12-2-91
Vol. 56 No. 231

federal register

Monday
December 2, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

12-2-91
Vol. 56 No. 231
Pages 61109-61346

federal register

Monday
December 2, 1991

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–2235
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–2235
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	512–2235
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 56, No. 231

Monday, December 2, 1991

Agency for Health Care Policy and Research
NOTICES
Committees; establishment, renewal, termination, etc.:
Otitis media in children, post-stroke rehabilitation, and congestive heart failure; clinical practice guidelines development panel, 61252

Agricultural Marketing Service
RULES
Oranges (navel) grown in Arizona and California, 61109

Agricultural Stabilization and Conservation Service
NOTICES
Meetings:
National Conservation Review Group, 61222

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Commodity Credit Corporation; Cooperative State Research Service; Farmers Home Administration; Federal Grain Inspection Service; Food and Nutrition Service; Forest Service; Rural Electrification Administration; Rural Telephone Bank

Animal and Plant Health Inspection Service
NOTICES
Eggs for production of animal biological products; veterinary biologics memorandum; correction, 61287
Genetically engineered organisms for release into environment; permit applications, 61222

Army Department
See also Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Aberdeen Proving Ground, MD; combat materiel research laboratory, 61237

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Coast Guard
RULES
Pollution:
Pollution fund expenditures; hazardous substance and oil discharge removal, 61162
PROPOSED RULES
Pollution:
Financial responsibility of vessels for water pollution, 61216

Commerce Department
See also Export Administration Bureau; Foreign-Trade Zones Board; International Trade Administration; Minority Business Development Agency; National Institute of Standards and Technology; National Oceanic and Atmospheric Administration; National Telecommunications and Information Administration
NOTICES
Agency information collection activities under OMB review; correction, 61287

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 61234, 61235 (3 documents)

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Union of Soviet Socialist Republics, 61233

Commodity Credit Corporation
PROPOSED RULES
Loan and purchase programs:
Sugar and crystalline fructose; marketing allotment regulations (1991-1996 FYs), 61191

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
MidAmerica Commodity Exchange—
Rough rice, 61236

Cooperative State Research Service
NOTICES
Grants and cooperative agreements; availability, etc.:
National competitive research initiative program, 61290

Customs Service
PROPOSED RULES
Country of origin marking:
Base metals and products thereof; origin determination; uniform rules, 61214
NOTICES
Trade name recordation applications:
Grand Tea Co., 61277
M.T.R. Condiments, 61278
M.T.R. Distributors (P) Ltd., 61277
M.T.R. Food Products, 61277

Defense Department
See also Army Department; Engineers Corps
NOTICES
Agency information collection activities under OMB review, 61236
Meetings:
DIA Defense Intelligence College Board of Visitors, 61236
Streamlining and Codifying Acquisition Laws Advisory Panel, 61237

Education Department
RULES
Postsecondary education:
Student assistance general provisions—
Verification reporting requirements, 61330
NOTICES
Agency information collection activities under OMB review, 61238
Grants and cooperative agreements; availability, etc.:
Centers for international business education, 61308
Meetings:
Historically Black Colleges and Universities, President's Board of Advisors, 61239

Employment and Training Administration
NOTICES
Adjustment assistance:
Tonka Corp. et al., 61262
Meetings:
Job Training Partnership Act Native American Programs' Advisory Committee, 61263

Energy Department
See also Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department
NOTICES
Natural gas exportation and importation:
Enron Oil & Gas Marketing, Inc., 61240

Engineers Corps
RULES
Water resource development projects; shoreline management fees at civil works projects, 61163
NOTICES
Environmental statements; availability, etc.:
Immigration and Naturalization Service Special Processing Center, AZ, 61237
Little Calumet River Flood Control Project, IN, 61238

Environmental Protection Agency
RULES
Drinking water:
National primary drinking water regulations—
Total coliforms; correction, 61287
NOTICES
Clean Air Act:
Benzene waste litigation; settlement, 61245
Meetings:
State-FIFRA Issues Research and Evaluation Group, 61248
Memorandums of understanding:
Carpet Cushion Council; carpet policy dialogue; carpet cushion products testing, 61245
National Association of Floor Covering Distributors; carpet policy dialogue; carpet installation adhesive testing program; document availability, 61246
Styrene Butadiene Latex Manufacturers Council (SBLMC); carpet policy dialogue; 4-phenylcyclohexene (4-PC) reporting program, 61247
Pesticide registration, cancellations, etc.:
2-Ethyl-1,3-Hexanediol, 61248

Executive Office of the President
See Presidential Documents; Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Foreign availability assessments:
Neodymium yttrium aluminum garnet (Nd:YAG) laser rods, 61266

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 61285

Farmers Home Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Housing preservation program, 61224

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Airbus Industrie, 61212
British Aerospace, 61213
Transition areas; correction, 61288
NOTICES
Grants and cooperative agreements; availability, etc.:
National Airspace System (NAS) long-term technical needs, 61271

Federal Communications Commission
RULES
Radio stations; table of assignments:
Alabama, 61168
Arkansas, 61169
Texas, 61168
(2 documents)
Vermont, 61169
PROPOSED RULES
Radio stations; table of assignments:
Oregon, 61220

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 61285

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Washington, 61250

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Hydropower license conditions and other matters, submittal, 61137

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Illinois, 61223
(2 documents)
Minnesota et al., 61224

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Hawaii County, HI, 61274

Federal Maritime Commission
RULES
Ocean freight forwarders, marine terminal operations, and passenger vessels:
Automated Tariff Filing and Information System (ATFI); electronic filing, processing and retrieval of tariff data, 61164
NOTICES
Agreements filed, etc., 61250
Correction, 61287

Federal Railroad Administration
RULES
Railroad operating rules:
Grade crossing signal system safety; reporting requirements, 61169
NOTICES
Exemption petitions, etc.:
Arkansas & Missouri Railroad et al., 61274

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 61285, 61286 (3 documents)
Applications, hearings, determinations, etc.:
CB Financial Corp. et al., 61250
Society Corp., 61251

Fish and Wildlife Service
RULES
Endangered and threatened species:
Sonoma sunshine, etc. (three plants from Cotati Valley, Sonoma County, CA), 61173
NOTICES
Environmental statements; availability, etc.:
Washington County, UT; Mojave desert tortoise, incidental taking, 61259

Food and Drug Administration
NOTICES
Color additive petitions:
Ethicon, Inc., 61253
Food additive petitions:
Ciba-Geigy Corp., 61253

Food and Nutrition Service
PROPOSED RULES
Child nutrition programs:
Women, infants, and children; special supplemental food program—
Food packaging for breastfeeding women, 61185

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida, 61227
Michigan
Alps Electric (USA), Inc.; automotive parts testing and distribution facility, 61226
American Yazaki Corp.; auto wiring harness testing and distribution facility, 61227
New Mexico—
Adria-SP, Inc.; pharmaceutical manufacturing plant; correction, 61228
Ohio—
Ford Motor Co.; passenger and cargo vehicle manufacturing plant, 61227
Texas—
Adria-SP, Inc.; pharmaceutical manufacturing plant; correction, 61228

Forest Service
NOTICES
Environmental statements; availability, etc.:
New York-New Jersey Highlands Region; study draft report, 61225

Health and Human Services Department
See Agency for Health Care Policy and Research; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Public Health Service; Social Security Administration

Health Care Financing Administration
NOTICES
Meetings:
International Classification of Diseases, Ninth Revision, Clinical Modification Coordination and Maintenance Committee, 61254

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 61241

Immigration and Naturalization Service
RULES
Nonimmigrant classes:
Temporary alien workers seeking classification and admission, 61111
PROPOSED RULES
Immigration:
Immigration benefits; processing procedures for certain applications and petitions, 61201

Interior Department
See also Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office
NOTICES
Meetings:
Indian Affairs Bureau Reorganization Joint Tribal/BIA/DOI Advisory Task Force, 61259

Internal Revenue Service
RULES
Income taxes:
Incentive stock option and employee stock purchase plans; stockholder approval, 61159

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 61228
Countervailing duties:
Extruded rubber thread from Malaysia, 61229
Applications, hearings, determinations, etc.:
Woods Hole Oceanographic Institution, 61229

Justice Department
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Arizona; correction, 61250
New Mexico; correction, 61287
Oregon; correction, 61287
Survey plat filings:
Alaska, 61250

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
Lykes Bros. Steamship Co., Inc., 61275

Minority Business Development Agency
NOTICES
Business development center program applications:
Oklahoma, 61230

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
President's Committee on Arts and Humanities; correction, 61287

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
Navistar International Transportation Corp., 61275

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Digital signature standard (DSS), 61231

National Institutes of Health
NOTICES
Meetings:
National Institute of General Medical Sciences, 61254

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic surf clam and ocean quahog, 61182, 61183 (2 documents)
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Bachman, Sucesion Alberto, 61225
Marine mammals:
Taking incidental to commercial fishing operations—
Draft legislative environmental impact statement and proposed regime to govern interactions, 61231
Meetings:
International Commission for the Conservation of Atlantic Tunas, 61232
North Pacific Fishery Management Council, 61232
Pacific Fishery Management Council, 61232
Permits:
Marine mammals, 61232

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 61261

National Telecommunications and Information Administration
NOTICES
Meetings:
Spectrum Planning Advisory Committee, 61233

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 61286

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 61286
Applications, hearings, determinations, etc.:
Georgia Power Co. et al., 61263
Long Island Lighting Co., 61265

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
Special observances:
Adoption Week, National (Proc. 6383), 61345

Public Health Service
See also Food and Drug Administration; National Institutes of Health
NOTICES
Meetings:
National Toxicology Program; Scientific Counselors Board, 61254
Organization, functions, and authority delegations:
National Institutes of Health, 61258

Rural Electrification Administration
PROPOSED RULES
Electric and telephone loans:
Documents and lien accommodation procedures, 61201

Rural Telephone Bank
PROPOSED RULES
Mortgages and related loan documents, including lien accommodation procedures, 61201

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc.; correction, 61288
Self-regulatory organizations; unlisted trading privileges:
Cincinnati Stock Exchange, Inc., 61266
Midwest Stock Exchange, Inc., 61267
Pacific Stock Exchange, Inc., 61267
Philadelphia Stock Exchange, Inc., 61268
Applications, hearings, determinations, etc.:
American General Life Insurance Co. of Delaware et al., 61268
Panther Partners, L.P., 61269

Small Business Administration
NOTICES
Disaster loan areas:
California, 61270
Massachusetts, 61270
License surrenders:
Wisconsin Community Capital, Inc., 61271
Meetings:
National Small Business Development Center Advisory Board, 61271

Meetings; regional advisory councils:
Illinois, 61270
New Jersey, 61271
Texas, 61271

Social Security Administration
RULES
Supplemental security income:
Aliens; residence and citizenship requirements
Correction, 61287

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Maryland, 61160
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Louisiana, 61215

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Intellectual property rights protection, countries denying policies and practices, 61278
United States-Canada Free-Trade Agreement:
Accelerated tariff elimination provision implementation; correction, 61284

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; Maritime Administration; National Highway Traffic Safety Administration

Treasury Department
See also Customs Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 61276, 61277
(2 documents)

Veterans Affairs Department
PROPOSED RULES
Disabilities rating schedule:
Genitourinary system disabilities, 61216
NOTICES
Committees; establishment, renewal, termination, etc.:
Vietnam Veterans Readjustment Problems Advisory Committee, 61284

Separate Parts In This Issue

Part II
Department of Agriculture, Cooperative State Research Service, 61290

Part III
Department of Education, 61308

Part IV
Department of Education, 61330

Part V
The President, 61345

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.

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.

3 CFR
Proclamations:
6383.....61345
7 CFR
907.....61109
Proposed Rules:
246.....61185
1435.....61191
1610.....61201
1717.....61201
1744.....61201
8 CFR
214.....61111
Proposed Rules:
103.....61201
214.....61201
223.....61201
223a.....61201
248.....61201
264.....61201
292.....61201
14 CFR
71.....61288
Proposed Rules:
39 (2 documents).....61212, 61213
18 CFR
4.....61137
16.....61137
19 CFR
Proposed Rules:
4.....61214
10.....61214
102.....61214
134.....61214
177.....61214
20 CFR
416.....61287
26 CFR
1.....61159
14a.....61159
30 CFR
920.....61160
Proposed Rules:
918.....61215
33 CFR
153.....61162
Proposed Rules:
130.....61216
131.....61216
132.....61216
137.....61216
34 CFR
668.....61330
36 CFR
327.....61163
38 CFR
Proposed Rules:
4.....61216
40 CFR
141.....61287
142.....61287
46 CFR
514.....61164
47 CFR
73 (5 documents).....61168, 61169
Proposed Rules:
73.....61220
49 CFR
234.....61169
50 CFR
17.....61173
652 (2 documents).....61182, 61183

Rules and Regulations

Federal Register
Vol. 56, No. 231
Monday, December 2, 1991

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 722]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from November 29 through December 5, 1991. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 722 (7 CFR part 907) is effective for the period from November 29 through December 5, 1991.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–0182.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

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

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California an represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has tentatively estimated that about 70 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (45,150 cars), with the remainder being exported fresh (12 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and

enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and Districts 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on November 26, 1991, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 6 members voting in favor, 4 opposing, and 1 abstaining, that 1,600,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 1,600,000 cartons is equivalent to the amount as specified in the Committee's shipping schedule. However, the Department, based on its independent analysis, information provided by the Committee, and the potential for off-shore competition, has revised the recommendation and established volume regulation in the amount of 1,700,000 cartons. Of the 1,700,000 cartons, 91.4 percent or 1,533,800 cartons are allotted for District 1, and 8.6 percent or 146,200 cartons are allocated for District 3. Districts 2 and 4 will remain open as they have not yet begun to ship.

During the week ending on November 21, 1991, shipments of navel oranges to fresh domestic markets, including Canada, totaled 999,000 cartons compared with 1,271,000 cartons shipped during the week ending on November 22, 1990. Export shipments totaled 179,000 cartons compared with 166,000 cartons shipped during the week ending on November 22, 1990. Processing and other uses accounted for 246,000 cartons compared with 286,000 cartons shipped during the week ending on November 22, 1990.

Fresh domestic shipments to date this season total 1,441,000 cartons compared with 3,904,000 cartons shipped by this time last season. Export shipments total 310,000 cartons compared with 363,000 cartons shipped by this time last season. Processing and other use shipments total 343,000 cartons compared with 805,000 cartons shipped by this time last season.

The average f.o.b. shipping point price for the week ending on November 21, 1991, was $11.58 per carton based on a reported sales volume of 612,000 cartons. The season average f.o.b. shipping point price to date is $12.35 per carton. The average f.o.b. shipping point prices for the week ending on November 22, 1990, was $9.84 per carton; the season average f.o.b. shipping point price at this time last year was $10.08.

The Department's Market News Service reported that, as of November 26, demand is fairly slow for first grade, and moderate for choice. The market is reported as barely steady. Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. The Committee also discussed concerns regarding the Florida citrus industry and increasing market competition. One Committee member favored a higher level of allotment, and three Committee members favored no regulation at this time.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from November 29 through December 5, 1991, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on December 5, 1991, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until November 26, 1991, and this action needs to be effective for the regulatory week which begins on November 29, 1991. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1022 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1022 Navel Orange Regulation 722.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from November 29 through December 5, 1991, is established as follows:

(a) District 1: 1,553,800 cartons;
(b) District 2: unlimited cartons;
(c) District 3: 146,200 cartons;
(d) District 4: unlimited cartons.

Dated: November 27, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–28970 Filed 11–29–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1417–91]

RIN 1115–AC72

Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of the Immigration Act of 1990 (IMMACT), Public Law No. 101–649, November 29, 1990, and the Armed Forces Immigration Adjustment Act of 1991, Public Law No. 102–110, October 1, 1991, as they relate to temporary alien workers seeking nonimmigrant classification and admission to the United States under sections 101(a)(15)(H), (L), (O), and (P) of the Immigration and Nationality Act (Act), 8 U.S.C. 1101. This rule also contains technical amendments which reflect the Service's operating experience under the H and L classifications. This rule will conform Service policy to the intent of Congress as it relates to these classifications, implement new nonimmigrant classifications and requirements established by Public Law 101–649 and Public Law No. 102–110, and clarify for businesses and the general public requirements for classification, admission, and maintenance of status.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, telephone (202) 514–3946.

SUPPLEMENTARY INFORMATION: On July 11, 1991, at 56 FR 31553–31576, the Immigration and Naturalization Service (Service) published a proposed rule with request for comments, in order to implement the provisions of Public Law No. 101–649. Public Law No. 101–649 dramatically altered the H–1B nonimmigrant classification by removing the prominent alien standard completely from the classification and created, among other things, the new O and P nonimmigrant classifications. Public Law No. 101–649 also required that petitions for H–1B classification contain an approved Labor Condition Application issued by the Department of Labor. Many of the prominent artists, athletes and entertainers who were previously eligible for H–1B status would be eligible for O and P nonimmigrant status under Public Law No. 101–649. The statute imposed a number of requirements and restrictions on these prominent aliens which were not contained in prior legislation. However, on October 1, 1991, the President signed into law the Armed Forces Immigration Adjustment Act of 1991 (Pub. L. No. 102–110). This law delays the implementation of certain provisions of the O and P nonimmigrant classifications until April 1, 1992. Aliens seeking nonimmigrant admission to the United States as artists, athletes, entertainers or fashion models before April 1, 1992 will not be admitted as O–1 P–1 or P–3 nonimmigrants, but may be admitted as H–1B nonimmigrants of distinguished merit and ability under the provisions of 8 U.S.C. 101(a)(15)(H)(i)(b) effective on September 30, 1991. Aliens seeking nonimmigrant admission for the purpose of accompanying or assisting in artistic or athletic performances by aliens of distinguished merit and ability for specific events will not be admitted as O–2 nonimmigrants, but may be admitted as H–1B nonimmigrants until April 1, 1992. Provisions of the proposed rule relating to the admission of artists, athletes and entertainers under the O and P classifications have been modified to conform to this change. Public Law No. 101–649 also altered the L–1 nonimmigrant classification.

Interested persons were invited to submit written comments on or before August 12, 1991. In the preamble to the proposed rule, the Service indicated that it desired comments and suggestions on how to streamline and facilitate the petitioning process. The Service also advised the public that many provisions in the proposed rule were statutory in nature and had to be included in the regulations.

This final rule will address only comments which relate to the nonimmigrant categories which will be in effect prior to April 1, 1992. Additionally, in order to accommodate the artists, entertainers, athletes, and fashion models in the H–1B category, the final regulation relating to the H–1B category now includes provisions to process petitions filed in their behalf.

Discussion of Comments on Proposed Regulations

A number of commenters offered suggestions and improvements for the proposed rule, some of which have been adopted. A number of comments were received which addressed issues which are more appropriate for inclusion in the Service's Operations Instructions. Additionally, there were a number of comments relating to areas that were not affected by IMMACT, such as the H–2A nonimmigrant classification, and were not discussed in the proposed rule. These comments were not considered in the drafting of the final rule. The following discussion: groups the comments into the various nonimmigrant classifications; discusses the issues raised; provides the Service's position on the issues; and, indicates the revisions adopted in the final rule, based on the public's concerns. A general provision section is also included in which topics relating to more than one nonimmigrant category are discussed.

H–1B Nonimmigrant Classification—Labor Condition Application for H–1B Petitions—Section 214.2(h)(4)(i)(B)(1)

The proposed regulation contains the requirement that H–1B petitions for aliens employed in a specialty occupation must be accompanied by an approved labor condition application from the Department of Labor. This provision generated one hundred and thirty-nine comments, the vast majority of which suggested that the labor condition application merely be required to be filed with the Department of

Labor, not approved. A number of academic institutions commented that, due to the nature of their hiring procedures, they would experience difficulty in hiring professors if the labor condition application had to be approved prior to the filing of the petition.

The Service recognizes that obtaining an approved labor condition application may create difficulties for certain types of employers. However, the provision that the labor condition application be approved prior to the alien's admission to the United States is found in the statutory definition of the H–1B classification in section 205(c)(1) of Public Law No. 101–649. Further, in order to ensure that the labor condition application is approved prior to entry, it is only logical that the approved labor condition application be a part of the petition package.

One commenter suggested that academic institutions be permitted to file one approved blanket labor condition application covering all H–1B petitions filed by the school for the year. The proposed rule at § 214.2(h)(4)(i)(B)(*3*) already provides for such a situation and therefore the final rule does not need to be amended to implement this suggestion.

One commenter suggested that physical therapists should be exempt from the labor condition application process due to the demonstrated shortage of individuals employed in this occupation. As the statute does not provide for an exception to this provision, this suggestion will not be adopted. Further, it must be noted that the labor condition application process does not contain a requirement that the labor market be tested.

Two commenters also suggested that the Service delete the requirement that the validity of an H–1B petition coincide with the validity of the labor condition application. The Service believes that this is a reasonable requirement in view of the streamlined labor condition application process proposed by the Department of Labor. To provide otherwise would serve to dilute the requirement that an employer post a notice of filing of the application in the workplace pursuant to 8 U.S.C. 212(n)(1)(C)(i).

Twenty-seven commenters suggested that the labor condition application is burdensome for employers who wish to substitute employees. The Service has historically required the filing of new I–129 petitions for substitute employees and does not believe that the proposed regulations will make this process any more difficult. The provision at § 214.2(h)(4)(i)(B)(*3*) of the proposed rule permits the filing of labor condition applications for multiple unnamed beneficiaries. The Service suggests that petitioners avail themselves of this provision where all beneficiaries of a labor condition application have not been identified at the time of filing the petition.

The proposed rule contains a requirement that only United States employers can file an H–1B petition. Six commenters suggested that foreign employers should also be permitted to file H–1B petitions. The labor condition application requires that a petitioner post a notice of the filing of a labor condition application at its place of employment. This obviously requires the petitioner to have a legal presence in the United States. As a result, this requirement will be retained in the final rule. In order to provide clarification, the Service has included a definition of the term "United States employer" in the final rule.

One commenter suggested that a permanent labor certification may be used in lieu of a labor condition application. As the procedures for obtaining these two documents are dramatically different, they may not be interchanged.

Three commenters suggested that the penalty for misrepresentations on labor condition applications is too severe. The penalties for misrepresentations are contained in the statute and must be included in the final rule.

One commenter also objected to the notification requirements required for the issuance of labor condition applications. The notification requirements are found in the statute and are within the jurisdiction of the Department of Labor. As a result, the Service will not respond to this objection.

Prominent Businessmen as Specialty Workers—Section 214.2(h)(4)(iii)

Fifty-two commenters suggested that prominent businessmen should be included in the definition of specialty occupation. Additionally, some commenters suggested that petitioners be permitted to file for labor condition applications for prominent businessmen.

A labor condition application can be issued to an employer for any occupation. However, an approved labor condition application issued for an occupation does not mean that the occupation is a specialty occupation. An approved labor condition application is not a factor in determining whether a position is a specialty occupation.

The definition of a specialty occupation is specifically set forth in the statute. Business may be accorded classification as H–1B aliens as long as the statutory requirements for the classification are met. That determination will be made based on a case-by-case review of the position. The regulation, in providing examples of recognized fields of endeavor, does include "business specialities." We also note that the list of fields of endeavor are included in the regulation as examples. That list is by no means exhaustive. Businessmen who lack the required degree or its equivalent should be able to obtain classification as O–1 aliens of extraordinary ability or as H–2B nonimmigrants, depending on their qualifications.

Thirty-one commenters suggested that the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations. Most of these commenters suggested that the definition should be expanded to include those occupations which did not require a bachelor's degree in the specific specialty. The definition of specialty occupation contained in the statute contains this requirement. Accordingly, the requirement may not be amended in the final rule.

Equivalency to Completion of a College Degree—Section 214.2(h)(4)(iii)(D)

Thirty-one commenters stated that the equivalency requirements for master's and doctorate degrees were too restrictive.

The Service maintains that the equivalent provided in the regulation for an advanced degree—a baccalaureate degree plus five years of progressive experience in the professions—is comparable to the educational level required for a master's degree. However, the final rule has been amended to reflect that the Service will accept foreign degrees determined to be equivalent to doctorate degrees granted by academic institutions in the United States.

One comment was received which suggested that the Service's formula for equating experience and/or training to education, three years of experience to one year of education, be replaced. It was suggested that the Service adopt the Department of Labor's requirement which equates two years of experience to one year of education.

The Service's present policy of equating three years of experience and/or training to each year of education has been codified in regulation since February 26, 1990. It was placed into regulation for the benefit of petitioners and applicants who may have difficulty in seeking and obtaining a

determination of equivalency through authoritative sources. The three-to-one formula is based on a survey of relevant precedent decisions which reflect the number of years of experience held by alien beneficiaries who did not hold degrees but were regarded by the Service as having the equivalent of a degree. *Matter of Bienkowski*, 12 I&N Dec. 17 (D.D. 1966); *Matter of Yaakov*, 13 I&N Dec. 203 (R.C. 1969); *Matter of Devnani*, 11 I&N Dec. 800 (D.D. 1966); *Matter of Arjani*, 12 I&N Dec. 649 (R.C. 1967).

Based on these precedent decisions, the Service will continue its present policy of utilizing the three-to-one formula.

One commenter also suggested that the Service's requirement that the petitioner establish that the beneficiary has been employed in "progressively responsible positions" is unnecessarily restrictive. The regulatory definition of the term "specialty occupation" is based on the definition of that term found in the statute. The statute clearly requires that the beneficiary be employed in progressively responsible positions. As a result, the Service will not alter this requirement in the final rule.

H–1B Petitions for Physicians—Section 214.2(h)(4)(vii)

As IMMACT removed the restrictions on graduates of foreign medical schools found in the current statute, graduates of foreign medical schools are now eligible to perform direct patient care and are eligible for H–1B nonimmigrant classification. These aliens, however, are subject to the same requirements as other H–1B nonimmigrants, including the labor condition application process.

One commenter suggested that foreign doctors should remain within the jurisdiction of the Educational Commission for Foreign Medical Graduates (ECFMG) to ensure that the American public is protected from unqualified physicians. In order to ensure that foreign medical graduates are competent to perform patient care in the United States, the final rule now includes an additional requirement that petitions for foreign physicians must be accompanied by an ECFMG certificate or by evidence that the beneficiary is exempt therefrom. Additionally, the final rule now contains language that petitions for foreign medical graduates must be accompanied by evidence that the alien is authorized by the state of intended employment to perform the duties described in the petition.

Return Travel Expenses—Section 214.2(h)(6)(vi)(E)

Eighty-two comments were received concerning this provision. Seventy-two commenters suggested that the provision should not apply to those situations where the beneficiary is dismissed for cause such as poor work performance. Two commenters suggested that the provision be made applicable only to aliens dismissed during the first three months of employment while five comments were received regarding those situations where the beneficiary was dismissed from employment as a result of lack of funding. Additionally, seven commenters suggested that the employer should be liable only if the alien intends to stay in the United States unlawfully. Five commenters stated that the provision should apply only in those situations where the alien comes to the United States on the basis of the employer's petition. One commenter also noted that it would be difficult to determine if the alien used the money to return home. Finally, six commenters suggested that the provision should be eliminated as it is unreasonable and excessive and may make it difficult for some employers to hire aliens.

In response to the above comments, the final rule relating to this provision has been expanded and includes more detail. The final rule will be amended to reflect that this provision will be complaint-driven. Complaints concerning noncompliance with this provision should be submitted in writing to the Service Center which adjudicated the petition and will be included in the file relating to the petition. The final rule will also indicate that the term "dismissed" requires some action by the employer. If the alien opts to terminate his or her employment prior to the expiration of the period of authorized admission, he or she is not considered to have been dismissed.

The final rule does not include a penalty provision for those employers who fail to comply with the statute as none was included in the statue. However, the Service may consider the fact that an employer has not complied with this provision when adjudicating future nonimmigrant visa petitions.

Eleven commenters also suggested that the final rule contain a definition of the term "aboard" as some employers could simply provide the beneficiary with return transportation to Canada or Mexico in order to comply with the statutory requirement. This suggestion will be adopted in the final rule. The definition will require the petitioner to be liable for the beneficiary's return transportation to the alien's last place of residence outside the United States.

Numerical Limits on H–1B Nonimmigrant—section 214.2(h)(8)(i)(A)

The proposed rule contains the requirement that aliens who may be accorded nonimmigrant classification (excluding those in DOD research) shall be limited to 65,000 for each fiscal year. Eleven comments were received relating to this provision. Two commenters suggested that the cap should be higher. Two commenters suggested that numbers should be assigned when the petition is approved. One commenter suggested that the numerical cap should not apply to extensions of stay while two suggested that a system should be established to keep track of the backlog of numbers similar to that presently in use by the Department of State for permanent visa numbers. Four commenters suggested that aliens, not petitions, should be counted as some aliens may be employed by two separate employers within the same fiscal year.

The 65,000 numerical limitation is a statutory requirement and must therefore be retained in the final rule. The Service has no authority to raise the cap beyond the limits imposed by Congress. The proposed rule clearly states that the numerical limitation applies only to new petitions and not extensions of stay. Further, the statute requires that aliens are to be issued visas in the order in which petitions are filed. The Service will not institute a backlog system since H–1B nonimmigrants are coming temporarily to the United States and the need for the beneficiary's service may dissipate over the course of time. The Service will also retain in the final rule its proposal to assign a number to each petition even if the beneficiary was previously accorded H–1B status in the same fiscal year. The Service believes that this provision will result in more efficient adjudication of H–1B petitions as it will not be required to review prior records relating to a prospective beneficiary when adjudicating a new petition.

The Service also received two comments suggesting that the language in the proposed rule at § 214.2(h)(8)(ii)(C) which provides for the allocation of numbers to Guam is in conflict with § 214.2(h)(8)(ii)(B) which requires numbers to be assigned when filed. The Service agrees with the comments and § 214.2(h)(8)(ii)(C) has been amended in the final rule.

Transition for Current H–1B Nonimmigrant

Fifty-three comments were received suggesting that H–1B nonimmigrant aliens in the United States on the date of enactment be exempt from the labor condition application requirements and that this provision should be stated in the final rule.

The Service will institute a policy that only those petitions and applications filed after October 1, 1991, will be affected by the new provisions. Further, any H–1B alien in the United States on the date of enactment will be entitled to their current H–1B classification and can be readmitted to the United States in that category. This policy and other transitional issues are more appropriately handled through policy issuances rather than formal rulemaking since they are great in number and short-lived in relevance.

L–1 Nonimmigrant Classification—Definition of the Term "doing business"—Section 214.2(1)(ii)(H)

One comment was received which noted that the definition of the term "doing business" contained in the proposed rule made reference to the staffing levels of the entity. As section 123 of Public Law No. 101–649 states that staffing levels alone are not to be used in determining whether an individual is performing in a managerial or executive capacity, the reference to staffing levels in the definition appears to be inconsistent. Therefore, the reference to staffing levels will be removed from the definition.

Definition of the Term "Affiliate"—Section 214.2(l)(1)(ii)(L)

The proposed rule contains a definition of the term "affiliate" at § 214.2(l)(1)(ii)(L) which is more restrictive than the definition currently in use. Forty-six commenters stated that this definition was more restrictive and did not reflect the reality of the business world. A number of commenters stated that the definition would exclude a number of legitimate businesses from classification as qualifying organizations. Several of the commenters suggested that the current definition should be expanded to allow firms which are owned by different groups of individuals to qualify.

The Service had proposed to amend this definition as a result of certain operational difficulties encountered using the current definition. Given the objections raised by various commenters, the Service will retain the definition currently in use in the final rule. In drafting IMMACT, Congress altered the "L–1" nonimmigrant classification with the intention of making the classification easier for businesses to utilize. IMMACT also added an additional criterion for establishing an affiliate relationship so that additional types of businesses could utilize the nonimmigrant category. The Service will confine this regulatory effort to areas directly affected by IMMACT.

The Service will not expand the definition of the term "affiliate" in the final rule. In drafting Pub. L. No. 101–649, Congress created a number of statutory definitions for the L–1 nonimmigrant category but chose not to define the term "affiliate". Arguably, if Congress wanted to expand the Service's definition of "affiliate," it could have done so in the statute. Since the definition was not altered by Congress, the Service believes that the current definition comports with Congressional intent.

One commenter from a major world-wide accounting firm also stated that the definition of "affiliate" at § 214.2(1)(2)(ii)(L)(*3*) should be altered to clarify that the term also includes those qualifying accounting firms which provide only consulting services. The definition included in the proposed rule could be interpreted to require that these firms perform both consulting and managerial duties. As the legislative history of this provision supports this commenter's suggestion, the definition of "affiliate" has been amended to include accounting firms which provide only consulting services.

Evidence Required To Support a Petition for a New Office—Section 214.2(l)(3)(v)

Section 123 of Public Law No. 101–649 states that staffing levels alone are not to be used in determining whether an individual is performing in a managerial or executive capacity. Therefore, the reference to staffing levels in the description of the evidence required to support a new office petition has been deleted in the final rule. Petitioners will still be required to establish that the new office will support a managerial position within one year of the filing of the petition. The final rule has been amended to require the petitioner to submit evidence of the organizational structure of the U.S. and foreign firms.

Extension of Stay Provision—Section 214.2(l)(15)

The Service realized that some aliens accorded L–1 status on the basis of specialized knowledge may subsequently be promoted or transferred to a managerial or executive position. In order to accommodate this situation and to allow the alien to be accorded the maximum period of stay in the United States, the proposed rule indicated that an alien accorded L–1 nonimmigrant status on the basis of specialized knowledge could be granted an extension of stay for a sixth and seventh year, but only if the alien has been employed in a managerial or executive capacity for two prior years. This provision generated thirty-one comments. Several commenters stated that there was no statutory basis for this requirement. Additionally, commenters stated that the two year requirement was entirely too long and did not reflect the realities of the business world.

In response to these comments, the Service has reconsidered this portion of the proposed rule. The final rule will be amended to require that the alien beneficiary be employed in a managerial capacity for only six months in order to be granted an extension for a sixth and seventh year. The petitioner will be required to document this change of duties through the filing of a new or amended petition. The Service deems the requirement of six months previous managerial or executive employment to be an appropriate indicator of the legitimacy of the managerial position.

O Nonimmigrant Category—Definition of O–1 Nonimmigrant—Section 214.2(o)(1)(ii)(A)

As a result of the passage of the Armed Forces Immigration Adjustment Act of 1991, the O–1 nonimmigrant classification is now limited until April 1, 1992 to aliens who have extraordinary ability in the sciences, education, or business. Aliens seeking nonimmigrant admission to the United States who are artists, athletes, or entertainers and who would have been eligible to apply for admission under the O–1 classification may be admitted under the H–1B classification until April 1, 1992. In addition, aliens seeking nonimmigrant admission for the purpose of accompanying or assisting in artistic or athletic performances by aliens of distinguished merit and ability will not be admitted as O–2 nonimmigrants but may be admitted as H–1B nonimmigrants until April 1, 1992. Comments relating to O–1 artists, athletes, or entertainers and to O–2 nonimmigrants will not be addressed in this rule.

There were a number of general comments on the definition of the O–1 nonimmigrant category. One commenter suggested that the category include groups. However, as the statute limits

this classification to individuals, this comment will not be adopted.

Eight commenters recommended that the foreign residence requirement for O–1 aliens be removed as it is not found in the statute. Upon further consideration, the Service concurs with these commenters and will remove this requirement from the final rule.

One commenter stated that an alien employer should be permitted to file an O–1 petition. There is no provision in the statute or regulation precluding an alien employer from filing an O–1 petition.

Seven commenters also suggested that the Service delete the requirement that the O–1 alien should be coming to perform services relating to a specific event. The Service has not deleted this provision in the final rule as section 207(b)(2)(A) of IMMACT clearly limits the admission period of an O–1 to the length of time of the "event."

Services for More Than One Employer—Section 214.2(o)(2)(ii)(B)

Thirty-one commenters suggested that the final rule contain a provision permitting an O–1 alien to work for concurrent employers without requiring the employers to file separate petitions for the alien. The statute requires that, prior to according an alien O–1 status, the Attorney General must determine if the alien's entry into the United States will prospectively substantially benefit the United States and that the alien will continue to be employed in the area of extraordinary ability. These determinations can only be made by the Service through the adjudication of a petition. As a result, no revision will be made in the final rule.

Definition of "Event" or "Performance"—Section 214.2(o)(3)(ii)

One hundred fifty-three comments were received stating that the definition of "event" should be broadened and expanded. Specifically, commenters suggested the inclusion of engagements, layoffs, vacations and promotional appearances in the definition. Some commenters suggested the Service include a business event in the definition. Several commenters also submitted to the Service their own proposed definitions.

The Service acknowledges that short vacations often occur which are incidental and/or related to the event or performance. The Service is reluctant to include the term "layoffs," as it commonly implies a negative and adverse action of unemployment. However, the definition will include language which allows for short stopovers between performances, such as in a tour. The Service believes that business events are adequately considered in the definition as business projects.

Definition of "Extraordinary Ability"—Section 214.2(o)(3)(ii)

The Service has amended the definition of extraordinary ability in order to conform with the language of the House Committee Report on the Judiciary, H.R. Rep. No. 723, 101st Cong., at 59.

Definition of "Substantially Benefits Prospectively the United Stotes"—Section 214.2(o)(3)(ii)

The Service has reconsidered the definition of "substantially benefits prospectively the United States" found in the proposed rule. Based on the high standards for the O–1 nonimmigrant category, the mere presence of any O–1 alien in the United States would substantially benefit prospectively the United States. Therefore, the definition serves no useful purpose and has been removed.

Standards for Establishing That o Position Substantially Benefits Prospectively the United States—Section 214.2(o)(3)(iii)

IMMACT requires that an O–1 alien's admission to the United States substantially benefit prospectively the United States. In order to implement this requirement, the Service proposed criteria for establishing that a position substantially benefits the United States. A number of commenters suggested that these criteria be amended or deleted as they do not establish how the position substantially benefits the United States and do not include such criteria as the creation of jobs for United States workers. Further, a number of commenters questioned why the Service had departed from its long standing policy of requiring aliens of extraordinary ability or achievement to be coming to the United States to continue to perform services requiring such ability or achievement. These commenters noted that the statute requires that O–1 aliens be coming to the United States to continue to be employed in the area of extraordinary ability. They suggested that the Service include a provision requiring the petitioner to establish that the position must also require the services of such an alien.

Based upon these comments, the Service has reevaluated this section of the proposed rule. The standards listed in the proposed rule would have restricted the ability of many petitioners to establish that the alien's employment will substantially benefit prospectively the United States as the criteria are not all-inclusive, and omit a number of valid criteria such as the creation of jobs for United States workers. As a result, this standard will be removed from the final rule.

Additionally, in response to the above mentioned comments, the Service will include in the final rule the long standing requirement that an alien of extraordinary ability must be coming to the United States to perform services requiring such ability. This provision is consistent with the language of the statute.

Evidentiary Requirements for O–1 Nonimmigrant Aliens of Extraordinary Ability—Section 214.2(o)(3)(iv)

The proposed rule describes the evidentiary requirements for O–1 aliens of extraordinary ability in the sciences, education, or business. The Service received five hundred eighty-seven comments in response to these provisions. Five hundred fifty-six commenters stated that the standards were too high or stringent and would make the nonimmigrant category difficult to utilize. Two commenters suggested that the standards were not stringent enough.

The Service agrees that the standards for this category are very high. However, the basis for the proposed regulatory language was derived from the House Committee report which indicated that the O–1 extraordinary ability category was comparable to the category of priority workers for permanent immigration. The report indicated that extraordinary ability may be established through a one-time achievement such as receiving a Nobel Prize. The report also stated that the category is reserved for those individuals who have risen to the very top of their field of endeavor. As a result, it is the opinion of the Service that the standards for this category as described in the proposed rule reflect the intent of Congress and will therefore be retained in the final rule.

Nine commenters stated that the standards in the proposed rule are not appropriate for all occupations and that some individuals employed in certain occupations will have difficulty in meeting the standards. Nineteen commenters also suggested that the Service develop separate standards for the different occupations covered in the nonimmigrant category such as career business people. A number of commenters also supplied the Service with their own proposed standards for various fields of endeavor.

The Service has given careful consideration to the comments received concerning the standards for the O–1 category. The Service believes that the standards in the proposed rule are sufficiently flexible so that the highest achieving individuals in any occupational area may be accommodated. The final rule also retains the "catch-all" provision which guarantees that the standard applies to all occupations. The adoption of separate standards for separate occupations could result in the exclusion of certain aliens from O–1 classification. Further, the Service believes that the standards as contained in the proposed rule reflect Congressional intent that the category be reserved for only those individuals who have reached the pinnacle of their respective field of endeavor.

Length of Admission for O–1 Nonimmigrant—Section 214.2(o)(7)(iii)(A)

Thirteen individuals provided comments concerning the length of admission for O–1 nonimmigrant aliens. Ten commenters suggested that an O–1 alien should not be limited to three years but should be admitted for a longer period of time.

The three year period of time discussed in the proposed rule relates only to the alien's initial period of admission. It is an administrative procedure established by the Service to ensure that the alien is still employed by the petitioning entity in an appropriate capacity. The alien's total period of stay in the United States will be limited to the duration of the event. There is no absolute time limit on the O–1's total stay in the United States.

The P Nonimmigrant Classification—Definition of P–2 Nonimmigrant—Section 214.2(p)(1)(ii)(B)

As a result of the passage of the Armed Forces Immigration Adjustment Act of 1991, implementation of the P–1 and P–3 nonimmigrant classifications for artists, athletes, and entertainers is delayed until April 1, 1992. Therefore, only the P–2 and P–4 nonimmigrant classifications are being implemented at this time. These nonimmigrant classifications are limited to artists and entertainers (both individuals and groups) who are under reciprocal exchange programs between the U.S. and foreign organizations which provide for the temporary exchange of artists and entertainers and their accompanying spouses or children. Comments relating to P–1 and P–3 classifications will not be addressed in this rule.

Twenty-seven comments were received concerning this nonimmigrant category. Three commenters suggested that existing reciprocal agreements should be "grandfathered" into the new classification. Eight commenters suggested that the definition is too restrictive and should be liberalized. Seven commenters stated that it should be made clear in the regulation that a P–2 alien does not have to be a performer.

The definition of the P–2 nonimmigrant classification found in the proposed rule is based on statutory language and the House Committee report. The definition includes both performing artists and those individuals who are also an integral part of the performance. The P–2 classification is not limited only to performing artists. The final rule provides that the P–2 classification may be granted to the actual performer or performers and that essential support personnel who are integral to the performance may also be granted P–2 status.

The Committee report clearly indicates that the exchange of artists in this area should be group for group or individual for individual. As a result, the Service will not "grandfather" in any existing reciprocal agreement unless the agreement complies with the statute and regulation.

Definition of "Event" or "Performance"—Section 214.2(p)(3)

Six commenters have brought to the Service's attention that the definition of "event" or "performance" should be included in the regulations for the P–2 classification as this was clearly indicated as the period of authorized status by statute. The Service concurs and will include the definition of "event" or "performance" in the final rule for purposes of this section.

Length of Admission—Section 214.2(p)(6)(iii)

Twelve individuals commented on the period of admission and period of extensions for aliens in the P nonimmigrant category. In response to these comments, the Service will amend the final rule to provide for a maximum period of initial admission of one year for all categories in the P nonimmigrant classification. Additionally, extensions of stay may be granted for periods of one year to complete the event.

Limitation on Admission of P–2 Aliens—Section 214.2(p)(8)(iv)

Fifteen comments were received stating that the 90-day limitation on re-admission should be removed. As the 90-day limitation on admission for P–2 nonimmigrant aliens is statutory, it must remain in the final rule.

General Provisions

A number of comments were received addressing long-standing Service policy such as the filing requirements for groups utilizing different consulates to obtain nonimmigrant visas, filings by foreign agents, and the H–2A nonimmigrant classification. The Service has insufficient information upon which to base such changes and would prefer to address such changes in a separate proposed rule with an adequate public comment period.

Revocation

Two commenters suggested that the language found in the proposed rule concerning the revocation of the H, L, O and P nonimmigrant classifications was cumbersome and contradictory. Based on these comments, the Service will amend the sections in the four nonimmigrant classifications relating to revocations to make it clear that the Service may revoke a petition at any time even after its validity has expired.

Emergent Filings

The proposed rule contained the provision that petitions for the H, L, O and P nonimmigrant classifications shall be filed only at the four Service Centers, even in emergent circumstances. Sixty people commented on this provision, suggesting that the Service retain its current policy of allowing for emergent filings at local offices. A majority of the commenters indicated that the current policy provides petitioners with an "escape-valve" to allow them to petition for aliens on short notice.

The Service proposed this provision to assure that petitions would be adjudicated in a consistent fashion and to enable the Service to track the number of petitions filed for those nonimmigrant classifications which are subject to numerical limitations. The Service is aware that situations may develop which will necessitate the filing of petitions in emergent situations. However, the Service believes that these petitions can be processed in acceptable time frames at the Service Centers. It should be pointed out that since union consultations or outside advisories are mandatory, even cases receiving the most expeditious treatment will require more time than in the past. Upon consideration, these filing limitations are retained in the final rule.

Sixty-six commenters also suggested that the Service describe the emergent filing process for the Service Centers in the final rule. The Service does not

believe that the final regulation is an appropriate forum to detail such processes. Each Service Center will develop its own system for accepting and processing these cases, depending upon local operating conditions. The Service will be developing various options in order to assist in the expeditious processing of these applications.

Essential Support Personnel

One commenter took exception to the Service's statement in the preamble to the proposed rule that the H–2B category was not appropriate for essential support personnel. In creating the essential support personnel category, the Service sought to continue its long standing practice of providing for the admission of accompanying aliens for whom the H–2B category is unworkable due to Department of Labor regulations which preclude the issuance of a temporary labor certification. The Service continues to believe this policy is correct and in accord with the statute, and will retain it in the final rule.

Periods of Admission

A number of commenters stated that all H, O, and P aliens should be admitted for up to thirty days before and thirty days after the need for the alien's services. The Service feels that the ten-day period of time for the O and P classifications is sufficient and will be retained in the final rule. Further, for consistency, the proposed rule will be modified for the H nonimmigrant category to comport with the O and P classifications. Local Service officials retain the authority to grant a period of voluntary departure beyond ten days in individual cases, where warranted.

Consultation Requirements for the O and P Nonimmigrant Classification

Five hundred seventy-seven comments were received concerning the consultation process for these nonimmigrant classifications. Almost all commenters either objected to the concept of requiring a consultation or provided suggestions on how to modify the process. One hundred fifty comments were received concerning the entities from which the Service should seek consultation. Additionally, numerous comments were received concerning the actual consultation process itself.

Three hundred twenty-five commenters suggested that management organizations, not labor organizations, should provide consultations for entertainers and that labor organizations could not possibly provide a consultation for every conceivable type of activity. For example, one hundred twenty-one comments were received stating that consultations could not be obtained concerning circus variety acts while eight comments were received stating that no United States organization could provide consultations for ethnic or cultural groups. Four commenters stated that consultations for visual artists would be difficult to obtain. Seventy-nine commenters stated that no consultation should be required where there is no collective bargaining unit. On the other hand, one commenter suggested that labor organizations be required to comment on every petition. Twenty-five people suggested that the consultation process be eliminated. Finally, two commenters stated that ethnic advisory boards should be established to provide consultations for certain ethnic groups.

The statute requires the Attorney General to consult with a peer group for aliens of extraordinary ability. The statute also requires the Service to consult with a labor organization for P petitions. The Service is bound by these statutory requirements. However, the Service is aware that a labor organization or peer group may not exist for every proposed employment situation. The final rule will contain a provision which accommodates this situation to ensure that a petition will not be denied simply because an appropriate consulting entity does not exist.

Comments were received suggesting modification to the actual consultation process itself. Twenty-six commenters feared that a consulting organization could "kill" a petition merely by delaying its response to the petitioner's request for a consultation. The rule provides, however, that the Service can adjudicate the petition without a response from a consulting organization if a timely response is not forthcoming.

Forty-two commenters also suggested that consulting organizations be given a deadline to respond to requests for consultations from petitioning employers similar to the fifteen-day requirement when the Service requests the consultation. The Service cannot mandate a specific time frame for consultations from consulting organizations because many of the organizations which have volunteered to provide consultations have small staffs and may not be able to provide a consultation as quickly as the petitioner would like. Additionally, several commenters suggested that the petitioner's request for a consultation be considered adequate evidence of consultation. The Service will not adopt this suggestion as it has no way of verifying that the consulting organization ever received the request for consultation or ever responded to the request.

Twenty-one commenters also suggested that notice to a labor organization should be adequate evidence of consultation and that no response should be required. The Service views the consultation process as an avenue to obtain information concerning the merits of a beneficiary in order to adjudicate a petition properly. The consultation process is not a notification process for the industry where the beneficiary intends to work. A mere notification to a consulting organization does not provide the Service with the information required to adjudicate the petition. Therefore, this proposal will be rejected.

Three commenters suggested that the final rule state that consultations be given considerable weight in the adjudication of petitions. In light of the intent of Congress to facilitate the admission of these aliens and the overwhelming public comment that the consultation requirement be eliminated altogether, the language in the proposed rule, which does give appropriate weight to the opinion of the consulting organization, is preferable.

Thirty-four commenters also suggested that consultations should be substantive, not conclusory, and expressed concern as to the contents. The proposed rule contains language that consultations must contain a specific statement of facts upon which the consultation was based.

Sixty-three comments were received suggesting that petitioners will be forced to engage in pre-filing consultations. The Service stated in the proposed rule that a substantially longer adjudication time would be required in instances where the Service would have to obtain the required consultation. This language was not placed in the proposed regulation to require petitioners to obtain the consultation before filing the petition, but merely to advise petitioners of a faster method of obtaining an adjudication of their petition.

Two commenters suggested that a consultation state whether the position requires the services of an alien of extraordinary ability. As the Service considers the consultation process to be a vehicle to obtain information, this suggestion will be adopted in the final rule.

Eight commenters suggested that the petitioner should receive a copy of any negative consultation. The proposed rule contains such a provision, which will be retained in the final rule. One

commenter suggested that the petitioner be given an opportunity to rebut a negative consultation. The final rule requires the Service to serve the petitioner with a notice of intent to deny if the Service intends to deny the petition on the basis of a negative consultation. This provides opportunity for response before a denial is issued.

Nine commenters suggested that the consulting entity should receive a copy of the decision on the petition. The Service has no objection to the consulting organization obtaining information concerning the petition. However, a consulting organization is not a party to the petition proceedings and is not entitled to notification of the Service's action on a particular petition.

One commenter suggested that preeminent petitioners should not be required to submit consultations with their petitions since the offer of employment should be sufficient to establish the beneficiary's abilities. One commenter suggested that membership in a peer group should constitute a consultation. One commenter suggested that the consultation should be waived for those aliens who were accorded H–1B or O status within the previous five years. As the statute does not provide for waivers of the consultation process, these comments will not be adopted.

Eight commenters suggested that more than one consultation should be required if more than one consulting entity exists. This suggestion would further complicate the process as it would increase the amount of paperwork and associated costs required to adjudicate the petition. The regulations do not preclude a petitioner from filing more than one consultation, but the Service will not mandate this requirement in the final rule.

Four commenters also stated that the proposed rule should contain a definition of "peer group." In response to these comments, the Service has drafted a definition of the term "peer group" in the final rule.

Three commenters also provided the Service with an alternate consultation process. This alternate consultation process has been carefully considered but the Service does not view it as being a viable alternative.

In response to the comments concerning the consultation process, the Service has made a minor alteration in the process as described in the proposed rule. The Service has added language to accommodate situations where the petitioner does not have knowledge of a consulting organization. The final rule contains language enabling the petitioner to submit those petitions to the Service, which will attempt to obtain its own consultation.

Extensions of Stay

One hundred twenty-eight commenters suggested that aliens be permitted to travel outside the United States during the pendency of the adjudication of their request for an extension of stay. The commenters stated that beneficiaries are often required to travel on short notice and are inconvenienced by the current process.

It has been long standing Service policy that requests for extensions of stay should be processed only while the alien is in the United States. However, in order to accommodate those aliens who where required to travel outside the United States while the extension of stay was pending, the Service devised a procedure to convert the request for an extension of stay to a request for an extension of the underlying visa petition. Under the proposed rule, in order to obtain an extension of stay for a beneficiary, the petitioner must also request (on the same application form) an extension of the petition. The petitioner will simply be required to notify the Service when the alien desires to travel and, when applicable, the consular post to which the alien will apply for a visa.

Time Frames for Adjudications

One hundred twenty-four commenters suggested that the final rule provide a maximum time frame for the adjudication of petitions. Some stated that the Service should be required to adjudicate petitions within 45 days while eighty-six others suggested 15 days for emergency cases. The service believes that there is little to be gained by imposing a required processing time. When local conditions at the Service Centers adversely affect the processing time, an artificially set time limit will do little to correct the situation. The Service is aware of the legitimacy of these concerns and will make every effort to process and adjudicate petitions in a timely manner. However, such management controls are more properly within the bounds of policy guidance and operating instructions rather than regulations.

Repeat Adjudications for O and P Nonimmigrant Petitions

In the proposed rule, the Service solicited comments concerning the processing of petitions where the beneficiary had previously been accorded the benefit sought. The Service received four hundred eighty-four comments in this area stating that some sort of procedure should be developed to process repeat petitions in a rapid fashion. Most of the commenters suggested that if a petition had been approved in the beneficiary's behalf within a certain time frame, then the new petitioner should not be required to fully document the subsequent petition. The Service has considered these comments and has made changes to the consultation process which should streamline the process. For example, the final rule now contains a provision where the Service will attempt to obtain the required consultation when a petitioner is unaware of the existence of an appropriate consulting organization. The Service will also accept consultations from closely related consulting organizations to assist petitioners in obtaining a timely adjudication of their petitions. The Service is also prepared to amend the consultation and the adjudication process if they are found to be too cumbersome for petitioners.

The Service, however, will not adopt the suggestion that petitioners should not be required to document fully subsequent petitions for the same beneficiary. As the consultation must address both the beneficiary's qualifications and the particulars of the offered position, a new consultation must accompany each petition. Further, if the Service is required to adjudicate subsequent petitions which are not fully documented, a substantially longer adjudication time may be required in order to allow the Service to review the prior petition relating to the beneficiary.

90-Day Filing Window

In the Supplementary Information section of the proposed rule, the Service requested and received five hundred forty-six comments regarding the issue that petitions for O and P nonimmigrant classifications be filed no more than 90 days prior to the need of the alien's services. The purpose of this restriction is to ensure orderly processing of petitions for these classifications. The commenters were requested by the Service to determine whether a time limitation is desirable for H petitions as well as O and P petitions, whether the 90-day time frame is a realistic requirement, and whether some other time frame (e.g., 180 days or 270 days) would be more advantageous. Overwhelmingly, commenters responded that the 90-day filing window should be removed. Most preferred that no filing window be imposed for O classification as it is not subject to any limiting cap. Two hundred fifty-two commenters indicated that the 90-day

filing window should be removed for P classification as well. Only three commenters indicated a preference for a 180-day filing window and ten commenters preferred 270 days.

In the existing regulation, § 214.2(h)(9)(i)(B) states: "The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services or training." Service experience based on this requirement indicates very few problems arise and that most petitions are filed within 30 to 60 days prior to the date of actual need; an insignificant number are filed earlier than 60 days. Seldom has a petitioner indicated a need to file earlier than 180 days. However, due to the overwhelming comments that a 90-day early filing restriction is problematic, the final rule will be amended to provide a six month filing window for H, O, and P nonimmigrant classifications. This will also be consistent with current H–1B requirements.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been forwarded to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, for review and clearance.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment, Organization and functions (Government agencies), Passports and visas.

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraphs (h)(1), (h)(2)(i)(A), (C), (D), (E), and (h)(2)(ii);

b. Revising paragraph (h)(4) heading;

c. Revising paragraph (h)(4)(i) through (h)(4)(iii);

d. Removing paragraphs (h)(4)(iv) and (h)(4)(v);

e. Redesignating paragraphs (h)(4)(vi) and (h)(4)(vii) as (h)(4)(iv) and (h)(4)(v);

f. Revising newly redesignated paragraph (h)(4)(iv);

g. Adding new paragraphs (h)(4)(vi), (h)(4)(vii), (h)(4)(viii), (h)(4)(ix), (h)(6)(vi)(E), and (h)(7)(iv);

h. Revising paragraph (h)(8);

i. Redesignating paragraphs (h)(9)(iii)(A) through (h)(9)(iii)(C) as (h)(9)(iii)(B) through (h)(9)(iii)(D);

j. Adding a new paragraph (h)(9)(iii)(A);

k. Revising newly designated paragraphs (h)(9)(iii)(B) and (h)(9)(iii)(D);

l. Revising paragraphs (h)(10)(ii), (h)(10)(iii), (h)(11)(i), (h)(13) through (h)(16) and (h)(18) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) *Temporary employees*—(1) *Admission of temporary employees*—(i) *General.* Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified as follows: under section 101(a)(15)(H)(i)(a) of the Act as a registered nurse; under section 101(a)(15)(H)(i)(b) of the Act as an alien who is coming to perform services in a specialty occupation, services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, services of an exceptional nature requiring distinguished merit and ability as artists, athletes, entertainers, and fashion models, or as an alien who is accompanying or assisting in the artistic or athletic performance by an alien of distinguished merit and ability; under section 101(a)(15)(H)(ii)(a) of the Act as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature; under section 101(a)(15)(H)(ii)(b) of the Act as alien coming to perform other temporary services or labor; or under section 101(a)(15)(H)(iii) of the Act as an alien who is coming as a trainee or participant in a special education exchange visitor program. These classifications are commonly called H–1A, H–1B, H–2A, H–2B, and H–3, respectively. The employer must file a petition with the Service for review of the services or training and for determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classifications.* (A) An H–1A classification applies to an alien who is coming temporarily to the United States to perform services as a registered nurse, meets the requirements of section 212(m)(1) of the Act, and will perform services at a facility for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act.

(B) An H–1B classification applies to an alien who is coming temporarily to the United States:

(*1*) To perform services in a specialty occupation (except registered nurses, agricultural workers, and aliens of extraordinary ability or achievement in the sciences, education, or business) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has an approved labor condition application under section 212(n)(1) of the Act;

(*2*) To perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

(*3*) to perform services of an exceptional nature requiring distinguished merit and ability as artists, entertainers, athletes, or fashion models; or

(*4*) To accompany and assist in the artistic or athletic performance by an alien who is admitted under paragraph (h)(1)(ii)(B)(*3*) of this section.

(C) An H–2A classification applies to an alien who is coming temporarily to the United States to perform agricultural work of a temporary or seasonal nature.

(D) An H–2B classification applies to an alien who is coming temporarily to the United States to perform nonagricultural work of a temporary or seasonal nature, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor to be performed must be determined by the service. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam, or a

notice from one of these individuals that such a certification cannot be made, prior to the filing of a petition with the Service.

(E) An H-3 classification applies to an alien who is coming temporarily to the United States:

(*1*) As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution, or

(*2*) As a participant in a special education exchange visitor program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H-1A, H-1B, H-2A, H-2B, or H-3 temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will perform services or receive training, even in emergent situations, except as provided in this section. Petitions in Guam and the Virgin Islands, and petitions involving special filing situations as determined by Service Headquarters, shall be filed with the local Service Office or a designated Service Office. The petitioner may submit a legible photocopy of a document in support of the visa petition in lieu of the original document. However, the original document shall be submitted if requested by the Service.

* * * * *

(C) *Services or training for more thon one employer.* If the beneficiary will perform nonagricultural services for, or receive training from, more than one employer, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services or receive training, unless an established agent files the petition.

(D) *Chonge of employers.* If the alien is in the United States and decides to change employers, the new employer must file a petition on Form I-129 requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay shall conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the new employment until the petition is approved.

(E) *Amended or new petition.* The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the beneficiary's eligibility as specified in the original approved petition. An amended or new H-1A, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

* * * * *

(ii) *Multiple beneficiories.* More than one beneficiary may be included in an H-2A, H-2B, or H-3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time and in the same location. If the beneficiaries will be applying for visas at more than one consulate, the petitioner shall file a separate petition for each consulate. If visa-exempt beneficiaries will be applying for admission at more than one port of entry, the petitioner shall file a separate petition for each port of entry.

* * * * *

(4) *Petition for olien to perform services in o speciolty occupotion, services reloting to o DOD cooperative reseorch and development project or coproduction project, services of distinguished merit ond obility in the fields of art, entertoinment, othletics or foshion modeling ond occomponying oliens (H-1B)*—(i)(A) *Types of H-1B clossificotion.* An H-1B classification may be granted to an alien who:

(*1*) Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum requirement for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation;

(*2*) Based on reciprocity, will perform services of an exceptional nature requiring exceptional merit and ability relating to a DOD cooperative research and developn.ent project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

(*3*) To perform services of an exceptior.l nature, either individually or as part of a group, in the fields of art, entertainment, athletics, or fashion modeling and who is of distinguished merit and ability, or

(*4*) To perform services as an accompanying alien in the artistic or athletic performance of an alien of distinguished merit and ability.

(B) *General requirements for petitions involving a speciolty occupotion.* (*1*) Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain approval of a labor condition application from the Department of Labor in the occupational specialty in which the alien(s) will be employed.

(*2*) Approval by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

(*3*) If all of the beneficiaries covered by an H-1B labor condition application have not been identified at the time a petition is filed, petitions for newly identified beneficiaries may be filed at any time during the validity of the approved labor condition application using photocopies of the same approval. Each petition must reference all previously approved petitions by file number for that labor condition application.

(*4*) When petitions have been approved for the total number of workers specified in the approved labor condition application, substitution of aliens against previously approved openings shall not be made and a new labor condition application shall be required.

(*5*) If the Secretary of Labor notifies the Service that the petitioning employer has failed to meet a condition in its labor condition application, that the petitioning employer has substantially failed to meet a condition described in subparagraphs (C) or (D) of section 212(n)(1) of the Act, or that there was a misrepresentation of a material fact in the application, the Service shall not approve new petitions in specialty occupations for that employer or extend the stay of aliens employed in specialty occupations by that employer for a period of one year from the date of receipt of such notice.

(*6*) If approval of the employer's labor condition application is suspended or

invalidated by the Department of Labor, the Service will not suspend or revoke the employer's approved petitions for aliens already employed in specialty occupations, if the employer has agreed to comply with the terms of the labor condition application for the duration of the authorized stay of aliens it employs.

(C) *General requirements for petitions involving an alien of distinguished merit and ability.* H-1B classification may be granted to an alien as an individual or as a member of a group, or to accompanying alien as defined in paragraph (h)(4)(ii)(A) of this section. The petition must indicate the capacity in which the alien is seeking H–1B classification at the time of filing.

(*1*) *H–1B classification in individual capacity.* H–1B classification may be granted to an alien who is of distinguished merit and ability. An alien of distinguished merit and ability is one who is prominent in the field of arts, entertainment, athletics, or fashion modeling. The alien must be coming to the United States to perform services which require a person of prominence.

(*2*) *H–1B classification as a member of a group.* A group of distinguished merit and ability consists of two or more persons who function as a unit, such as an athletic team or performing ensemble. The group as a whole must be prominent in its field and must be coming to the United States to perform services which require a group of prominence. A person who is a member of a group of distinguished merit and ability may be granted H–1B classification based on that relationship but may not perform services separate and apart from the group unless he or she is granted H–1B classification in an individual capacity.

(D) *General requirements for H–1B classification as an accompanying alien.* A person who is an accompanying alien as defined in paragraph (h)(4)(ii)(A) of this section may be granted H–1B classification based on providing essential support to an individual or group of distinguished merit and ability. The H–1B classification derived from the individual or group of distinguished merit and ability does not entitle an accompanying alien to perform services separate and apart from the individual or group of distinguished merit and ability.

(ii) *Definitions:*

(A) *Accompanying alien* means a support person such as a manager, trainer, musical accompanist, or other highly skilled, essential person determined by the director to be coming to the United States to perform support services which cannot readily be performed by a United States worker and which are essential to the successful performance of the services to be rendered by an H–1B individual or group in the arts, entertainment or sports field. Such alien must possess appropriate qualifications, significant prior experience with the H–1B individual or group, and critical knowledge of the specific type of services to be performed so as to render success of the services dependent upon his or her participation. A highly skilled alien meeting the above criteria may be accorded H–1B classification based on this relationship with the H–1B individual or group to whom his or her services are essential.

(B) *Group* means two or more persons established as one entity to provide some form of service or activity. The reputation of the group, not that of individual members, is considered in according H–1B classification.

(C) *Prominence* means a high level of achievement in the fields of arts, entertainment, athletics, or fashion modeling evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of endeavor.

(D) *Recognized authority* means a person or an organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. Such an opinion must state:

(*1*) The writer's qualifications as an expert;

(*2*) The writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom;

(*3*) How the conclusions were reached; and

(*4*) The basis for the conclusions, including copies or citations of any research material used.

(E) *Specialty occupation* means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

(F) *United States employer* means:

(*1*) A person, firm, corporation, contractor, or other association, or organization in the United States which suffers or permits a person to work within the United States;

(*2*) Which has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and

(*3*) Which has an Internal Revenue Service Tax identification number.

(iii) *Criteria for H–1B petitions involving a specialty occupation.*—(A) *Standards for specialty occupation position.* To qualify as a specialty occupation, the position must meet one of the following criteria:

(*1*) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(*2*) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(*3*) The employer normally requires a degree or its equivalent for the position; or

(*4*) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

(B) *Petitioner requirements.* The petitioner shall submit the following with an H–1B petition involving a specialty occupation:

(*1*) An approved labor condition application from the Department of Labor in the specialty occupation, valid for the dates of intended employment,

(*2*) A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

(*3*) Evidence that the alien qualifies to perform services in the specialty occupation as described in paragraph (h)(4)(iii)(A) of this section, and

(C) *Beneficiary qualifications.* To qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

(*1*) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*2*) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

(*3*) Hold an unrestricted State license, registration or certification which

authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

(*4*) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

(D) *Equivalence to completion of a college degree.* For purposes of paragraph (h)(4)(iii)(C)(*4*) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(*1*) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(*2*) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(*3*) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(*4*) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(*5*) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(*i*) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(*ii*) Membership in a recognized foreign or United States association or society in the specialty occupation;

(*iii*) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(*iv*) Licensure or registration to practice the specialty occupation in a foreign country; or

(*v*) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

(E) *Liability for transportation costs.* The employer will be liable for the reasonable costs of return transportation of the alien abroad if the alien is dismissed from employment by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. If the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term "abroad" refers to the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for an alien obtaining or continuing H–1B status.

(iv) *General documentary requirements for H–1B classificotion in a specialty occupation.* An H–1B petition involving a specialty occupation shall be accompanied by:

(A) Documentation, certifications, affidavits, declarations, degrees, diplomas, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is qualified to perform services in a specialty occupation as described in paragraph (h)(4)(i) of this section and that the services the beneficiary is to perform are in a specialty occupation. The evidence shall conform to the following:

(*1*) School records, diplomas, degrees, affidavits, declarations, contracts, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data, be executed by the person in charge of the records of the educational or other institution, firm, or establishment where education or training was acquired.

(*2*) Affidavits or declarations made under penalty of perjury submitted by present or former employers or recognized authorities certifying as to the recognition and expertise of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(B) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

* * * * *

(vi) *Criteria and documentary requirements for H–1B petitions involving DOD cooperative research and development projects or coproduction projects.*—(A) *General.* (*1*) For purposes of H–1B classification, services of an exceptional nature relating to DOD cooperative research and development projects or coproduction projects shall be those services which require a baccalaureate or higher degree, or its equivalent, to perform the duties. The existence of this special program does not preclude the DOD from utilizing the regular H–1B provisions provided the required guidelines are met.

(*2*) The requirement for approval of a labor condition application from the Department of Labor shall not apply to petitions involving DOD cooperative research and development projects or coproduction projects.

(B) *Petitioner requirements.* (*1*) The petition must be accompanied by a verification letter from the DOD project manager for the particular project stating that the alien will be working on a cooperative research and development project or a coproduction project under a reciprocal Government-to-Government agreement administered by DOD.

Details about the specific project are not required.

(2) The petitioner shall provide a general description of the alien's duties on the particular project and indicate the actual dates of the alien's employment on the project.

(3) The petitioner shall submit a statement indicating the names of aliens currently employed on the project in the United States and their dates of employment. The petitioner shall also indicate the names of aliens whose employment on the project ended within the past year.

(C) *Beneficiary requirement.* The petition shall be accompanied by evidence that the beneficiary has a baccalaureate or higher degree or its equivalent in the occupational field in which he or she will be performing services in accordance with paragraph (h)(4)(iii)(C) and/or (h)(4)(iii)(D) of this section.

(vii) *Criteria and documentary requirements for H–1B petitions for aliens of distinguished merit and ability in the fields of arts, entertainment, athletics, and fashion modeling*—(A) *General.* Prominence in the fields of arts, entertainment, and athletics may be established by an individual or a group. Prominence in the field of fashion modeling may be established by an individual. The reputation of the group as an entity, not the qualifications or accomplishments of individual members, shall be evaluated for H–1B classification. The work which a prominent alien or group is coming to perform in the United States must require the services of a prominent alien or group. A petition for an H–1B alien of distinguished merit and ability in the fields of arts, entertainment, athletics, and fashion modeling shall be accompanied by:

(1) Documentation, certifications, affidavits, writings, reviews, or any other required evidence sufficient to establish that the beneficiary is a person of distinguished merit and ability as described in paragraph (h)(4)(i) of this section, and that the services the beneficiary is to perform require a person of such merit and ability. Affidavits submitted by present or former employers or recognized experts certifying to the recognition and outstanding ability of the beneficiary shall specifically describe the beneficiary's recognition and ability in factual terms and must set forth the expertise of the affiant and the manner in which the afiant acquired such information.

(2) Copies of any written contracts between the petitioner and beneficiary, or a summary of the terms of the oral agreement under which the beneficiary will be employed, if there is no written contract.

(B) *Petitioner's requirements.* To qualify as a position requiring prominence, the petitioner must establish the position meets one of the following criteria:

(1) The position or services to be performed involve an event, production, or activity which has a distinguished reputation;

(2) The services to be performed are as a lead of starring participant in a distinguished activity for an organization or establishment that has a distinguished reputation or record of employing prominent persons; or

(3) The services primarily involve educational or cultural events sponsored by educational, cultural, or governmental organizations which promote international educational or cultural activities.

(C) *Beneficiary's requirements.* An alien or group may establish prominence in either one of the following categories. The alien(s) must:

(1) Have sustained national (foreign or U.S.) or international acclaim and recognition for achievements in the particular field, as evidenced by at least three different types of documentation showing that the alien or group:

(*i*) Has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, or contracts;

(*ii*) Has been the recipient of significant national or international awards or prizes for services performed;

(*iii*) Has achieved national or international recognition for achievements evidenced by critical reviews or other published material by or about the individual or group in major newspapers, trade journals, or magazines;

(*iv*) Has performed and will perform services as a lead or starring participant for organizations and establishments that have a distinguished reputation;

(*v*) Has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as title, rating, or standing in the field, box office receipts, record sales, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(*vi*) Has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien or group is engaged. Such testimonials must be in a form that clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(*vii*) Has commanded and now commands a high salary or other substantial remuneration for services in relation to others in the field, evidenced by contracts or other reliable evidence.

(2) Be an artist who, or an artistic group that, is recognized by governmental agencies, cultural organizations, scholars, arts administrators, critics, or other experts in the particular field for excellence in developing, interpreting, or representing a unique or traditional ethnic, folk, cultural, musical, theatrical, or other artistic performance or presentation; be coming to the United States primarily for an educational or cultural event(s) to further the understanding of or development of that art form; and be sponsored primarily by educational, cultural, or governmental organizations which promote such international cultural activities and exchanges. An artist or group which seeks H–1B classification under this provision must provide affidavits, testimonials, or letters from recognized experts attesting to the authenticity and excellence of the alien's or group's skills in performing or presenting the unique or traditional art form, explaining the level of recognition accorded the alien or group in the native country and the United States, and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill and recognition. The alien or group must provide at a minimum:

(*i*) Evidence that most of the performances or presentations will be educational or cultural events sponsored by educational, cultural, or governmental agencies; and

(*ii*) Both an affidavit or testimonial from the Ministry of Culture, USIA Cultural Affairs Officer, the academy for the artistic discipline, a leading scholar, a cultural institution, or a major university in the alien's own country or from a third country, and a letter from a United States expert who has knowledge in the particular field, such as a scholar arts administrator, critic, or representative of a cultural organization or government agency; or

(*iii*) A letter or certification from a U.S. Government cultural or arts agency such as the Smithsomian Institution, the National Endowment for the Arts, the National Endowment for the Humanities, or the Library of Congress.

(D) *Special requirements for aliens of distinguished merit and ability in the fields of arts, entertainment, athletics, and fashion modeling*—(1) *Adjudication*

of petition. (*i*) In determining whether an alien in the fields of art, entertainment, athletics, or fashion modeling is prominent and whether the services require a person of prominence, the director shall consider, but not be limited to, evidence described in paragraph (h)(4)(vii)(A), (B) and (C) of this section, and where he or she deems necessary, may require further evidence on any of those or other appropriate factors.

(*ii*) The director may decide not to require full documentation of any of the factors in paragraph (h)(4)(vii)(A), (B) and (C) of this section, if the alien or group is of such distinguished merit and ability that the name or reputation standing by itself would be sufficient to establish without any question that the alien or group is of distinguished merit and ability and that the alien or group is coming to the United States to perform services which require such merit and ability. In such a case, the petitioner's statement which describes the beneficiary's standing and achievements in the field of endeavor may be accepted as sufficient for approval of the petition.

(*iii*) The director shall approve or deny the petition based on the information in the record when that information clearly establishes H–1B eligibility or ineligibility in accordance with paragraph (h)(4)(vii)(A), (B) and (C) of this section. In all other cases, before making a decision, the director shall consult with the appropriate union and a management organization, or recognized critics or experts in the appropriate field, for an advisory opinion regarding the qualifications of the alien and the nature of the services to be performed.

(*2*) *Advisory opinions.* An advisory opinion may be furnished orally by an appropriate official, subject to later confirmation in writing, when requested by the director. The written opinion shall be signed by a duly authorized and responsible official of the organization consulted. Advisory opinions shall be non-binding upon the Service.

(*3*) *Accompanying alien or member of a group.* When an alien is entitled to H–1B classification as an accompanying alien or as a member of a group, the phrase "Accompanying Alien" or the name of the group shall be noted on the approved petition, the alien's travel documents, and arrival-departure record, Form I–94.

(viii) *Criteria and documentary requirements for H–1B petitions for accompanying aliens.*—(A) *General.* Accompanying support personnel are highly skilled aliens coming temporarily to the United States as an essential and integral part of an artistic or athletic performance of an H–1B alien because they perform services which cannot be readily performed by a United States worker and which are essential to performances or services of the H–1B alien.

(B) *Petitioner's requirements.* The petition must be filed in conjunction with the employment of the H–1B alien and must be accompanied by:

(*1*) A statement describing the alien's prior and current essentiality, critical skills, and experience with the H–1B alien;

(*2*) Statements or affidavits from persons with first-hand knowledge that the alien has had substantial experience performing the critical skills and essential support service for the H–1B alien; and

(*3*) a copy of any written contract or a summary of the terms of the oral agreement under which the H–1B alien will be employed.

(ix) *Criteria and documentary requirements for H–1B petitions for physicians.* An H–1B petition filed for a physician shall be accompanied by:

(A) An approved labor condition application;

(B) Evidence that the beneficiary has received a certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG) or is exempt therefrom; and

(C) Evidence that the beneficiary has authorization from the state of intended employment to perform the duties of the proffered position.

* * * * *

(6) * * *

(vi) * * *

(E) *Liability for transportation costs.* The employer will be liable for the reasonable costs of return transportation of the alien abroad, if the alien is dismissed from employment for any reason by the employer before the end of the period of authorized admission pursuant to section 214(c)(5) of the Act. If the beneficiary voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the alien has not been dismissed. If the beneficiary believes that the employer has not complied with this provision, the beneficiary shall advise the Service Center which adjudicated the petition in writing. The complaint will be retained in the file relating to the petition. Within the context of this paragraph, the term "abroad" means the alien's last place of foreign residence. This provision applies to any employer whose offer of employment became the basis for the alien obtaining or continuing H–2B status.

(*7*) * * *

(iv) *Petition for participant in a special education exchange visitor program.*—(A) *General Requirements.* (*1*) The H–3 participant in a special education training program must be coming to the United States to participate in a structured program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

(*2*) The petition must be filed by a facility which has professionally trained staff and a structured program for providing education to children with disabilities, and for providing training and hands-on experience to participants in the special education exchange visitor program.

(*3*) The requirements in this section for alien trainees shall not apply to petitions for participants in a special education exchange visitor program.

(B) *Evidence.* An H–3 petition for a participant in a special education exchange visitor program shall be accompanied by:

(*1*) A description of the training program and the facility's professional staff and details of the alien's participation in the training program (any custodial care of children must be incidental to the training), and

(*2*) Evidence that the alien participant is nearing completion of a baccalaureate or higher degree in special education, or already holds such a degree, or has extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

(8) *Numerical limits*—(i) *Limits on affected categories.* During each fiscal year, the total number of aliens who can be provided nonimmigrant classification is limited as follows:

(A) Aliens classified as H1–B nonimmigrants, excluding those involved in DOD research and development projects or coproduction projects, may not exceed 65,000.

(B) Aliens classified as H–1B nonimmigrants to work for DOD research and development projects or coproduction projects may not exceed 100 at any time.

(C) Aliens classified as H–2B nonimmigrants may not exceed 66,000.

(D) Aliens classified as H–3 nonimmigrant participants in a special education exchange visitor program may not exceed 50.

(ii) *Procedures.* (A) Each alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Act shall be counted for purposes of the numerical limit. Requests for petition extension or extension of an alien's stay shall not be

counted for the purpose of the numerical limit. The spouse and children of principal aliens classified as H–4 nonimmigrants shall not be counted against the numerical limit.

(B) Numbers will be assigned temporarily to each alien (or job opening(s) for aliens in petitions with unnamed beneficiaries) included in a new petition in the order that petitions are filed. If a petition is denied, the number(s) originally assigned to the petition shall be returned to the system which maintains and assigns numbers.

(C) For purposes of assigning numbers to aliens on petitions filed in Guam and the Virgin Islands, Service Headquarters Adjudications shall assign numbers to these locations from the central system which controls and assigns numbers to petitions filed in other locations of the United States.

(D) When an approved petition is not used because the beneficiary(ies) does not apply for admission to the United States, the petitioner shall notify the Service Center Director who approved the petition that the number(s) has not been used. The petition shall be revoked pursuant to paragraph (h)(11)(ii) of this section and the unused number(s) shall be returned to the system which maintains and assigns numbers.

(E) If the total numbers available in a fiscal year are used, new petitions and the accompanying fee shall be rejected and returned with a notice that numbers are unavailable for the particular nonimmigrant classification until the beginning of the next fiscal year.

(9) * * *

(iii) * * *

(A) *H–1A petition.* An approved petition for an alien classified under section 101(a)(15)(H)(i)(a) of the Act shall be valid for a period of up to three years.

(B)(*1*) *H–1B petition in a specialty occupation.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien in a specialty occupation shall be valid for a period of up to three years but may not exceed the approval period of the labor condition application.

(*2*) *H–1B petition involving a DOD research and development or coproduction project.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien involved in a DOD research and development project or a coproduction project shall be valid for a period of up to five years.

(*3*) *H–1B petition involving an alien of distinguished merit and ability in the fields of art, entertainment, athletics, or fashion modeling.* An approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an alien of distinguished merit and ability in the fields of art, entertainment, athletics, or fashion modeling shall be valid for a period of up to three years.

(*4*) *H–1B petition for an accompanying alien.* The validity period of an approved petition classified under section 101(a)(15)(H)(i)(b) of the Act for an accompanying alien shall coincide with that of the principal alien or group.

* * * * *

(D)(*1*) *H–3 petition for alien trainee.* An approved petition for an alien trainee classified under section 101(a)(15)(H)(iii) of the Act shall be valid for a period of up to two years.

(*2*) *H–3 petition for alien participant in a special education training program.* An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act as a participant in a special education exchange visitor program shall be valid for a period of up to 18 months.

* * * * * *

(10) * * *

(ii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory inform U.S. ation of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(iii) *Notice of denial.* The petitioner shall be notified of the reasons for the denial, and of his or her right to appeal the denial of the petition under 8 CFR part 103. There is no appeal from a decision to deny an extension of stay to the alien.

(11) * * *

(i) *General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(H) of the Act and paragraph (h) of this section. An amended petition on Form I–129 should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director may revoke a petition at any time, even after the expiration of the petition

* * * * *

(13) *Admission*—(i) *General.* (A) A beneficiary shall be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(B) When an alien in an H classification has spent the maximum allowable period of stay in the United States, a new petition under sections 101(a)(15) (H) or (L) of the Act may not be approved unless that alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the time limit imposed on the particular H classification. Brief trips to the United States for business or pleasure during the required time abroad are not interruptive, but do not count towards fulfillment of the required time abroad. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purposes of any trips to the United States during the period that the alien was required to spend time abroad.

(ii) *H–1A limitation on admission.* An H–1A alien who has spent five, or in certain extraordinary circumstances, six years in the United States under section 101(a)(15)(H) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year.

(iii) *H–1B limitation on admission*—(A) *Alien in a specialty occupation, alien of distinguished merit and ability, or an accompanying alien.* An H–1B alien in a specialty occupation, an alien of distinguished merit and ability, or an accompanying alien, who has spent six years in the United States under section 101(a)(15) (H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15) (H) or (L) of the Act unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(B) *Alien involved in a DOD research and development or coproduction project.* An H–1B alien involved in a DOD research and development or coproduction project who has spent 10 years in the United States under section 101(a)(15) (H) and/or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15) (H) or (L) of the Act to perform services involving a DOD

research and development project or coproduction project. A new petition or change of status under section 101(a)(15)(H) or (L) of the Act may not be approved for such an alien unless the alien has resided and been physically present outside the United States, except for brief trips for business or pleasure, for the immediate prior year.

(iv) *H–2B and H–3 limitation on admission.* An H–2B alien who has spent three years in the United States under section 101(a)(15)(H) and/or (L) of the Act or an H–3 alien who has spent 18 months in the United States under section 101(a)(15)(H) and or (L) of the Act may not seek extension, change status, or be readmitted to the United States under section 101(a)(15)(H) and/or (L) of the Act unless the alien has resided and been physically present outside the United States for the immediate prior six months.

(v) *Exceptions.* The limitations in paragraph (h)(13)(ii) through (h)(13)(iv) of this section shall not apply to H–1A, H–1B, H–2B, and H–3 aliens who did not reside continually in the United States and whose employment in the United States was seasonal or intermittent or was for an aggregate of six months or less per year. In addition, the limitations shall not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. To qualify for this exception, the petitioner and the alien must provide clear and convincing proof that the alien qualifies for such an exception. Such proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

(14) *Extension of visa petition validity.* The petitioner shall file a request for a petition extension on Form I–129 to extend the validity of the original petition under section 101(a)(15)(H) of the Act. Supporting evidence is not required unless requested by the director. A request for a petition extension may be filed only if the validity of the original petition has not expired.

(15) *Extension of stay*—(i) *General.* The petitioner shall apply for extension of an alien's stay in the United States by filing a petition extension on Form I–129 accompanied by the documents described for the particular classification in paragraph (h)(15)(ii) of this section. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time of the filing of the extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa. When the total period of stay in an H classification has been reached, no further extensions may be granted.

(ii) *Extension periods*—(A) *H–1A extension of stay.* An extension of stay may be authorized for a period of up to two years for a beneficiary of an H–1A petition. The alien's total period of stay may not exceed five years, except in extraordinary circumstances. Beyond five years, an extension of stay not to exceed one year may be granted under extraordinary circumstances. Extraordinary circumstances shall exist when the director finds that termination of the alien's services will impose extreme hardship on the petitioner's business operation or that the alien's services are required in the national welfare, safety, or security interests of the United States. Each request for an extension of stay for the beneficiary of an H–1A petition must be accompanied by a current copy of the Department of Labor's notice of acceptance of the petitioner's attestation on Form ETA 9029.

(B) *H–1B extension of stay*—(*1*) *Alien in a specialty occupation, an alien of distinguished merit and obility or on accompanying alien.* An extension of stay may be authorized for a period of up to three years for a beneficiary of an H–1B petition in a specialty occupation, an alien of distinguished merit and ability or an accompanying alien. The alien's total period of stay may not exceed six years. The request for extension must be accompanied by an approved labor condition application for the specialty occupation valid for the period of time requested.

(2) *Alien in a DOD reseorch ond development or coproduction project.* An extension of stay may be authorized for a period up to five years for the beneficiary of an H–1B petition involving a DOD research and development project or coproduction project. The total period of stay may not exceed 10 years.

(C) *H–2A or H–2B extension of stay.* An extension of stay for the beneficiary of an H–2A or H–2B petition may be authorized for the validity of the labor certification or for a period of up to one year, except as provided for in paragraph (h)(5)(x) of this section. The alien's total period of stay as an H–2A or H–2B worker may not exceed three years, except that in the Virgin Islands, the alien's total period of stay may not exceed 45 days.

(D) *H–3 extension of stay.* An extension of stay may be authorized for the length of the training program for a total period of stay as an H–3 trainee not to exceed two years, or for a total period of stay as a participant in a special education training program not to exceed 18 months.

(16) *Effect of approval of a permanent lobor certification or filing of a preference petition on H classificotion*—(i) *H–1A or H–1B clossification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an H–1A or H–1B petition or a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an H–1A or H–1B nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(ii) *H–2A, H–2B, ond H–3 classification.* The approval of a permanent labor certification, or the filing of a preference petition for an alien currently employed by or in a training position with the same petitioner, shall be a reason, by itself, to deny the alien's extension of stay.

* * * * *

(18) *Use of approval notice, Form I–797.* The Service shall notify the petitioner on Form I–797 whenever a visa petition, an extension of a visa petition, or an alien's extension of stay is approved under the H classification. The beneficiary of an H petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use a copy of Form I–797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I–797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

* * * * *

§ 214.2 [Amended]

3. In § 214.2, paragraph (h)(2)(iii) is amended by removing the reference to "I–129H" in the first sentence.

§ 214.2 [Amended]

4. In § 214.2, paragraph (h)(2)(iv) is amended by removing the term "H–1B and" in the first sentence.

§ 214.2 [Amended]

5. In § 214.2, paragraph (h)(2)(v)(E) is amended by adding the phrase "in the same state" immediately after the word "valid" in the last sentence of the paragraph.

§ 214.2 [Amended]

6. In § 214.2, paragraph (h)(5)(i)(A) is amended by revising the reference to "Form I–129H" to "Form I–129".

§ 214.2 [Amended]

7. In § 214.2, paragraph (h)(6)(iii)(E) is amended by removing the term "on I–129H," after the word "petition", and removing the term "for I–129Hs" after the word "jurisdiction".

§ 214.2 [Amended]

8. In § 214.2, paragraph (h)(6)(vi) introductory text is amended by revising the phrase "filed on Form I–129H".

§ 214.2 [Amended]

9. In § 214.2, paragraph (h)(7) is amended by revising the heading of this paragraph to read: *"Petition for alien trainee or participant in a special education exchange visitor program (H–3)—"*.

§ 214.2 [Amended]

10. In § 214.2, paragraph (h)(7)(i) is amended by revising the heading of this paragraph to read *"Alien trainee."*, and revising the word "instruction" in the first sentence to "training".

§ 214.2 [Amended]

11. In § 214.2, paragraph (h)(7)(ii) is amended by revising the heading of paragraph to read *"Evidence required for petition involving alien trainee—"*.

§ 214.2 [Amended]

12. In § 214.2, paragraph (h)(7)(iii) is amended by revising the heading of this paragraph to read *"Restrictions on training program for alien trainee."*.

§ 214.2 [Amended]

13. In § 214.2, paragraph (h)(9)(i) is amended by removing the term "Form I–171C, Notice of Approval or" in the second sentence of introductory text.

§ 214.2 [Amended]

14. In § 214.2, paragraph (h)(9)(ii) (A), (B), and (C) are amended by revising the reference to "(h)(9)(ii)" to "(h)(9)(iii)".

15. Section § 214.2, amended by:

a. Revising paragraphs (l)(1)(i), (l)(1)(ii) (A), (B), (C), (D), (F), (G), (H), (K), and (L);

b. Revising paragraph (l)(2)(i) and (l)(3)(iii);

c. Redesignating paragraphs (l)(3)(vi) and (l)(3)(vii) as paragraphs (l)(3)(vii) and (l)(3)(viii);

d. Revising paragraph (l)(3)(v);

e. Adding a new paragraph (l)(3)(vi);

f. Revising paragraphs (l)(5)(ii)(C) and (l)(6);

g. Revising paragraph (l)(7)(i) introductory text;

h. Revising paragraph (l)(7)(i)(C), (l)(7)(ii), (l)(8)(ii) and (l)(8)(iii), (l)(9)(i), (l)(10)(i), (l)(12), (l)(14)(i), (l)(15); and (l)(16) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(l) * * *

(1) * * *

(i) *General.* Under section 101(a)(15)(L) of the Act, an alien who within the preceding three years has been employed abroad for one continuous year by a qualifying organization may be admitted temporarily to the United States to be employed by a parent, branch, affiliate, or subsidiary of that employer in a managerial or executive capacity, or in a position requiring specialized knowledge. An alien transferred to the United States under this nonimmigrant classification is referred to as an intracompany transferee and the organization which seeks the classification of an alien as an intracompany transferee is referred to as the petitioner. The Service has responsibility for determining whether the alien is eligible for admission and whether the petitioner is a qualifying organization. These regulations set forth the standards applicable to these classifications. They also set forth procedures for admission of intracompany transferees and appeal of adverse decisions. Certain petitioners seeking the classification of aliens as intracompany transferees may file blanket petitions with the Service. Under the blanket petition process, the Service is responsible for determining whether the petitioner and its parent, branches, affiliates, or subsidiaries specified are qualifying organizations. The Department of State or, in certain cases, the Service is responsible for determining the classification of the alien.

(ii) * * *

(A) *Intracompany transferee* means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge. Periods spent in the United States in lawful status for a branch of the same employer or a parent, affiliate, or subsidiary thereof and brief trips to the United States for business or pleasure shall not be interruptive of the one year of continuous employment abroad but such periods shall not be counted toward fulfillment of that requirement.

(B) *Managerial capacity* means an assignment within an organization in which the employee primarily:

(*1*) Manages the organization, or a department, subdivision, function, or component of the organization;

(*2*) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(*3*) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(*4*) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(C) *Executive capacity* means an assignment within an organization in which the employee primarily:

(*1*) Directs the management of the organization or a major component or function of the organization;

(*2*) Establishes the goals and policies of the organization, component, or function;

(*3*) Exercises wide latitude in discretionary decision-making; and

(*4*) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(D) *Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

* * * * *

(F) *New office* means an organization which has been doing business in the United States through a parent, branch, affiliate, or subsidiary for less than one year.

(G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:

(*1*) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(*2*) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate, or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and

(*3*) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

(H) *Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

* * * * *

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50–50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) *Affiliate* means (*1*) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(*2*) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity, or

(*3*) In the case of a partnership that is organized in the United States to provide accounting services along with managerial and/or consulting services and that markets its accounting services under an internationally recognized name under an agreement with a worldwide coordinating organization that is owned and controlled by the member accounting firms, a partnership (or similar organization) that is organized outside the United States to provide accounting services shall be considered to be an affiliate of the United States partnership if it markets its accounting services under the same internationally recognized name under the agreement with the worldwide coordinating organization of which the United States partnership is also a member.

* * * * *

(2) * * *

(i) Except as provided in paragraph (l)(2)(ii) and (l)(17) of this section, a petitioner seeking to classify an alien as an intracompany transferee shall file a petition on Form I–129, Petition for Nonimmigrant Worker, only at the Service Center which has jurisdiction over the area where the alien will be employed, even in emergent situations. The petitioner shall advise the Service whether it has filed a petition for the same beneficiary with another office, and certify that it will not file a petition for the same beneficiary with another office, unless the circumstances and conditions in the initial petition have changed. Failure to make a full disclosure of previous petitions filed may result in a denial of the petition.

* * * * *

(3) * * *

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

* * * * *

(v) If the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

(C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (l)(1)(ii) (B) or (C) of this section, supported by information regarding:

(*1*) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(*2*) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(*3*) The organizational structure of the foreign entity.

(vi) If the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

(A) Sufficient physical premises to house the new office have been secured;

(B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (l)(1)(ii)(G) of this section; and

(C) The petitioner has the financial ability to remunerate the beneficiary and to commence doing business in the United States.

* * * * *

(5) * * *

(ii) * * *

(C) When the alien is a visa-exempt nonimmigrant seeking L classification under a blanket petition, or when the alien is in the United States and is seeking a change of status from another nonimmigrant classification to L classification under a blanket petition, the petitioner shall submit Form I–129S, Certificate of Eligibility, and a copy of the approval notice, Form I–797, to the Service Center with which the blanket petition was filed.

* * * * *

(6) *Copies of supporting documents.* The petitioner may submit a legible photocopy of a document in support of the visa petition, in lieu of the original document. However, the original document shall be submitted if requested by the Service.

(7) * * *

(i) *General.* The director shall notify the petitioner of the approval of an individual or a blanket petition within 30 days after the date a completed petition has been filed. If additional information is required from the petitioner, the 30 day processing period shall begin again upon receipt of the information. Only the Director of a Service Center may approve individual and blanket L petitions. The original Form I–797 received from the Service with respect to an approved individual or blanket petition may be duplicated by the petitioner for the beneficiary's use

as described in paragraph (l)(13) of this section.

* * * * *

(C) *Amendments.* The petitioner shall file an amended petition, with fee, at the Service Center where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (i.e., from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to L nonimmigrant classification, subject to the same period of admission and limits as the beneficiary, if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she has been granted employment authorization.

(8) * * *

(ii) *Individual petition.* If an individual is denied, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified within 30 days after the date a completed petition has been filed of the denial, the reasons for the denial, and the right to appeal the denial. If the petition is denied in part, the Service Center issuing the denial shall forward to the petitioner, along with the denial, a Form I–797 listing those organizations which were found to quality. If the decision to deny is reversed on appeal, a new Form I–797 shall be sent to the petitioner to reflect the changes made as a result of the appeal.

(9) * * *

(i) *General.* The director may revoke a petition at any time, even after the expiration of the petition.

* * * * *

(10) * * *

(i) A petition denied in whole or in part may be appealed under 8 CFR part 103. Since the determination on the Certificate of Eligibility, Form I–129S, is part of the petition process, a denial or revocation of approval of an I–129S is appealable in the same manner as the petition.

* * * * *

(12) *L–1 limitation on period of stay*—(i) *Limits.* An alien who has spent five years in the United States in a specialized knowledge capacity or seven years in the United States in a managerial or executive capacity under section 101(a)(15) (L) and/or (H) of the Act may not be readmitted to the United States under section 101(a)(15) (L) or (H) of the Act unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. Such visits do not interrupt the one year abroad, but do not count towards fulfillment of that requirement. In view of this restriction, a new individual petition may not be approved for an alien who has spent the maximum time period in the United States under section 101(a)(15) (L) and/or (H) of the Act, unless the alien has resided and been physically present outside the United States, except for brief visits for business or pleasure, for the immediate prior year. The petitioner shall provide information about the alien's employment, place of residence, and the dates and purpose of any trips to the United States for the previous year. A consular or Service officer may not grant L classification under a blanket petition to an alien who has spent five years in the United States as a professional with specialized knowledge or seven years in the United States as a manager or executive, unless the alien has met the requirements contained in this paragraph.

(ii) *Exceptions.* The limitations of paragraph (l)(12)(i) of this section shall not apply to aliens who do not reside continually in the United States and whose employment in the United States is seasonal, intermittent, or consists of an aggregate of six months or less per year. In addition, the limitations will not apply to aliens who reside abroad and regularly commute to the United States to engage in part-time employment. The petitioner and the alien must provide clear and convincing proof that the alien qualifies for an exception. Clear and convincing proof shall consist of evidence such as arrival and departure records, copies of tax returns, and records of employment abroad.

* * * * *

(14) *Extension of visa petition validity*—(i) *Individual petition.* The petitioner shall file a petition extension on Form I–129 to extend an individual petition under section 101(a)(15)(L) of the Act. Except in those petitions involving new offices, supporting documentation is not required, unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired.

* * * * *

(15) *Extension of stay.* (i) In individual petitions, the petitioner must apply for the petition extension and the alien's extension of stay concurrently on Form I–129. When the alien is a beneficiary under a blanket petition, a new certificate of eligibility, accompanied by a copy of the previous approved certificate of eligibility, shall be filed by the petitioner to request an extension of the alien's stay. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. Even though the requests to extend the visa petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien is required to leave the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) An extension of stay may be authorized in increments of up to two years for beneficiaries of individual and blanket petitions. The total period of stay may not exceed five years for aliens employed in a specialized knowledge capacity. The total period of stay for an alien employed in a managerial or executive capacity may not exceed seven years. No further extensions may be granted. When an alien was initially admitted to the United States in a specialized knowledge capacity and is later promoted to a managerial or executive position, he or she must have been employed in the managerial or executive position for at least six months to be eligible for the total period of stay of seven years. The change to managerial or executive capacity must have been approved by the Service in an amended, new, or extended petition at the time that the change occurred.

(16) *Effect of approval of a permanent labor certification or filing of a preference petition on L–1 classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an L petition, a request to extend an L petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States as a nonimmigrant under the L classification and depart voluntarily at the end of his or her authorized stay,

and at the same time, lawfully seek to become a permanent resident of the United States.

* * * * *

§ 214.2 [Amended]

16. Section 214.2 is amended by revising the reference to "Form I–129L" to "Form I–129" whenever it appears in the following paragraphs:
(l)(2)(i)
(l)(2)(ii)
(l)(3) introductory text
(l)(4)(iv) introductory text
(l)(14)(ii) introductory text
(l)(14)(iii)(A)
(l)(17)(i)

§ 214.2 [Amended]

17. Section 214.2 is amended by revising the reference to "Form I–171C" to "Form I–797" whenever it appears in the following paragraphs:
(l)(5)(ii)(A)
(l)(5)(ii)(B)
(l)(7)(i)(A)(*1*)
(l)(7)(i)(B)(*1*)
(l)(9)(iii)(B)
(l)(13) heading
(l)(13)(i)
(l)(13)(ii)
(l)(17)(ii)

§ 214.2 [Amended]

18. In § 214.2, paragraph (l)(17)(ii) is amended by removing the term "(or Form I–797)" in the second sentence.

§ 214.2 [Amended]

19. In § 214.2, paragraph (l)(1)(ii)(M) is amended by revising the reference to "district director or Regional Service Center director" to "Service Center director".

§ 214.2 [Amended]

20. In § 214.2, paragraph (l)(2)(ii) is amended by revising the reference to "Regional Service Center" to "Service Center" whenever it appears in the paragraph.

§ 214.2 [Amended]

21. In § 214.2, paragraph (l)(3)(iii) is amended by revising the word "immediately" to the phrase "within the three years".

§ 214.2 [Amended]

22. In § 214.2, paragraph (l)(3)(v) is amended in the introductory text by inserting the phrase "to the United States as a manager or executive" immediately after the word "coming".

§ 214.2 [Amended]

23. In § 214.2, paragraph (l)(14)(ii)(D) is amended by adding the phrase "when the beneficiary will be employed in a managerial or executive capacity" immediately after the phrase "wages paid to employees" and before the ";".

§ 214.2 [Amended]

24. In § 214.2, paragraph (l)(17)(iv) is amended by removing the phrase "on Form I–292" in the third sentence, by revising the reference to "Regional Service Center (RSC)" in the fourth sentence to "Service Center", and by revising the reference to "RSC" in the last sentence to "Service Center".

§ 214.2 [Amended]

25. In § 214.2, paragraphs (l)(17)(V)(A) and (B) are amended by inserting the phrase "subject to the same limits" immediately after the phrase "length of stay".

26. Section 214.2 is amended by redesignating paragraph (o) as paragraph (s), adding new paragraphs (o) and (p) and adding and reserving paragraph (r) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(o) *Aliens of extraordinary ability.*—(1) *Classification*—(i) *General.* Under section 101(a)(15)(O) of the Act, a qualified alien may be authorized to come to the United States to perform services relating to a specific event. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(O)(i) of the Act as an alien who has extraordinary ability in the sciences, education, or business or under section 101(a)(15)(O)(iii) of the Act as the spouse or child of an alien described in section 101(a)(15)(O)(i) of the Act who is accompanying or following to join the alien. These classifications are called the O–1 and O–3 category, respectively. The petitioner must file a petition with the Service for a determination of the alien's eligibility for O–1 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classification.* An O–1 classification applies to an individual alien who has extraordinary ability in the sciences, education, or business which has been demonstrated by sustained national or international acclaim; who is coming temporarily to the United States or continue work in the area of extraordinary ability; and whose admission will substantially benefit the United States.

(2) *Filing of petitions.* (i) *General.* A petitioner seeking to classify an alien as an O–1 shall file a petition on Form I–129, Petition for Nonimmigrant Worker, only with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than six months before the actual need for the alien's services. An O–1 petition shall be adjudicated at the appropriate Service Center, even in emergent situations. The petition shall be accompanied by the evidence specified in this section for the classification. A legible photocopy of a document in support of the petition may be submitted in lieu of the original. However, the original document shall be submitted if requested by the director.

(ii) *Other filing situations.*—(A) *Services in more than one location.* A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service Center having jurisdiction over the area where the work will begin.

(B) *Services for more than one employer.* If the beneficiary will work concurrently for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform services, unless an established agent files the petition.

(C) *Change of employer.* If an O–1 alien in the United States seeks to change employers, the new employer must file a petition with the Service Center having jurisdiction over the new place of employment.

(D) *Amended petition.* The petitioner shall file an amended petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition.

(E) *Agents as petitioners.* An established United States agent may file a petition in cases involving an alien who is traditionally self-employed or uses agents to arrange short-term employment in his or her behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A petition filed by an agent is subject to the following conditions:

(*1*) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*2*) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specify the wage offered and the other terms and conditions of employment of the beneficiary.

(3) *Petition for alien of extraordinary ability (O–1*—(i) *General.* Extraordinary ability in the sciences, education, or business must be established for an individual alien. An O–1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability, that the alien meets the criteria in paragraph (o)(3)(iv) or (v) of this section, and that the alien's admission will substantially benefit the United States.

(ii) *Definitions.*

Event means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or an engagement. Such activity could include short vacations, promotional appearances and stopovers which are incidental and/or related to the event. A group of related activities will also be considered an event.

Extraordinary ability in the sciences, education, or business means a level of expertise indicating that the individual is one of the small percentage who have risen to the very top of the field of endeavor.

Peer group means a group or organization comprising practitioners of the alien's occupation who are of similar standing with the alien and which is governed by such practitioners. If there is a collective bargaining representative of an employer's employees in the occupational classification for which the alien is being sought, such a representative may be considered the appropriate peer group for purposes of consultation.

(iii) *Standards for establishing that a position requires the services of an alien of extraordinary ability.* To establish that a position requiring the services of an alien of extraordinary ability, the position must meet one of the following criteria:

(A) The position or services to be performed involve an event or activity which has a distinguished reputation or is a comparable newly organized event or activity;

(B) The services to be performed are in a lead or critical role in an activity for an organization or establishment that has a distinguished reputation or record of employing extraordinary persons;

(C) The services primarily involve a specific scientific or educational project, conference, convention, lecture, or exhibit sponsored by bona fide scientific or educational organizations or establishments; or

(D) The services consist of a specific business project that is appropriate for an extraordinary executive, manager, or highly technical person due to the complexity of the business project.

(iv) *Standards for an O–1 alien of extraordinary ability.* An alien of extraordinary ability in the sciences, education, or business must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally-recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(*1*) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(*2*) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(*3*) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(*4*) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(*5*) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(*6*) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(*7*) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(*8*) Evidence that the alien has commanded and now commands a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

(4) *Consultation*—(i) *General.* (A) Written evidence of consultation with an appropriate peer group regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O–1 classification can be approved.

(B) Evidence of consultation shall be a written advisory opinion from the peer group. If the director requests an advisory opinion and no response is received within the time period specified, the director shall make a decision without the advisory opinion. The director's written request for an opinion shall be evidence of consultation.

(C) To facilitate adjudication of an O–1 petition, the petitioner should obtain a written advisory opinion from an appropriate peer group and submit it when the petition is filed. The written opinion should set forth a specific statement of facts upon which the conclusion was reached. When the Service must obtain an advisory opinion, considerably longer adjudication time may be required. Consultation is not required if the petition will be denied on another ground.

(D) Written evidence of consultation shall be included in the record in every approved O petition. Consultations are advisory in nature and not binding on the Service. If a petition is denied because of the opinion provided by a peer group, it shall be attached to the director's decision.

(E) When a petition is filed without the required evidence of consultation but the petitioner names an appropriate peer group, the petitioner shall send a copy of the petition and supporting documents to the appropriate peer group at the same time that the petition is filed with the Service. The petitioner shall explain to the peer group that it will be contacted by the Service for an advisory

opinion regarding the services to be performed and the alien's qualifications. The name and address of the peer group where the copy of the petition was sent shall be indicated in the petition that is filed with the Service. If the director determines that the petition was sent to the appropriate peer group, the director shall request, in writing, a written advisory opinion from that group before approving a petition.

(F) When a petition is filed without the required evidence of consultation and the petitioner does not designate an appropriate peer group, the Service will obtain the consultation.

(G) In those cases where it is established by the petitioner that an appropriate peer group does not exist, the Service may render a decision on the evidence of record. This does not preclude the Service from obtaining a consultation from a closely related peer group.

(H) In those cases where the Service determines that the consultation submitted by the petitioner was provided by an inappropriate peer group, the Service may seek a new consultation from an appropriate peer group.

(I) If the record of proceeding in a case contains conflicting consultations, the director shall render a decision on the evidence of record.

(ii) *Consultation requirements for an O–1 alien of extraordinary ability.* Written consultation with a peer group in the area of the alien's ability is required in an O–1 petition. The peer group shall be an appropriate association or entity with expertise in that area. The advisory opinion provided by the peer group must describe the alien's ability and achievements in the field of endeavor and state whether the position requires the services of an alien of extraordinary ability. The written opinion must be signed by an authorized official of the organization.

(iii) *Procedures for advisory opinions.* (A) The Service will list in its Operations Instructions for O classification those peer groups which agree to provide advisory opinions to the Service and/or petitioners. The list will not be exclusive. The Service and petitioners may use other sources, such as publications, to identify appropriate peer groups.

(B) The director's request for an advisory opinion shall specify the information needed. The peer group to which the request is being made should be advised that a written opinion is needed within 15 days of the date of the director's letter. If a response is not received within 15 days, the director shall make a decision without the advisory opinion. The director may shorten the 15 day period in his or her discretion.

(5) *General documentary requirements for O classification.* The evidence submitted with an O petition shall conform to the following:

(i) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by the person in charge of the institution, firm, establishment, or organization where the work was performed.

(ii) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability shall specifically describe the alien's recognition and ability or achievement in factual terms and must set forth the expertise of the affiant and the manner in which the affiant acquired such information.

(iii) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed.

(iv) An explanation of the nature of the event or activity, the beginning and ending date for the event or activity, and a copy of any itinerary for the event or activity.

(6) *Approval and validity of petition.* (i) *Approval.* The director shall consider all of the evidence submitted and such other evidence as he or she may independently require to assist his or her adjudication. The director shall notify the petitioner of the approval of the petition on Form I–797, Notice of Action. The approval notice shall include the alien beneficiary's name and classification and the petition's period of validity.

(ii) *Recording the validity of petitions.* Procedures for recording the validity period of petitions are as follows:

(A) If a new O petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified by paragraph (o)(6)(iii) of this section or other Service policy.

(B) If a new O petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified by paragraph (o)(6)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (o)(6)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Validity.* An approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the director to be necessary to accomplish the event or activity, not to exceed three years.

(iv) *Spouse and dependents.* The spouse and unmarried minor children of the O–1 alien beneficiary are entitled to O–3 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(7) *Denial of petition*—(i) *Notice of intent to deny.* When an adverse decision is proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under Part 103 of this chapter. There is no appeal from a decision to deny an extension of stay to the alien.

(8) *Revocation of approval of petition.* (i) *General.*—(A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(O) of the Act and paragraph (o) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) *Automatic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner goes out of business, files a written

withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice*—(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(*2*) The statement of facts contained in the petition was not true and correct;

(*3*) The petitioner violated the terms or conditions of the approved petition;

(*4*) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or

(*5*) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(9) *Appeal of a denial or a revocation of a petition*—(i) *Denial.* A denied petition may be appealed under Part 103 of this chapter.

(ii) *Revocation.* A petition that has been revoked on notice may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(10) *Admission.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(11) *Extension of visa petition validity.* The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(O) of the Act on Form I–129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired.

(12) *Extension of stay*—(i) *Extension procedure.* The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I–129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension of stay. The alien beneficiary must be physically present in the United States at the time of filing of the extension of stay. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension period.* An extension of stay may be authorized in increments of up to one year for an O–1 beneficiary to continue or complete the same event or activity for which he or she was admitted plus an additional ten days.

(13) *Effect of approval of a permanent labor certification or filing of a preference petition on O classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an O petition, a request to extend such a petition, or the alien's application for admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an O nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

(14) *Effect of a strike.* (i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(O) of the Act shall be denied; or

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission on the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (o)(15)(i) of this section, the Commission shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated thereunder in the same manner as are all other O nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by an O nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(15) *Use of approval notice, Form I–797.* The Service shall notify the petitioner on Form I–797 whenever a visa petition or an extension of a visa petition is approved under the O classification. The beneficiary of an O petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use Form I–797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I–797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

(p) *Artists and entertainers under a reciprocal exchange program*—(1) *Classification.* (i) *General.* Under section 101(a)(15)(P) of the Act, an alien having a residence in a foreign country which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform services for an employer or a

sponsor. Under this nonimmigrant category, the alien may be classified under section 101(a)(15)(P)(ii) or the Act as an alien who is coming to perform as an artist or entertainer under a reciprocal exchange program or under section 101(a)(15)(P)(iv) of the Act as the spouse or child of an alien described in section 101(a)(15)(P)(ii) of the Act who is accompanying or following to join the alien. These classifications are called P–2 and P–4, respectively. The employer or sponsor must file a petition with the Service for review of the services and for determination of the allien's eligibility for P–2 classification before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classificotion*—A *P–2* classification applies to an alien who is coming temporarily to the United States to perform as an artist or entertainer, individually or as part of a group, or to perform as an integral part of the performance of such a group, and seeks to perform under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states, and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers between the United States and the foreign states involved.

(2) *Filing of petitions—(i) General.* A P–2 petition for an artist or entertainer in a reciprocal exchange program shall be filed by the sponsoring organization or an employer in the United States. The petitioning employer or sponsoring organization shall file a P petition on Form I–129, Petition for Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than six months before the actual need for the alien's services. A P–2 petition shall be adjudicated at the appropriate Service Center, even in emergent situations. The petition shall be accompanied by the evidence specified in this section. A legible photocopy of a document in support of the petition may be submitted in lieu of the original. However, the original document shall be submitted if requested by the director.

(ii) *Other filing situotions*— (A) *Services in more thon one locotion.* A petition which requires the alien to work in more than one location (i.e., a tour) must include an itinerary with the dates and locations of the performances and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this section. If the petitioner is a foreign employer with no United States location, the petition shall be filed with the Service office that has jurisdiction over the area where the employment will begin.

(B) *Services for more than one employer.* If the beneficiary(ies) will work for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform the services, unless an established agent files the petition.

(C) *Chonge of employer.* If a P–2 alien in the United States seeks to change employers or sponsors, the new employer must file a petition and a request to extend the alien's stay in the United States. A P–2 petition must be accompanied by an explanation of why it would be a hardship on the petitioner for the alien(s) to remain outside the United States for a three month period pursuant to paragraph (p)(6)(iv) of this section, before engaging in a new activity or performance in the United States.

(D) *Amended petition.* The petitioner shall file an amended petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition

(E) *Agents os petitioners.* An established United States agent may file a petition in cases involving workers who traditionally are self-employed or use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A petition filed by an agent is subject to the following conditions:

(*1*) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary(ies) if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary(ies) may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*2*) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary(ies). The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on a reciprocal exchange program or they are essential support aliens to P–2 beneficiaries performing in the same location and in the same occupation. If visa-exempt beneficiaries will be applying for visas at more than one consulate, the petitioner shall submit a separate petition for each consulate. If the beneficiaries will be applying for admission at more than one port of entry, the petitioner shall submit a separate petition for each port of entry.

(G) *Named beneficiaries.* Petitions for P classification must include the names of beneficiaries and other required information at the time of filing.

(3) *Definitions: Arts* includes fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

Contract means the written agreement between the petitioner and the beneficiary(ies) that explains the terms and conditions of employment. The contract shall describe the services to be performed, and specify the wages, hours of work, working conditions, and any fringe benefits.

Event or performance means an activity such as a tour, exhibit, project, entertainment event, or an engagement. Such activity could include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event or performance. An entertainment event could include an entire season of performances. A group of related activities will also be considered an event.

Essential support olien means skilled, essential person determined by the director to be an integral part of the performance of a P–2 alien because he or she performs support services which cannot be readily performed by a United States worker and which are essential to the successful performance of services by the P–2 alien. Such alien must have appropriate qualifications to perform the services, critical knowledge

of the specific services to be performed, and experience in providing such support to the P–2 alien.

Group means two or more persons established as one entity or unit to provide a service or performance.

Member of a group means a person who is actually performing the entertainment services.

Sponsor, as used in this paragraph, means an established organization in the United States which will not directly employ a P–2 alien but will assume responsibility for the accuracy of the terms and conditions specified in the petition.

(4) *Petition for an artist or entertainer under a reciprocal exchange program (P–2)*—(i) *General.* (A) A P–2 classification shall be accorded to artists or entertainers, individually or as a group, who will be performing under a reciprocal exchange program which is between an organization or organizations in the United States and an organization in one or more foreign states and which provides for the temporary exchange of artists and entertainers, or groups of artists and entertainers, between the United States and the foreign states involved.

(B) The exchange of artists or entertainers shall be similar in terms of caliber of artists or entertainers, terms and conditions of employment, such as length of employment, and numbers of artists or entertainers involved in the exchange. However, this requirement does not preclude individual for group exchanges.

(C) An alien who is an essential support person as defined in paragraph (p)(3) of this section may be accorded P–2 classification based on a support relationship to a P–2 artist or entertainer under a reciprocal exchange program.

(ii) *Documentary requirements for petition involving a reciprocal exchange program.* A petition for P–2 classification shall be accompanied by:

(A) A copy of the formal reciprocal exchange agreement between the United States organization or organizations which is sponsoring the aliens and an organization or organizations in a foreign country which will receive the United States artist or entertainers;

(B) A statement from the sponsoring organization describing the reciprocal exchange of United States artists or entertainers as it relates to the specific petition for which P–2 classification is being sought;

(C) Evidence that an appropriate labor organization in the United States was involved in negotiating, or has occurred with, the reciprocal exchange of United States and foreign artists or entertainers; and

(D) Evidence that the aliens for whom P–2 classification is being sought and the United States artists or entertainers subject to the reciprocal exchange agreement are experienced artists or entertainers with comparable skills, that the terms and conditions of employment are similar. The exchange may be individual for individual or group for group.

(5) *Consultation*—(i) *General.* (A) Written evidence of consultation with an appropriate labor organization regarding the nature of the work to be done and the alien's qualifications are mandatory before a petition for P–2 classification can be approved.

(B) Evidence of consultation shall be a written advisory opinion from an official of the labor organization. If the director makes a written request for an advisory opinion and no response is received within the time period requested, the director shall make a decision without the advisory opinion. The director's written request for an opinion shall be evidence of consultation.

(C) To facilitate timely adjudication of a P–2 petition, the petitioner should obtain a written advisory opinion from an appropriate labor organization and submit it when the petition is filed. When a petition is filed without the required evidence of such consultation, the Service will request the consultation on its own from the appropriate labor organization. If the petitioner desires the Service to obtain a consultation, the petitioner must submit an additional copy of the petition and supporting documentation.

(D) If the petition is filed without the required consultation but the petitioner has indicated on the petition the name of the appropriate labor organization, the petitioner shall send a copy of the petition and supporting documents to an appropriate labor organization at the same time the petition is filed with the Service. The petitioner shall explain to the labor organization that it will be contacted by the Service for an advisory opinion regarding the services to be performed and the alien's qualifications. The name and address of the labor organization where the copy of the petition was sent shall be indicated in the petition that is filed with the Service. If the director determines that a copy of the petition was sent to an appropriate agency, the director shall request, in writing, a written advisory opinion from the labor organization before approving the petition. When the Service must obtain an advisory opinion, considerably longer adjudication time may be required.

(E) If the petition is filed without the required consultation and the petitioner does not list or designate a consulting entity, the Service will attempt to obtain a consultation.

(F) Written evidence of consultation shall be included in the record in every approved P petition. A single consultation may be submitted in conjunction with multiple essential support personnel or a group of principal aliens even though more than one petition is filed in their behalf. The advisory opinion should set forth a specific statement of facts on which the opinion is based. Consultations are advisory in nature and not binding on the Service. If a petition is denied because of the opinion provided by a labor organization, it shall be attached to the director's decision. Consultation is not required if the petition will be denied on other grounds.

(G) If the petitioner establishes that an appropriate labor organization does not exist, the Service shall render a decision on the evidence of record. This does not preclude the Service from obtaining a consultation from a closely related labor organization.

(H) If the Service determines that the consultation submitted by the petitioner was provided by an inappropriate labor organization, the Service may seek a new consultation from the appropriate organization.

(I) If the record of proceeding in a case contains conflicting consultations, the director shall render a decision on the evidence of record.

(ii) *Consultation requirements for P–2 alien in a reciprocal exchange program.* In P–2 petitions where an artist or entertainer is coming to the United States under a reciprocal exchange program, consultation with the appropriate labor organization is required to verify the existence of a viable exchange program. The advisory opinion from the labor organization shall comment on the bona fides of the reciprocal exchange program and specify whether the exchange meets the requirements of paragraph (p)(4)(ii) of this section.

(iii) *Consultation requirements for essential support aliens.* Written consultation on petitions for P–2 essential support aliens must be made with a labor organization with expertise in the skill area involved. The opinion provided by the labor organization shall evaluate the alien's essentiality to and working relationship with the artist or entertainer and state whether there are available U.S. workers who can perform the support services.

(iv) *Procedures for advisory opinions.* (A) The Service shall list in its Operations Instructions for P

classification those organizations which agree to provide advisory opinions to the Service and/or petitioners. The list will not be exclusive. The Service and petitioners may use other sources, such as publications, to identify appropriate labor organizations.

(B) The director's request for an advisory opinion shall specify the information needed. The organization to which the request is being made should be advised that a written opinion is needed within 15 days of the date of the director's letter. If a response is not received within 15 days, the director shall make a decision without the advisory opinion. The director may shorten the 15-day period in his or her discretion.

(6) *Approval and validity of petition*—(i) *Approval.* The director shall consider all the evidence submitted and such other evidence as he or she may independently require to assist in his or her adjudication. The director shall notify the petitioner of the approval of the petition on Form I–797, Notice of Action. The approval notice shall include the alien beneficiary's name and classification and the petition's period of validity.

(ii) *Recording the volidity of petitions.* Procedures for recording the validity period of petitions are:

(A) If a new P petition is approved before the date the petitioner indicates the services will begin, the approved petition and approval notice shall show the actual dates requested by the petitioner as the validity period, not to exceed the limit specified in paragraph (p)(6)(iii) of this section or other Service policy.

(B) If a new P petition is approved after the date the petitioner indicates the services will begin, the approved petition and approval notice shall show a validity period commencing with the date of approval and ending with the date requested by the petitioner, not to exceed the limit specified in paragraph (p)(6)(iii) of this section or other Service policy.

(C) If the period of services requested by the petitioner exceeds the limit specified in paragraph (p)(6)(iii) of this section, the petition shall be approved only up to the limit specified in that paragraph.

(iii) *Volidity of P-2 petitions for artists or entertainers in reciprocol exchange programs.* An approved petition for an artist or entertainer under section 101(a)(15)(P)(ii) of the Act shall be valid for a period of time determined by the director to be necessary to complete the event, activity, or performance for which the P–2 aliens are admitted, not to exceed one year.

(iv) *P–2 limitation on odmission.* An alien who has been admitted as a P–2 nonimmigrant may not be readmitted as a P–2 nonimmigrant unless the alien has remained outside the United States for at least three months after the date of his or her most recent admission. The director may waive this requirement in cases of individual tours where application of this requirement would cause undue hardship.

(v) *Spouse ond dependents.* The spouse and unmarried minor children of a P–2 alien beneficiary are entitled to P–2 alien beneficiary are entitled to P–4 nonimmigrant classification, subject to the same period of admission and limitations as the alien beneficiary, if they are accompanying or following to join the alien beneficiary in the United States. Neither the spouse nor a child of the alien beneficiary may accept employment unless he or she has been granted employment authorization.

(7) *Deniol of petition*—(i)*Notice of intent to deny.* When an adverse decision in proposed on the basis of derogatory information of which the petitioner is unaware, the director shall notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant rebuttal material will be considered in making a final decision.

(ii) *Notice of deniol.* The petitioner shall be notified of the decision, the reasons for the denial, and the right to appeal the denial under part 103 of this chapter. There is no appeal from a decision to deny an extension of stay to the alien.

(8) *Revocation of approval of petition*—(i)*General.* (A) The petitioner shall immediately notify the Service of any changes in the terms and conditions of employment of a beneficiary which may affect eligibility under section 101(a)(15)(P) of the Act and paragraph (p) of this section. An amended petition should be filed when the petitioner continues to employ the beneficiary. If the petitioner no longer employs the beneficiary, the petitioner shall send a letter explaining the change(s) to the director who approved the petition.

(B) The director may revoke a petition at any time, even after the validity of the petition has expired.

(ii) *Automotic revocation.* The approval of an unexpired petition is automatically revoked if the petitioner goes out of business, files a written withdrawal of the petition, or notifies the Service that the beneficiary is no longer employed by the petitioner.

(iii) *Revocation on notice*—(A) *Grounds for revocotion.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

(*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;

(*2*) The statement of facts contained in the petition were not true and correct;

(*3*) The petitioner violated the terms or conditions of the approved petition;

(*4*) The petitioner violated requirements of section 101(a)(15)(*P*) of the Act or paragraph (p) of this section; or

(*5*) The approval of the petition violated paragraph (p) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition.

(9) *Appeol of a denial or a revocation of a petition.* (i) *Denial.* A denied petition may be appealed under part 103 of this chapter.

(ii) *Revocotion.* A petition that has been revoked on notice may be appealed under part 103 of this chapter. Automatic revocations may not be appealed.

(10) *Admission.* A beneficiary may be admitted to the United States for the validity period of the petition, plus a period of up to 10 days before the validity period begins and 10 days after the validity period ends. The beneficiary may not work except during the validity period of the petition.

(11) *Extension of visa petition validity.* The petitioner shall file a request to extend the validity of the original petition under section 101(a)(15)(P) of the Act on Form I–129 in order to continue or complete the same activity or event specified in the original petition. Supporting documents are not required unless requested by the director. A petition extension may be filed only if the validity of the original petition has not expired.

(12) *Extension of stoy*—(i) *Extension procedure.* The petitioner shall request extension of the alien's stay to continue or complete the same event or activity by filing Form I–129, accompanied by a statement explaining the reasons for the extension. The petitioner must also request a petition extension. The dates of extension shall be the same for the petition and the beneficiary's extension

of stay. The beneficiary must be physically present in the United States at the time the extension of stay is filed. Even though the requests to extend the petition and the alien's stay are combined on the petition, the director shall make a separate determination on each. If the alien leaves the United States for business or personal reasons while the extension requests are pending, the petitioner may request the director to cable notification of approval of the petition extension to the consular office abroad where the alien will apply for a visa.

(ii) *Extension periods for P–2 aliens.*— An extension of stay may be authorized in increments of one year for aliens in reciprocal exchange programs to continue or complete the same event or activity for which they were admitted.

(13) *Effect of approval of a permanent labor certification or filing of a preference petition on P classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying a P petition, a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as a P nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States. This provision does not include essential support personnel.

(14) *Effect of a strike.* (i) If the Secretary of Labor certifies to the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place where the beneficiary is to be employed, and that the employment of the beneficiary would adversely affect the wages and working conditions of U.S. citizens and lawful resident workers:

(A) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(P) of the Act shall be denied; or

(B) If a petition has been approved, but the alien has not yet entered the United States, or has entered the United States but has not commenced employment, the approval of the petition is automatically suspended, and the application for admission of the basis of the petition shall be denied.

(ii) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (p)(14)(i) of this section, the Commissioner shall not deny a petition or suspend an approved petition.

(iii) If the alien has already commenced employment in the United States under an approved petition and is participating in a strike or labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Secretary of Labor, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers but is subject to the following terms and conditions:

(A) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated thereunder in the same manner as all other P nonimmigrants;

(B) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(C) Although participation by a P nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for deportation, an alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to deportation.

(15) *Use of approval notice, Form I–797.* The Service shall notify the petitioner on Form I–797 whenever a visa petition or an extension of a visa petition is approved under the P classification. The beneficiary of a P petition who does not require a nonimmigrant visa may present a copy of the approval notice at a port of entry to facilitate entry into the United States. A beneficiary who is required to present a visa for admission and whose visa expired before the date of his or her intended return may use Form I–797 to apply for a new or revalidated visa during the validity period of the petition. The copy of Form I–797 shall be retained by the beneficiary and presented during the validity of the petition when reentering the United States to resume the same employment with the same petitioner.

* * * * *

Dated: November 20, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–28552 Filed 11–29–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 16

[Docket RM89–7–001]

Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters; Order on Rehearing

Issued November 22, 1991.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order on rehearing that in general rejects requests to modify the final rule adopted in this proceeding, governing hydropower procedural regulations. The Commission has, however, revised the definition of "fishway" to make it clear that it includes devices that provide upstream or downstream passage of fish, where passage of a population is necessary for the life cycle of a species. The Commission also has revised the regulations adopted to provide notice in the Federal Register of the tendering for filing of hydropower applications for license or exemption, and to set a final deadline for the completion of the consultation process under Federal Power Act section 10(j).

EFFECTIVE DATE: January 2, 1992.

FOR FURTHER LEGAL INFORMATION CONTACT: Merrill Hathaway, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0825.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Thomas E. Dewitt, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 810 1st Street, NE., Washington, DC 20426, (202) 219–2821.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission's Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no

charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

TABLE OF CONTENTS

I. Introduction
II. Discussion
A. Definition
1. Fish and Wildlife Recommendation
2. Indian Tribe
3. Fishway
4. Ready for Environmental Analysis
5. Resource Agency
B. Pre-hearing Procedures and Related Issues
1. Pre-filing Consultation
2. Scientific Studies
3. Non-capacity Amendments
C. Hearing Process
1. Water Quality Certification
2. Notice-and-Comment Hearing
3. Deadlines
4. Endangered Species Act
5. Section 10(j) Process
6. Intervention
D. Miscellaneous
1. Transition Provisions
2. Clarification of Delegated Authority
3. Filing Requirements for Certain Applicants
4. Requests to Intervene and Late Requests
Regulatory Text
Appendix A
Appendix B

I. Introduction

On May 8, 1991, the Federal Energy Regulatory Commission (Commission) issued Order No. 533, adopting a final rule amending the regulations governing submittal of proposed hydropower license conditions and other matters.[1] Requests for rehearing were filed by a number of parties.[2]

The requests ask the Commission to revise certain definitions adopted in the regulations, especially the definition of "fishway," which they believe should include facilities for downstream as well as upstream passage, devices for temperature control, and flow requirements. Additional opportunity for public participation in the pre-filing consultation process is sought, and requests are made for more public notice of the tendering for filing of hydropower applications. A number of requests challenge the revisions to the regulations governing determination of when an applicant has obtained a waiver of a water quality certification and when an applicant needs to reapply to a state agency for certification because of an amendment to its proposed project facilities.

Questions are raised about the adequacy of public notice and opportunity for comment regarding the regulatory revisions adopted. Requests allege that the new regulations unfairly restrict the ability of fish and wildlife agencies to modify their fish and wildlife recommendations and that the deadlines adopted for them are beyond the Commission's authority and counterproductive.

Requests object to the procedures adopted to implement section 10(j) of the Federal Power Act (FPA) [3] and ask for additional procedures. A request finds fault with the Commission's decision to end its interim policy allowing late interventions in hydropower proceedings by fish and wildlife agencies. Clarification of the new public file requirements is requested. Parties object to the delegation of authority to the Director of the Office of Hydropower Licensing (OHL) to handle FPA 10(j) matters and in appropriate cases to consider waivers of the pre-filing consultation regulations. The Commission is asked to clarify the revisions to its regulations concerning service of applications on resource agencies consulted.

After further review, the Commission has determined that it is appropriate to revise the definition of "fishway" to include facilities for downstream as well as upstream passage, based on accepted usages of the term, which applies only where a population of fish have a need for passage in order to complete the life cycle of the species. There is no basis to extend the term to include devices for temperature control or operational measures such as requirements for flows. The procedures already adopted for public participation in the pre-filing consultation process appear adequate, but the regulations are revised to provide that notice of the tendering for filing of all hydropower applications will be given in the Federal Register. The requests have not shown there is any need to make further changes in the regulations governing the Commission's determination of when an applicant has obtained a waiver of water quality certification due to inaction by a state agency and when an applicant must reapply to a state agency for a water quality certification due to an amendment to proposed project facilities.

Adequate public notice and opportunity for comment have been afforded for the regulatory revisions adopted in this rulemaking. The regulations do not unduly restrict fish and wildlife agencies in revising their fish and wildlife recommendations, and the Commission has the authority to set reasonable deadlines for all submissions in hydropower hearings, which deadlines may be extended as appropriate in specific cases. The revised procedural regulations are necessary for the Commission's effort to instill more discipline in the conduct of hydropower proceedings, to ensure the expeditious processing of applications and the gathering of the facts required for decision.

The FPA 10(j) procedures fully comply with legal requirements and afford all interested parties the opportunity to help the Commission and resource agencies attempt to resolve any differences about the inconsistency of fish and wildlife recommendations with applicable law. There is no need to grant to fish and wildlife agencies rights to intervene in hydropower proceedings in a manner not given to other interested persons. The new public file requirements adopted for applicants for original licenses or exemptions apply only to applications filed on or after June 19, 1991. The new delegations of authority to the Director of OHL are clearly authorized and are left undisturbed. The Commission clarifies which consulted federal resource agencies need service of multiple copies of filed applications.

The following discussion supplements the discussion set forth in the preamble to the Final Rule, which deals with many of the same issues raised again on rehearing.

II. Discussion

A. Definitions.

1. Fish and Wildlife Recommendation.

The final rule added a definition of "fish and wildlife recommendation" in order to determine which recommendations are subject to the special consultation and finding requirements of FPA section 10(j). The term means any recommendation of a fish and wildlife agency designed to protect, mitigate potential damages to, or enhance any wild member of the

[1] 55 FERC ¶ 61,193 (1991); 56 F R 23,108 (May 20, 1991).

[2] These parties are listed in appendix A.

[3] 16 U.S.C. 803(j) (1988).

animal kingdom.[4] The Commission stated that the term does not include, *inter alia*, a request that the proposed project not be constructed or operated or a request for additional studies that can be completed prior to licensing.

A number of requesters ask the Commission to include in the definition a recommendation that a proposed project not be constructed or operated.[5] They point out that a "no-build" recommendation may be critically important to protect fish and wildlife and suggest that the Commission's interpretation ignores the fish and wildlife agencies' right to base their recommendations on the Fish and Wildlife Coordination Act (FWCA).[6] These requesters argue that the Commission's decision is based on a hypertechnical reading of FPA section 10(j) and violates the legislative intent behind enactment of that section in ECPA, citing the following language: [7]

> The Committee recognizes that in certain cases the expert opinion and recommendations of these agencies may be that development of a site, even with license conditions, would not be consistent with fish and wildlife values and that a license should not issue. They are free to make such recommendations.

The Commission is also asked to include in the definition requests for additional studies prior to licensing.[8]

These arguments repeat those made in the comments on the NOPR, which the Commission considered and rejected in the Final Rule. Clearly, a fish and wildlife agency is free to recommend that a project not be licensed, and the Commission will consider such recommendation carefully in determining, under the standards of sections 4(e)[9] and 10(a)(1)[10] of the FPA, whether or not to license a proposed hydropower project.

The language of FPA section 10(j), however, which the definition of "fish and wildlife recommendation" implements, clearly provides that only recommendations that would condition the issuance of a license trigger the special consultation and finding requirements of that section. FPA section 10(j)(1) states that "each license issued * * * shall include conditions for such protection, mitigation, and enhancement [of fish and wildlife]." [11]

Section 10(j)(2), setting forth additional consultation and finding requirements, also is clear in referring only to recommendations for conditions that would be included in an issued license. This section applies only to recommendations "referred to in paragraph (1)," *i.e.*, recommendations for conditions in licenses to protect fish and wildlife. In listing the findings required of the Commission should it choose not to adopt a fish and wildlife recommendation for license conditions, section 10(j)(2)(B) provides that the "conditions selected by the Commission [must] comply with the requirements of paragraph (1)," *i.e.*, the conditions in the license issued by the Commission must include conditions to protect, mitigate and enhance fish and wildlife.[12]

The material from the House Report on ECPA, cited by the requesters and quoted above, is in no way inconsistent with this reading of the plain language of the statute. In that material, the House Committee was merely emphasizing that the ECPA amendments were not intended to eliminate a fish and wildlife agency's discretion to recommend—under FPA section 4(e) or 10(a)—denial of a license for a proposed hydropower project.

Similar reasoning applies to the argument that the Commission should reverse its determination that a request for additional pre-licensing studies does not fit within the definition of a "fish and wildlife recommendation" subject to the requirements of FPA section 10(j). Neither in the ECPA amendments to the FPA nor in the legislative history has Congress indicated that such procedural questions, affecting the adequacy of the record before the Commission for decision, should be resolved pursuant to the special consultation and finding provisions of section 10(j). As discussed above, such provisions apply only to recommendations for conditions to protect fish and wildlife in the issuance of licenses.

2. Indian Tribe

In response to comments received on the NOPR, the Commission adopted a definition of "Indian tribe" in the final rule that refers to tribes recognized by treaty with the United States, by federal statute, or by Interior in its listing of tribal governments pursuant to 25 CFR 83.6(b).[13] This definition is used in the regulations to determine with what Indian groups an applicant must consult in preparing a proposal for hydropower facilities, and the views of which groups the Commission must seek in deciding on such a proposal.[14] For a particular project the definition includes only those tribes whose legal rights as a tribe may be affected.

Interior objects to this "nexus test" in the definition and maintains that an Indian tribe should be consulted on a

---

[4] Section 4.30(b)(9)(ii). The full text of the definition reads as follows:

"Fish and wildlife recommendation" means any recommendation designed to protect, mitigate damages to, or enhance any wild member of the animal kingdom, including any migratory or nonmigratory mammal, fish, bird, amphibian, reptile, mollusk, crustacean, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any egg or offspring thereof, related breeding or spawning grounds, and habitat. A "fish and wildlife recommendation" includes a request for a study which cannot be completed prior to licensing, but does not include a request that the proposed project not be constructed or operated, a request for additional prelicensing studies or analysis or, as the term is used in §§ 4.34(e)(2) and 4.34(f)(3), a recommendation for facilities, programs, or other measures to benefit recreation or tourism.

[5] Interior, Commerce, Wildlife Federation, American Rivers, Washington, California Fish and Game, and West Virginia.

[6] 16 U.S.C. 661 et seq.

[7] H.R. Rep. No. 99-507, 99th Cong., 2d Sess. 32.

[8] American Rivers and Washington.

[9] FPA section 4(e) states:

In deciding *whether* to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, *the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat)*, the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

16 U.S.C. 797(e) (1988) (emphasis added). This language, like section 10(j), was added to the FPA by ECPA.

[10] FPA Section 10(a)(1) requires any project that the Commission licenses to be on the condition:

That the project adopted, including the maps, plans, and specifications, shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes referred to in section 4(e); and if necessary in order to secure such plan the Commission shall have authority to require the modification of any project and of the plans and specifications of the project works before approval.

16 U.S.C. 803(a), as amended by ECPA.

[11] 16 U.S.C. 803(j)(1) (1988) (emphasis added).

[12] See also FPA section 10(j)(2) (referencing the provisions of section 10(j)(1) as to "each license issued"); *compare* section 4(e), discussing "whether to issue any license."

[13] Section 4.30(b)(10). The full text of the definition reads as follows:

"Indian tribe" means, in reference to a proposal to apply for a license or exemption for a hydropower project, an Indian tribe which is recognized by treaty with the United States, by federal statute, or by the U.S. Department of the Interior in its periodic listing of tribal governments in the **Federal Register** in accordance with 25 CFR 83.6(b), and whose legal rights as a tribe may be affected by the development and operation of the hydropower project proposed (as where the operation of the proposed project could interfere with the management and harvest of anadromous fish or where the project works would be located within the tribe's reservation).

[14] Sections 4.32, 4.34, 4.38 and 16.8.

hydropower project whether or not the tribe has legal rights that may be affected by the project.

The Commission considered and rejected this argument in the Final Rule, and Interior has not furnished any reason to change the result. In order to determine which of the many tribes in a state or region needs to be consulted by an applicant and the Commission regarding a specific hydropower proposal, it is necessary for there to be some connection between the tribe and the project beyond that of a concerned citizen. The Commission is confident this connection exists when the tribe's legal rights as a tribe may be affected. As the Commission explained, the requirement of a connection between the tribe and the project is not meant to exclude a tribe from making its views known on a project that affects its important interests, but to set a limit on the tribes that the applicant and the Commission would undertake to consult on a particular project. Any tribe that believes it should be consulted on a particular hydropower proposal should make known its views to the applicant and the Commission, and they will be carefully considered. If for any reason an affected tribe is not consulted by an applicant during the pre-filing consultation process, the tribe may seek intervention in the proceeding and file comments with the Commission in accordance with the procedures promulgated in the Final Rule.

3. Fishway

In the Final Rule, the Commission adopted a definition of the term "fishway," for purposes of clarifying the scope of the regulations adopted to implement the Commission's responsibilities under section 18 of the FPA.[15] Under this section, the Secretaries of the Interior and Commerce may prescribe fishways for hydropower projects, conditions for which the Commission must then incorporate into licenses for approved projects. By contrast, fish and wildlife recommendations not involving federal fishway prescriptions are subject to the procedures set forth in section 10(j) of the FPA. The definition reads as follows: [16]

"Fishway" means any structure, facility, or device used for the upstream passage of fish through, over, or around the project works of a hydropower project, such as fish ladders, fish locks, fish lifts and elevators, and similar physical features; those screens, barriers, and similar devices that operate to guide fish to a fishway; and flows within the fishway necessary for its operation.

In the NOPR, the Commission included in the definition devices used for the upstream or downstream passage of fish, but deleted the inclusion of downstream devices in response to comments filed, which claimed that narrowing the definition in this manner was more consistent with usages in both contemporary and historical scientific literature on the subject.

The Commission rejected claims that the definition should be expanded to include non-structural elements, such as minimum flow and temperature control regimes, on the grounds that there was no evidence to suggest that such measures had ever been commonly understood to be included within the meaning of "fishway," which was confined to physical structures, facilities, and devices, and the flows within the fishway necessary for its operation.

A number of requesters vigorously object to the definition of fishway that the Commission adopted in the Final Rule.[17] They maintain that the Commission was not justified in deleting from the definition facilities for downstream passage of fish and that non-structural measures such as minimum flows and temperature-control regimes should be included.

The requesters cite precedents in recent cases, decided in the 1980s, where the Commission accepted prescriptions of fishways that included facilities for downstream passage, and claim that the Commission has not adequately explained why it is now changing its understanding of the term.[18] The requesters argue that providing adequate downstream passage past hydropower facilities is critically important for the survival and prosperity of many anadromous fish species, whose adults must ascend the rivers to their spawning grounds and whose young must descend the rivers to the sea.[19] Patents are listed for fishways issued by the U.S. Patent Office between 1872 and 1930 that provide for downstream passage.[20]

The requesters believe that there is evidence of Congressional intent in adopting section 18 of the Federal Water Power Act (FWPA) [21] (in 1920) that supports including downstream passage facilities within the meaning of the term "fishway," and that there is no reason to assume that Congress used the term in a technical, scientific sense.[22] Commerce argues that the term "fishway" should also be construed according to its contemporary meaning, *i.e.*, after 1920. According to Commerce's review of scientific literature published during this time frame, including official publications of the U.S. Government agencies entrusted with management responsibilities over the nation's fish resources, the term encompasses downstream passage facilities. Commerce points to the fish ladder at Bonneville Dam on the Columbia River, which was modified to facilitate downstream as well as upstream passage.

Wildlife Federation claims that the Commission failed to give adequate notice of the change in the definition of "fishway" from the NOPR to the Final Rule, and American Rivers takes the position that the Commission has no authority to adopt any definition of the term, based on its assertion that Congress delegated to the Secretaries of the Interior and Commerce, not the Commission, the authority prescribe fishways.

The Commission has carefully reviewed the meaning of the term "fishway" as it is used in section 18 of the FPA. The Commission continues to believe that the legislative history of section 18, discussed in the Preamble to the Final Rule, fails to provide any definitive guidance as to whether "fishway" encompasses devices for downstream passage. An attempt must therefore be made to establish what meaning or meanings that term has been commonly understood to have. In the Preamble to the Final Rule the Commission focused on the scientific usages of the term. While it is true, as stated in that preamble, that many scientists consistently use the term to include only facilities for upstream passage at hydropower facilities, both before and after 1920 other scientists have used the term to include facilities for either downstream or upstream passage. On the basis of the record the Commission finds no basis for concluding that this broader scientific use of the term is improper.

[15] 16 U.S.C. 811.

[16] Section 4.30(b)(9)(iii).

[17] Interior, Commerce, Wildlife Federation, American Rivers, Washington, Oregon, West Virginia, and Congressman Dingell.

[18] Interior, Attach. 3; Commerce.

[19] *E.g.*, Interior, Commerce, and American Rivers.

[20] Interior, Attach. 2.

[21] June 10, 1920, c.285, 18, 41 Stat. 1073.

[22] *E.g.*, Wildlife Federation. The parties cite scientific literature predating passage of the Federal Dam Act of 1906 and the FWPA of 1920, federal legislation in which there first appeared the language of section 18 of the FWPA granting to certain agencies the authority to prescribe fishways, as well as the floor debate on the FPA discussed in the preamble to the Final Rule.

The Commission agrees with those requesters who maintain that there is no reason to assume, however, that Congress used the term "fishway" in a technical sense, as the term would be used by a scientist in a scholarly article. The Commission has undertaken additional research to determine whether the term has a meaning or meanings that have been commonly accepted outside purely scientific literature, either in respected reference works or in other laws. As a result, the Commission concludes that, while the term "fishway" and its synonyms have been commonly used to refer to upstream passage facilities, they have also been commonly used to refer to facilities for downstream passage, and that this usage has occurred both before and after 1920.

This conclusion is supported by many respected reference works. Webster's International Dictionary defines fishway as "a contrivance for enabling fish to pass around a fall or dam in a stream * * *." [23] Thus the definition is not restricted to devices to provide upstream passage. The Penguin Dictionary of Civil Engineering defines fish ladder, fish pass and fishway together as a "channel along which fish can travel *up* or down past a weir or dam." [24] The Encyclopaedia Britannica states that fish passes usually take the form of fish ladders or fish locks. The latter are commonly used in Europe, and the encyclopedia describes the function of a typical fish lock as follows: [25]

> The Borland fish lock was developed in Scotland as an alternative to fish ladders. It operates on the same intermittent principle as a ship lock but is constructed as a closed conduit. Intermittent closure of the gates at the bottom causes the continuous flow through the lock to fill the conduit at intervals, and thus allows fish waiting in the bottom chamber to be raised through the height of the dam. The lock also serves at other seasons to flush young salmon down past the dam.

Like the example of the fish ladder referenced by Commerce, a fish lock can therefore be used both for upstream and downstream passage past a dam.[26] The Commission recognizes that some general reference works, past and present, define a fishway as providing upstream passage, but in light of the common usage explored herein these interpretations of the term's meaning appear at best incomplete, and cannot support the conclusion that the definition of the term excludes devices used, either partly or exclusively, for downstream fish passage.[27]

Legal authorities, as well, commonly include downstream passage devices within the definition of fishway. Corpus Juris defines a fishway as follows: [28]

> As contemplated by some statutes, a fishway means that, where there is an obstruction in the stream which prevents the fish from going up or down the stream, an artificial means is afforded to the fish to pass the obstruction.

Ballentine's Law Dictionary defines fishway as follows: [29]

> A way, provided in the construction of a dam, whereby fish may journey from below to above the dam or vice versa.

Of the eight states whose current statutes contain definitions of the term "fishway" that discuss to which direction of passage the term applies, five states define the term to include both upstream and downstream passage facilities.[30]

Of the remaining states with such statutes, two states define a fishway in terms of upstream passage,[31] and one state distinguishes between a fishway and a facility for downstream passage.[32] The Commission has also found a number of state laws, in effect prior to Congressional enactment of the General Dam Act of 1906, which provide that a fishway includes devices for both upstream and downstream passage,[33] as well as state court opinions of the same vintage that emphasize the importance of maintaining the public right in maintaining the passage of fish up and down rivers and streams.[34]

---

[23] Webster's Third New International Dictionary (1981). The dictionary cites a fish ladder as an example of a fishway, and defines "fish ladder" as "a series of pools arranged like steps by which fishes can pass over a dam in going upstream." No one has claimed in this proceeding that a fish ladder is not a fishway; it is equally clear, however, that a fish ladder is but one type of fishway, and the mention of fish ladder in the definition of fishway in this dictionary cannot be construed to imply that only a fish ladder is a fishway. *See* McGraw-Hill Dictionary of Engineering (1984) (fish ladder is a "*type of fishway* that carries water around a dam through a series of stepped baffles or boxes and thus facilitates the migration of fish") (emphasis added).

[24] J. Scott, The Penguin Dictionary of Civil Engineering (3rd ed. 1984) (emphasis added). *See also* the definition of "fish ladder" in the McGraw-Hill Dictionary of Engineering, *supra*. A weir is a small dam.

[25] 5 Encyclopaedia Britannica 446–47 (1977) (emphasis added).

[26] The Federal Power Commission addressed this question in 1945, regarding the Bonneville project on the Columbia River:

> Four fish ladders and three fish locks, referred to collectively as fishways, provide for the migrations of fish *back and forth* past the dam.

4 FPC 953, 957 (1945) (emphasis added); *see also* B. Rizzo, Fish Passage Facilities Design Parameters for Connecticut River Basin (Bureau of Sport Fisheries & Wildlife 1972) (fish ladders can serve the function of moving fish downstream as well as upstream past a dam).

[27] *E.g.*, The Oxford English Dictionary (2d ed. 1989) (a fishway is "an arrangement for enabling fish to ascend a fall or dam"); Webster's Universal Dictionary (1905) (a fishway is an "arrangement by which fish may ascend a waterfall or dam"). In the preface to the latter dictionary, the first standard dictionary of the English language prepared and published in the twentieth century, the editors rejected the principle that a word should have only one meaning:

> [N]o modern dictionary would be considered complete without the definitions that convey to the mind a clear view of all the senses in which a word is used, as well as its primary or most important sense. New uses of old words are as worthy of a place in the dictionary as new words themselves, and the editors of this work have been ever on the watch for them, as well as careful to include all important specific definitions sanctioned by usage in literature or speech.

[28] 36A Corpus Juris Secundum 498 (1961) (emphasis added, footnote omitted).

[29] J. Ballentine, Ballentine's Law Dictionary (3rd ed. 1969) (emphasis added).

[30] Idaho Code § 36–906 (1990) (fishway must "accommodate seasonal movement of fish up and down the stream"); Rev. Stat. Missouri § 252.150 (1989) (fishway must "enable fish to have free passage up and down said waters at all times"); Ore. Rev. Stat. § 498.268(1) (fishway must "provide adequate upstream and downstream passage"); 30 Penn. C.S. § 3501(a) (1989) (fishway must "enable the fish to ascend and descend the waters at all seasons"); Va. Code Ann. § 29.1–532 (1991) ("purpose of such a fishway is for anadromous and other migratory fish to have free passage up and down the streams during March, April, May and June, and down the streams throughout the remaining months").

[31] Nev. Rev. Stat. Ann. § 503.400 (1989) (fishway must be built "so that at all seasons of the year fish may ascend above such dams"); Tex. Parks & Wild. Code § 66.109 (1991) (fishway must be "sufficient to allow fish in all seasons to ascend the dam").

[32] Alaska Stat. § 16.05.840 (1990) ("every dam or other obstruction built by any person across a stream frequented by salmon or other fish shall be provided * * * with a durable and efficient fishway and a device for efficient passage for downstream migrants"). The California Water Board has stated that the purpose of a fishway is to permit upstream passage for anadromous fish. In re United Water Conservation District, 1987 Cal. ENV LEXIS 21 (September 3, 1987); In re City of San Luis Obispo, 1982 Cal. ENV LEXIS 24 (August 9, 1982).

[33] Pa. P.L. 302 § 13, enacted May 29, 1901, which later became P.L. 448 § 185, enacted May 2, 1925, 30 Purdon's Pa. Stat. Ann. § 185, discussed in Commonwealth v. Pierce, 17 Pa. Dist. 146 (1907); Fish v. Dam, 26 Pa. County Ct. 214 (1902) (the law required a dam to include "some artificial devices * * * to enable the fish to ascend and descend the river freely at all seasons of the year"); Ill. Sess. Laws 171, enacted May 31, 1879, discussed in Parker v. Illinois, 111 Ill. 581, 585 (1884) (a person who obstructs a waterway must "place therein suitable fishways, in order that the free passage of fish up or down or through such waters may not be obstructed"); and State v. Beardsley, 108 Iowa 396, 79 NW 136, 139 (1899) (Iowa state statute required fishways "to afford a free passage for fish up and down").

[34] *E.g.*, Commissioners on Inland Fisheries v. Holyoke Water Power Co., 104 Mass. 446, 450 (1870), *aff'd sub nom.* Holyoke Co. v. Lyman, 82 U.S. 500 (1872); *Swift* v. *Town of Falmouth*, 167 Mass. 115, 45 N.E. 184, 186 (1896); *State* v. *Roberts*, 59 N.H. 256, 257 (1879); *West Point Water Power & Land Improvement Co.* v. *State*, 49 Neb. 218, 68 N.W. 6 (1896); and Sherwood v. Stephens, 90 P. 345 (Idaho 1907).

Finally, the laws of England, on which many laws in this country were based, use the term "fish pass" (a synonym of fishway) to refer to devices for both upstream and downstream passage.[35]

Based on the additional evidence regarding common usage of the term "fishway," including both technical and non-technical usage, we conclude that the term properly applies to both upstream and downstream passage.

By contrast, the requesters have provided no support, nor has the Commission discovered any during its research, for the proposition that the definition of "fishway" should be expanded to include temperature-control devices or minimum flows. The Commission is not aware of any accepted usage of the term that is this broad, and the many usages the Commission has reviewed without exception use the term "fishway" to refer to physical or structural devices that facilitate the passage of fish in the immediate vicinity of a dam (or other such obstruction in a river or stream). Indeed, these claims would have section 18 of the FPA far overreach its bounds and would, in effect, turn anything affecting fish migration in a river system into a "fishway." Congress clearly did not intend the prescriptive authority of section 18 to have such a scope, as evidenced, for example, in the many revisions made by ECPA to sections 4(e) and 10(a) of the FPA which are designed to protect fish and wildlife values, including migrating fish.[36] The Commission has consistently dealt with such issues pursuant to its authority under these sections of the Act, and in many cases an issue such as the appropriate level of minimum flows is at the heart of the Commission's decision under section 10(a).

In the Preamble to the Final Rule, the Commission stated that no limitation should be placed on the type of fish for which fishways may be prescribed, rejecting the recommendations of Edison Electric Institute (EEI), the National Hydropower Association, and others that fishways should be limited to passage devices for migratory fish. On further review the Commission believes that fishway prescriptions under EPA section 18 should be limited to fish that have a *bona fide* need to migrate past the obstacles presented by hydropower facilities. Accordingly, the Commission is amending the definition of fishway in the regulations to make clear that it applies only where "passage of a population is necessary for the life cycle of a fish species." Such fish would include both anadromous fish and certain species of non-anadromous fish. The definition would not apply to fish having no manifest need to migrate during their life cycles. The Commission's decision to limit the definition in this manner is supported by a substantial body of literature on the subject of fishways, as well as by reference to state statutes and case law.

In considering whether to adopt this revision, the Commission reviewed a large number of publications concerning the need for or design of fishways. These publications invariably focus on the importance of fishways in ensuring that fish would not be prevented from their necessary migration. Particularly suggestive are publications of the Departments of Commerce and the Interior that reflect distinctions among types of fish and discuss their differing needs for fishways.

In its 1917 U.S. Bureau of Fisheries circular entitled The Question of Fishways, Commerce stated that the need for fishways arises from the fact that "fish have a migratory tendency that is manifested in varying degrees in different species." It continued that the migratory need is most pronounced in anadromous fish, such as shad, salmon, alewives, common sturgeon, and striped bass (rockfish). Other fish "not ordinarily called anadromous * * * still show a marked tendency to move toward the headwaters at the time of spawning." These include the trout, whitefish, and sometimes the pike perch (walleye) and the suckers. Commerce indicated that for fish in this second category, proper fishways "may be of vital importance." Finally, Commerce recognized that there is "a general migratory tendency in most fish which has no evident definite relation to the spawning instinct" but is probably governed by necessities of feeding and of protection from extreme temperature. Commerce concluded that it did not necessarily follow that dams had any ill effect on this third category of fish, for which an impassable dam "merely divides the stream into two separate parts, each complete in itself so far as concerns the propagation and abundance of those particular species."

In an analysis based on geographic drainage areas, Commerce proceeded to specify which species of fish did and did not require fishways at dams. It concluded that fishways would be required for sturgeon, common eel, hickory and other shad, alewives, salmon (except landlocked salmon), smelt, striped bass, lampreys, steelhead trout, and eulachon (an anadromous smelt), and sometimes required for whitefish, landlocked salmon, most other trout, and several other species. It determined that, for all species not specified, it had "no evidence that under ordinary conditions a fishway is necessary or desirable." Among these species were "gars, bowfin, most of the catfishes, buffalofishes, redhorse, several species of sucker, carp, gizzard shad, chubs, pikes, crappies, sunfishes, basses, perches, and burbot (ling)." Commerce reiterated, in conclusion, that, for the majority of the fresh-water food fish, there was "no evidence, now in hand, to indicate that fishways are requisite for the maintenance of the species in normal abundance above dams under ordinary conditions." [37]

The Department of the Interior's Fish and Wildlife Service has made a similar analysis. In a 1944 publication entitled Fishways For Small Streams, George A. Rounsefell stated that anadromous fishes, "such as salmon, shad, sturgeon, alewives, smelt, striped bass, and sea-run trout or steelheads, must be able to ascend streams far enough to reach spawning grounds * * *" However, for fresh-water fishes "the necessity for fishways is not always so clear cut." He concluded that certain species, especially the salmonoids, have rather strict requirements for spawning conditions but that, for many warm-water species "which can reproduce and make proper growth without extensive migration, fishways are entirely unnecessary."

In another Fish and Wildlife Service publication, entitled Mitigation and Enhancement Techniques For the Upper Mississippi River System and Other Large Rivers (1982), the authors (Schnick and others; cited below as Schnick) state: "There is only one reason for installing a fish passage facility: To provide fish with a means of negotiating barriers in streams that interfere with or prevent movement or migration essential to completion of the life history of a fish."

---

[35] 18 L. Hailsham, Halsbury's Laws of England ¶ 667, 718 (4th ed. 1977) (a fish pass must be "maintained in such a condition * * * as will enable salmon and migratory trout to pass up and down it").

[36] ECPA added to section 4(e) the language quoted in footnote 9, *supra*, and to section 10(a) (1) the express requirement that in any license issued the project adopted must be best adapted to a comprehensive plan for, *inter alia*, "the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat * * *" See footnote 10, *supra*.

[37] In an even earlier Bureau of Fisheries publication (1908), entitled Fishways, von Bayer also addressed the need for fishways in relation to migration: "* * * the question has presented itself how to enable the fish to ascend to the headwaters of rivers in order to reach their spawning grounds for the propagation of their kind or to follow their migratory habits in search of food as heretofore."

Other publications generally relate their discussion of fishways to the needs of fish requiring migration for their lifecycle. In Problems of Fishway Construction (1933), Baker and Gilroy begin by stating:

> If migrating fish, such as the Pacific salmon and the steelhead trout, are to be conserved, efforts must be made to maintain stream channels in a condition which will permit a safe journey both upstream for the mature fish seeking spawning beds and downstream for the young fish hatched in the headwater areas.

The authors then evaluate the success of various types of fishways in overcoming the obstacles that dams present to this necessary migration. The article is replete with references to "upstream-migrating" and "downstream-migrating" fish and discusses the behavior of salmon and steelhead.

In An Investigation of Fishways (1939–40), McLeod and Nemenyi define fishways as "structures installed to aid fish in overcoming obstacles in migrating." The article classifies migrating fish into three main groups: Salmonides (salmon, trout), which spawn in the fall; cyprinides (carp and allied fishes), which spawn in the summer; and young eels. The authors also discuss the apparent motivations for migration. They attribute migration in salmonides to the need to spawn and in eels to feeding and spawning needs. They postulate that migration of cyprinides is not connected directly with propagation activities or the need to reach definite feeding grounds but rather to the instinct to return upstream in the spring and summer after having been swept downstream, in a weakened state, by currents in the autumn and winter.

In 1941, Nemenyi compiled An Annotated Bibliography of Fishways, which summarizes approximately 150 articles about fishways. In his preface, Nemenyi states:

> The effort of which the different migratory fishes are capable and the effort required to ascend the different kinds of fishways are beginning to be properly understood, thus making possible the first serious attempts to form rational rules for the design of fishways.

He also refers to an increased understanding of the "conditions under which turbines are passable without serious danger to the downstream migrants * * *" The articles themselves, many of them translated from other languages and dealing with conditions in other countries, contain many references to "migrating fish" and discuss the behavior of, and the problems of passing, salmon, trout, and eels, in particular.

In Fish Passage (contained in A Century of Fisheries in North America (1970), Norman G. Benson, editor), C.J. Eicher begins by stating: "Passage of migratory fish past obstructions, both natural and man-made, has been the subject of effort and research on the part of fishery workers on the American scene for many years." He discusses "one of the earliest large-scale attempts to facilitate anadromous fish movement", a pool-type fish ladder in Oregon that passed large numbers of chinook salmon, as well as steelhead trout, coho salmon, and American shad. Eicher also discusses types of fishways for "upstream migrants" and "devices" designed for passing "downstream migrants."

A number of articles concern the problems of fish passage at particular dams or in particular river systems. These inevitably focus on the problems of passing fish with a need to migrate, and usually anadromous fish. Ruggles and Watt, in Ecological Changes Due to Hydroelectric Development on the Saint John River (1975), refer to dams impeding access to upstream spawning areas by Atlantic salmon and "other anadromous species." They furnish details of passage facilities designed to protect salmon and "migrating juveniles" and refer to the partial failure of upstream passage facilities to provide shad with satisfactory access to upstream areas. They also note that no fish passage facilities were installed in Grand Falls Dam, the uppermost dam on the river system, because anadromous fish had never been able to pass Grand Falls.

In Fish Passage Facilities Design Parameters for Connecticut River Basin (1972), Rizzo discusses a program entered into by the U.S. Bureau of Sport Fisheries and Wildlife (now the Fish and Wildlife Service), the National Marine Fisheries Service, and several New England states "for restoration of anadromous fish in the Connecticut River Basin." The publication focuses on American shad and Atlantic salmon. In The Passage of Fish at Bonneville Dam (1940) (in Stanford Ichthyological Bulletin 1 (6)), Holmes describes the problems of constructing fishways at Bonneville Dam and of ensuring "passage of the young fish on their way to the ocean." He indicates that a "great deal of time was devoted to the study of the design of fishways for the passage of the upstream migrants." In Fish Problems Connected With Grand Coulee Dam (in the same volume of the Stanford Ichthyological Bulletin), Chapman discusses the problems of designing fishways at Grand Coulee Dam, whose construction was creating a barrier to the migration of spring chinook salmon, Columbia River sockeye salmon, and steelhead trout.

Respected treatises that examine fishways also reflect an emphasis on the need to ensure passage of migratory fish. Fisheries Handbook of Engineering Requirements and Biological Criteria (1973), by Milo C. Bell, a designer of early fishways, devotes several chapters to fishways or other fish passage problems. Although he does not appear to state affirmatively that fish passage solutions are designed or intended only for particular fish, his descriptions of these solutions invariably refer only to species requiring migration to survive. For example, in his chapter on Locks and Mechanical Handling, Bell mentions the particular experience of salmon in entering the devices he is discussing. In his chapter on Fishway Structures at Dams and Natural Obstructions, he specifies design considerations for shad and sturgeon.

An authoritative text on fishways is Design of Fishways and Other Fish Facilities (1961), by C. H. Clay. In his introductory chapter, Clay states at the outset: "Many different types of devices have been used to enable fish to migrate upstream past dams, waterfalls, and rapids." He emphasizes the need to construct adequate fishways in order to preserve the "many migratory species of fish left in the rivers of the world." This exclusive concern with migratory fish is reflected throughout the book. For example, in his chapter on Fishways at Dams, Clay discusses the effect of dams on migratory fish, the considerations involved in designing fishway and spillway entrances so that upstream migration can occur, and the species of migratory fish that have used particular fishways. In his chapter on Fish Locks and Fish Elevators, Clay again evaluates the success of these devices in passing particular species of migratory fish.

The literature provides little or no evidence of the use of fishways to pass all fish, without restriction. In Fishways, by W. H. Rogers (in Transactions of the American Fisheries Society, Twenty-First Annual Meeting (1892)), the author states that an impassable dam thrown across the lower portion of a river:

> destroys not only anadromous fish, but almost all valuable river fish as well—for in their search for food, and to propagate their species, almost all river fish are more or less migratory at certain seasons of the year. In proof of this, all sorts of fish inhabiting the Hudson River are seen passing up the fishway recently constructed on the Mechanicville dam, and I have seen them pass up many other fishways, both in Canada and in this country.

Rogers thus seems to suggest that fishways would be useful for the passage of all species of fish past a dam. However, even he relates the use of fishways to the concept of accommodating fish that are responding to a migratory instinct.

In addition to Rogers, some of the other authorities cited above, while clearly relating the need for fishways to the passage of migrating fish, consider a broad range of species to be capable of migrating. McLeod and Nemenyi, whose work was directed at problems in Iowa, refer to "trout, bass, wall-eye pike, and northern pike * * * crappies, bluegill, perch, and sunfish" as all being "prevented from migrating by a number of dams * * *. The construction of suitable fishways at these dams would greatly increase the migrating range of the fish, improving feeding and spawning conditions." Schnick cites a 1954 reference to the Keokuk Dam as "an effective barrier to the upstream migration of paddlefish, American eel, skipjack herring, Alabama shad, buffalo, shortnose gar, freshwater drum, common carp, shovelnose sturgeon, and three species of catfish." Among the species mentioned by these authorities, crappies, sunfish, pike, perch, carp, buffalo, and gar, as well as most catfish, were believed by Commerce, in 1917, not to require fishways. Nevertheless, the statements of these authorities cannot reasonably be interpreted as urging the construction of fishways for the benefit of all fish, or even of fish that may migrate but do not need to. The statement of McLeod and Nemenyi is tempered by their elaboration that the construction of fishways would improve "feeding and spawning conditions." Schnick's statement must be read in the context of her earlier-cited statement that the only reason for installing a fish passage facility is to overcome barriers to "migration essential to completion of the life history of a fish." [38]

The overwhelming body of the literature thus refers to, or considers the need for, fishways in the context not only of migrating fish but of fish species whose migration is essential for the survival of their population. The literature contains no support for the proposition that fishways should be constructed for non-migrating fish and scant support for the proposition that they should be constructed for fish that do not require migration, although they may in fact migrate.

The relation of fishways to the need to pass fish whose survival depends on migration is also reflected in state fishway statutes. Of the eight state statutes on fishways that we cited above, five directly state or imply that fishways are to be constructed only for such fish.[39] The remaining states qualify the fishway requirement with some kind of a "need" or practicality test.[40] This qualification suggests that, even in these states, the duty to install a fishway to provide fish passage is not absolute and that a right of free passage for any fish at any time, as may occur in a naturally free-flowing river or stream, is not guaranteed.[41]

State court cases enforcing the requirement for fishways also tend to reflect the view that fishway construction is intended to benefit only fish that need to migrate. In *Commonwealth* v. *Pierce*, 17 Pa. Dist. 146 (1901), the defendant was charged with erecting an obstruction that prevented the "migration of fish." A purpose of the law he was alleged to have violated was to "preserve the general movement of fish as they ascend streams for the purpose of propagating their kind * * *" *Id.* at 147. In *Parker* v. *Illinois*, 111 Ill. 581 (1884), the court stated that fishways are used to provide passage for fish that have "periodically to pass up and down streams for breeding purposes," such as salmon, and to prevent the destruction of such fish. *Id.* at 588, 591, 598. In *Commissioners on Inland Fisheries* v. *Holyoke Water Power Co.*, 104 Mass. 446 (1870), *aff'd sub nom. Holyoke Co.* v. *Lyman*, 82 U.S. 500 (1872), fishways were required to prevent the obstruction to migration of shad upriver to spawning grounds and back downstream to the sea. The court in *Swift* v. *Town of Falmouth*, 167 Mass. 115, 45 N.E. 184 (1896), stated that fishways are for "migratory fish" such as alewives and herring that run "up natural streams during spawning time and * * * return to the sea * * *." 45 N.E. at 186. In *Sherwood* v. *Stephens*, 90 P. 345 (Idaho 1907), the court ruled that there is a "common right to have fish inhabit and spawn in the stream. For this purpose, they must have a common passageway to and from their spawning and feeding grounds." 90 P. at 347, quoting from *State* v. *Theriault*, 41 Atl. 1030, 70 Vt. 617.[42]

The Commission's own treatment of fishway prescriptions is consistent with our revised definition. For example, we cited two recent Commission cases in the preamble to the Final Rule regarding fishway protection under FPA section 18. In Lynchburg Hydro Associates, 39 FERC ¶ 1,079 (1987), the Commission decided to reserve authority to prescribe fishways for striped bass, shad, alewife, and herring, all anadromous fish. In Eugene Water and Electric Board, 49 FERC ¶ 61,211 (1989), the Commission required the provision of fishways for salmon. In its request for rehearing, Interior cited five cases in support of its contention that fishways must include downstream passage devices. One of these cases is Lynchburg. The other cases all concern anadromous fish, such as salmon, striped bass, shad, alewife and herring.[43]

In considering the adoption of this restricted definition, we also reviewed other Commission orders in which fishways were prescribed or recommended. In all of these cases the primary reason given by Commerce or Interior for requiring installation of fishways, or for reserving the authority to prescribe them during the term of the

[38] In the only apparent Congressional comment on this issue, in a debate in 1918 on the proposed FPA Section 18, Representative Graham of Illinois complained that, because of the Keokuk Dam, edible fish: Are rapidly disappearing from the upper Mississippi River. The larger fish, such as carp and buffalo and the larger catfish, migrate up and down the river. In the spring of the year people come to the Keokuk dam, and below it they take out tons of fish, where they have come up to the foot of the dam trying to go up the great river.

[39] Alaska Stat. § 16.05.840 (1990) (fishways required for "salmon or other fish"); Idaho Code § 36-906(a) (1990) (fishways must accommodate "seasonal movements of fish up and down the stream"); Nevada Rev. Stat. Ann. § 503.400.1 (purpose of fishways is "so that at all seasons of the year fish may ascend above such dams * * * to deposit their spawn"); Tex. Parks & Wild. Code § 66.109(a) (1991) (fishways required "to allow fish in all seasons to ascend the dam or other obstruction for the purpose of depositing spawn"); and Va. Code Ann. § 29.1-532 (1991) (fishways required to ensure "the free passage of anadromous and other migratory fish").

[40] Rev. Stat. Missouri § 252.150 (1989) (fishways required if they are "necessary," but if they are "impractical or unnecessary" programs to stock hatchery-bred fish may be substituted); Ore. Rev. Stat. § 498.268 (1) (1988) (fishway must provide "adequate" passage for fish); and 30 Penn. C. S. § 3501(a) (1989) (fishways required except where they are not "practical or advisable").

[41] As a comparison, in England, fishways (called "fish passes") are required to provide passage for "salmon or migratory trout." 18 L. Hailsham, Halsbury's Laws of England, ¶ 666, 718 (4th ed. 1977).

[42] Other state court cases, while not clearly stating that the fishway construction requirement applies to fish requiring migration for survival, nevertheless relate the requirement to migration. For example, in *State* v. *Beardsley*, 108 Iowa 396, 79 N.W. 138 (1899), the court indicated that fishways are designed to prevent obstruction to the migration of fish. In *State* v. *Roberts*, 59 N.H. 256 (1879), the court stated that right "to have migratory fish pass in their accustomed course up and down rivers and streams is a public right." *Id.* at 257. And in *West Point Water Power & Land Improvement Co.* v. *State*, 49 Neb. 218, 66 N.W. 6 (1896), the court stated that fishways are for "migratory fish."

[43] Greenwood Ironworks, 41 FERC ¶ 62,023 (1987); Appomattox River Water Authority, 45 FERC ¶ 62,243 (1988); Commonwealth Hydroelectric, 41 FERC ¶ 62,309 (1987); and Bangor Hydro-Electric Co., 41 FERC ¶ 62,304 (1987).

license, pursuant to section 18 of the FPA, was to benefit salmonids. In the occasional cases that mentioned fishways benefiting resident fish, these benefits were only incidental to the main purpose of the fishway, helping the salmonids in their migrations.

The Commission also notes that the definition of fishways states that flows within the fishway will be considered part of it only where they are "necessary for its operation." This statement is as true for downstream fishways as it is for upstream fishways. The Commission will review the basis for any specific flows under this standard.

The Commission finds no basis to conclude that there was inadequate public notice of the fishway issue, since a complete, detailed definition of the term was included in the NOPR, and all modifications to that definition made during this proceeding have been in response to comments filed. The Commission has carefully and fully considered all arguments and evidence on this issue that were submitted in the comments, reply comments, and requests for rehearing that have been filed.

4. Ready for Environmental Analysis

In the Final Rule, the Commission adopted a definition of "ready for environmental analysis." [44] The Commission will deem an application ready for environmental analysis when there is no need for the applicant to file additional information or when any additional information requested by the Commission has for the most part been filed and found adequate. At this point, and not before, under the revised regulations the Commission will ask for public comments and agency recommendations on the merits of the application. This procedure was adopted to avoid placing the public and the agencies in the predicament of either making timely submissions with an incomplete factual basis or submitting their comments and recommendations after the deadline set by the Commission.

Washington objects to the definition, alleging that under it agencies may still be required to make recommendations when the scientific studies conducted by the applicant are inadequate. Commerce wants the Commission to obtain the concurrence of the fish and wildlife agencies in the determination of when an application is ready for environmental analysis.

The Commission sees no reason to change the definition of this term, nor is it necessary to require the concurrence of fish and wildlife agencies before the determination is made that an application is ready for environmental analysis. The Commission will make this determination only if and when the applicant has furnished the information necessary to serve as a basis for the evaluation of the proposed project's impact on the environment. The revised regulations establish procedures prior to filing and immediately after filing an application with the Commission, pursuant to which agencies can request studies and raise questions about their adequacy. The Commission will carefully consider all views of the agencies concerned prior to making a determination that an application is, or is not, ready for environmental analysis.

5. Resource Agency

Resource agency is a term used in the regulations. For example, § 4.38 requires applicants to consult with "the relevant Federal, state, and interstate resource agencies * * *." Accordingly, the regulations set forth the following definition of this term: [45]

"Resource agency" means a Federal, state, or interstate agency exercising administration over the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management, or cultural or other relevant resources of the state or states in which a project is or will be located.

Interior and American Rivers ask that the National Park Service be included in the definition, citing various laws recognizing Park Service expertise and authority relevant to the hydropower program, including the River Watch Program. For this reason these requesters argue that the Park Service should be consulted by applicants for proposed hydropower facilities. Interior also asks that Indian tribes be included in the definition.

The Commission has already addressed the appropriate role of Indian tribes in the pre-filing consultation process and in hydropower proceedings, as reflected in the revised regulations in parts 4 and 16 and as explained at length in the Preamble to the Final Rule. It is unnecessary to alter the definition of resource agencies for this purpose or to make any other changes in the regulations regarding Indian tribes.

We agree with the requesters, however, that in light of its administrative responsibilities under federal law the National Park Service should be consulted by hydropower applicants. We think the appropriate place to emphasize this fact is in §§ 4.38(a) (1) and 16.8(a) (1), where we will add the Park Service to the illustrative list of resource agencies with whom applicants must consult prior to filing their applications with the Commission. Finally, we are revising the definition to clarify and emphasize that reference to agencies exercising administration over "water resource management" includes agencies administering disposition of water rights.

B. Pre-hearing Procedures and Related Issues

1. Pre-filing Consultation

In the Final Rule, the Commission revised its regulations governing pre-filing consultation by applicants for original licenses and exemptions.[46] This revision was based on the similar provision for pre-filing consultation by applicants for new licenses.[47] As under previous regulations, applicants for original licenses and exemptions are required to go through a three-stage process prior to filing their applications with the Commission. In the first stage, the applicants must notify resource agencies of their plans; in the second stage the applicants must conduct studies of the impact of their proposal on resources and submit a draft application to the agencies for comment; and in the third stage the applicants file their applications with the Commission and serve copies on consulted agencies. The revision added a requirement that the applicant conduct a public meeting in the first stage, meet with resource agencies to resolve any disagreements regarding necessary studies and the draft application, and study reasonable hydropower alternatives to the proposed facilities. A mechanism for submitting disputes over necessary studies to the Commission was added in response to comments received.

American Rivers objects to what it characterizes as the virtual exclusion of the public from the pre-filing consultation process. It claims that allowing the public to participate fully in the process would not delay the preparation of applications, would improve the quality of applications filed with the Commission, and would increase the public's confidence in the fairness of the process. American Rivers cites as an example of procedures that

[44] Section 4.30(b) (26): "Ready for environmental analysis" means the point in the processing of an application for an original or new license or exemption from licensing which has been accepted for filing, where substantially all additional information requested by the Commission has been filed and found adequate.

[45] Section 4.30(b) (28).

[46] Section 4.38.

[47] Section 16.8.

should be required by the Commission for all applicants the practices of the State of Maine regarding hydropower applications. Maine allegedly gives notice of and solicits public input on draft applications submitted to state resource agencies during the second stage of pre-filing consultation and allows members of the public to attend any stage two meetings between state agencies and the applicant. American Rivers claims that the National Environmental Policy Act (NEPA) [48] applies to the pre-filing consultation process and supports its request for an expanded role for private citizens to participate.

American Rivers also objects to restricting the required analysis by the applicant of alternatives to hydropower facilities only, claiming that this limit violates NEPA, FPA section 4(e), and the Commission's own goals of promoting efficiency in the preparation and processing of applications.

The Commission has expanded the role of the public in the pre-filing consultation process and has initiated in this rulemaking other reforms, such as requirements for additional local notice and public files, that were previously not provided in the hydropower program.[49] The Commission welcomes initiatives on the state level, such as those in Maine, to supplement the Commission's efforts in this regard. We do not think it is appropriate at this time, however, to require additional procedures for public participation in the pre-filing consultation process. The goals of this process are to improve the quality of applications filed with the Commission and to expedite the processing of those applications, and we believe that the more detailed pre-filing consultation regulations already adopted will achieve these goals.

This rulemaking has also made numerous revisions to the Commission's hearing procedures on hydropower applications and has explained the procedures in great detail, so that members of the public may know when and how they may participate in the hearings, on the basis of which the Commission makes its final decisions. Should members of the public wish to participate more actively in the pre-filing consultation process concerning a particular hydropower application, they may take advantage of programs such as Maine's or they may take the initiative to contact the applicant directly and make more detailed presentations of their views. Going beyond these steps to require in all cases additional pre-filing procedures for consultation with the public would in our view unnecessarily complicate and encumber this process, risking delays that could undercut the Commission's goals for the pre-filing consultation process. Nor has American Rivers shown how this process is in any way inconsistent with NEPA.[50]

American Rivers has not given any new reasons for requiring an applicant to study non-hydropower alternatives to its proposal. The Commission fully considered this argument and stated why it was rejected in the Final Rule.[51]

2. Scientific Studies

In this rulemaking, the Commission addressed questions concerning which types of scientific study of the impact of hydropower proposals an applicant should be required to conduct. The Commission proposed and adopted, in response to the comments filed, procedures for determining when and how resource agencies may request studies of potential applicants in the pre-filing consultation process, what support for such study requests should be furnished, the obligations of applicants to conduct such studies, how disputes regarding such study requests may be resolved, and when and how the issue of the adequacy of studies will be addressed after a hydropower application is filed.

The Commission stated both its dedication to a full exploration of the resource impacts of a hydropower proposal, based on reasonable and necessary scientific studies conducted by the applicant, and its concern that certain study requests may cause undue delay in the preparation and processing of hydropower applications. Under the revised regulations, in the first stage of the pre-filing consultation process, resource agencies must furnish the applicant with a clear description of the basis for each study request, an explanation of why the study methodology specified is more appropriate than alternatives, and documentation that the use of the study methodology is a generally accepted practice that will be useful to the agency in furthering the resource goals affected by the proposed project.[52] During the second stage of pre-filing consultation, an applicant must conduct any reasonable study that is necessary for the Commission to make an informed decision on the merits of its application.[53] Disputes about study requests may be referred to the Commission for decision.[54] Within 45 days after an application is tendered for filing with the Commission, anyone can request that additional studies be conducted by an applicant, so long as the request is accompanied by a detailed showing of why the study is reasonable and necessary for the Commission to make an informed decision on the merits of the application.[55] Notice of the filing of the application would be given by the applicant inserting a notice in a local newspaper published in the county where the project is located and, in the case of resource agencies, by the applicant serving a copy of the application on each agency consulted.[56]

A number of agencies and environmental groups object to any requirement in the regulations that agencies justify their study requests.[57] They allege that such a requirement would place a severe burden of proof on the agencies, and that requested studies should be presumed valid and should be required unless the applicant or the Commission can show that a requested study is not necessary or that the information is already available.[58]

American Rivers objects to the notice provisions for the tendering for filing of applications and asks that public notice of this filing date be given by the Commission through the Federal Register. American Rivers complains that, under the former regulations, it could raise questions about the adequacy of studies in its comments on an application after it was accepted for filing, but that under the new regulations such questions may not be raised after the 45-day deadline following the tendering of the application to the Commission. American Rivers argues that citizens groups are denied a meaningful role in the pre-filing consultation process, and that therefore this rule change is particularly unfair. American Rivers contends that notice published in local newspapers where a proposed hydropower project is located is inadequate, because there are

[48] 42 U.S.C. 4321 *et seq.* (1988).

[49] See the more detailed explanation of these recent changes in the Preamble to the Final Rule, section IV.D.2.

[50] See the discussion of the NEPA process in the Commission's hydropower program, including its relationship to pre-filing consultation, in section IV.C.6. of the Preamble to the Final Rule.

[51] Preamble, section IV.B.1.

[52] Section 4.38(b)(4).

[53] Section 4.38(c)(1).

[54] Section 4.38 (b) and (c).

[55] Section 4.32 (b)(7).

[56] Section 4.32(b) (6), 4.38(d) (2), 16.8(d (2).

[57] Interior, Commerce, California Fish and Game, West Virginia, and Wildlife Federation.

[58] Commerce.

hundreds of such newspapers in large states and about 10,000 newspapers in the country. American Rivers states that, while members of citizens groups concerned about hydropower development do regularly review the **Federal Register**, they do not and cannot reasonably be expected to read newspapers in all the counties where hydropower proposals of interest to them may be located. As a result, it argues that the revised regulations may deprive citizens groups of the opportunity to present their views to the Commission on the adequacy of scientific studies conducted by an applicant. In addition, American Rivers submits that 60 rather than 45 days is a reasonable time to expect comments on the study question following reasonable notice of the filing of a hydropower application, and that the Commission should adopt procedures to ensure use of staggered study comment deadlines for any state where a large number of hydropower applications is filed at the same time.[59]

On the other hand, EEI objects to any provision allowing requests to be made for scientific studies after an application is filed. EEI maintains that such issues should be addressed solely in the pre-filing consultation process and that § 4.32(b)(7) should be deleted.

The Commission has already addressed many of these arguments in the preamble to the Final Rule.[60] The Commission continues to believe that the procedures it has adopted, to address the issue of what scientific studies an applicant must conduct, do not impose an excessive burden on resource agencies. To require them to describe in appropriate detail the study sought and explain why it is reasonable and necessary is the least that can be done to ensure that expensive and time-consuming studies are not imposed on applicants when there are less burdensome methods available to provide the record the Commission requires in order to make a decision on the merits of an application, including its resource impacts.

The showing required of an agency requesting scientific studies will vary with the facts of a case. For simple study requests, especially those that have been regularly used by hydropower applicants, there is no need for the description and justification for the request to be lengthy. On the other hand, where an agency wants an applicant to conduct an elaborate or expensive study, the agency must be careful to explain fully what study is being requested and why, so that the applicant and, where appropriate, the Commission can intelligently evaluate the request. Disputes over requested studies can be referred to the Commission by either an agency or an applicant. The revised regulations in part 4, based on those in part 16 applicable to applicants for new licenses, apply these procedures to all applicants for hydropower facilities and codify the practices that the Commission has evolved for weighing study requests. However, we remind applicants that they are ultimately responsible for ensuring the adequacy of their applications. Therefore, while resource agencies may request studies of particular interest to those agencies, the applicant is required to conduct such additional studies and collect such additional data as is needed to file an acceptable license application.

The Commission agrees, however, that the public notice provisions, relating to the filing of applications, need improvement in order to provide more opportunity for concerned citizens to make their views known to the Commission on the study issue. The **Federal Register** has been accepted as the appropriate vehicle for giving notice to the public of important matters affecting their rights.[61] Accordingly, the Commission is revising § 4.32(b)(7) of the regulations to require that notices be published in the **Federal Register** of the tendering for filing of all hydropower applications; all applicants for license or exemption will be required to furnish the Commission with a draft of this notice. The Commission is also requiring that local publication of the notice for the tendering for filing of an application be made at least twice and is extending to 60 days after filing, or such longer periods as the Commission believes is appropriate in particular cases, the deadline for filing with the Commission comments on or requests for additional studies.[62]

The Commission does not agree with EEI that it is inappropriate to allow any party to raise issues concerning the adequacy of studies after an application is filed, since the Commission's regulations do not grant to the public the right to participate in all facets of the pre-filing consultation process. The Commission is however optimistic that the procedures it has adopted for public participation in the pre-filing consultation process, as discussed above and in the Preamble to the Final Rule,[63] together with the procedures for participation by resource agencies, should be adequate to ensure that in most cases the necessary scientific studies have been conducted to furnish the Commission with the record it needs to process and reach decisions on the merits of hydropower applications. In some cases, however, disputes over necessary studies may not be resolved prior to filing, and all concerned parties, including resource agencies and private citizens, have the right under the FPA and the Administrative Procedure Act (APA)[64] to present their views to the Commission and to have a decision made on this issue. The rights of applicants are fully protected by the new procedures, which afford applicants notice of and the opportunity to respond to any requests for additional studies. The interests of an efficient administrative process for hydropower applications are far better served by raising and addressing such issues as soon as an application is filed, when the Commission is evaluating the need for additional information, rather than postponing this important procedural issue and attempting to address it at a later stage, along with substantive issues.

3. Non-capacity Amendments

In the Final Rule the Commission revised its regulations to clarify what kinds of applications are subject to the pre-filing consultation requirements of § 4.38. Applicants for "non-capacity amendments," *i.e.*, amendments that would not increase the maximum hydraulic capacity of a project by 15 percent or more and result in an increase in installed name-plate capacity of 2 megawatts (MW) or more, would not be subject to the complete three-stage, pre-filing consultation process, in order to encourage the kind of efficiency improvements such amendments would create.[65] Such an applicant would be required to consult with resource agencies and Indian tribes only to the extent that the amendment would affect their interests.[66]

[59] See also the requests filed by Interior, Oregon, and West Virginia.

[60] Section IV.B.3.

[61] *E.g., Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380 (1947).

[62] The Commission is making a related change to § 4.32(e)(2) (i) and (ii) of the regulations, to allow the Director of OHL 90 days, instead of the 60 days provided by the current regulations, in which he may reject an application as patently deficient. This revision will allow the Director, in his decision as to whether to accept an application, to take into account objections raised by persons challenging the adequacy of scientific studies conducted by the applicant.

[63] Preamble, Section IV.D.2.

[64] 5 U.S.C. 551 *et seq.*

[65] Sections 4.38(a)(4); 4.201 (b) and (c).

[66] Section 4.38(a)(5).

EEI asks that the Commission directly define "non-capacity amendment," as the regulations now contain only a definition of "capacity related amendment," and to confirm that a non-capacity amendment involves either less than 15 percent increase in hydraulic capacity or less than 2 megawatt increase in installed name-plate capacity. We confirm EEI's reading of the regulation. We believe that the regulation is clear as written, and perceive no need to revise it.

C. Bearing Process

1. Water Quality Certification

In the Final Rule, the Commission modified the showing previously required of an applicant regarding its compliance with section 401(a) (1) of the Federal Water Pollution Control Act (the Clean Water Act),[67] where the certifying agency has received a request for water quality certification but has not acted on it for one year. Formerly, the Commission's regulations required that the applicant provide the Commission a copy of its request for certification, including proof of the date that the certifying agency received the request "in accordance with applicable law governing filings with that agency." [68] If the certifying agency had not denied or granted a request for certification within one year from this date, under the Commission's regulations the certifying agency was deemed to have waived the certification requirements of the Clean Water Act. Under the revised regulations, an applicant must provide the Commission proof of the date on which the certifying agency received the request for water quality certification, without having to demonstrate that it was filed "in accordance with applicable law;" [69] a certifying agency is deemed to have waived the certification requirements of the Clean Water Act if it has not denied or granted a request for certification within one year from receipt of the request.[70]

The Commission also revised its regulations to clarify when amendments to pending applications for license or applications to amend an existing license would require an applicant to submit a new request for water quality certification to a certifying agency. The revised regulations provide that going back to the certifying agency with the proposed amendment is necessary only if "the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project." [71] If, for example, an amendment would add recreational facilities or replace outmoded electrical facilities with more efficient facilities, without having a material effect on discharges of water from the project, a new water quality certification would not be required.

A number of requesters object to the new regulation providing that the one-year waiver period commences on the date the certification application is received by the agency, not the date the application is received in accordance with applicable law governing filings with that agency.[72] They suggest that this change would require the Commission to overlook violations of state law (regarding filing requirements), and that the old rule is superior since the Commission only needs to ask the state agency in question for guidance to determine if and when the agency had received a certification application satisfying state filing requirements. The requesters claim that the revised rule would diminish the authority Congress granted to the states in this area and that the Commission therefore lacks the authority to promulgate the rule. The requesters also submit that the revised rule is contrary to section 401 of the Clean Water Act, as interpreted in *City of Fredericksburg* v. *FERC*,[73] and that the Commission is encouraging delay and confusion in proceedings before state agencies, through repeated filings of incomplete certification applications.

The requesters also oppose the rule change to determine when an applicant seeking an amendment to its license or pending application must obtain a second water quality certification from a state agency.[74] They claim that any amendment to a license or pending application that would affect project facilities or operating requirements requires either a new section 401 certification from the state or a determination by the certifying agency that a new certification is unnecessary. It is asserted that the new regulation will encourage applicants to design applications to please the state agencies and then to amend the application or license in hopes of evading the requirements of section 401. The requesters argue as well that this rule change is beyond the Commission's authority by invading the states' powers to make water quality determinations and by attempting to restrict the states' powers to include in a section 401 certification requirements that the applicant satisfy other appropriate state laws, and that the revised rule conflicts with state court legal precedents.[75] It is claimed that any Commission rule governing when a second water quality certification is needed must parallel those regulations governing when a hydropower application is materially or significantly amended.

Oregon claims that this rule was changed without opportunity for notice and comment. Oregon states that the Commission has failed to address whether a new water quality certification or waiver is required if the applicant does not seek to amend its application but the Commission analyzes an alternative plan of development in the environmental review process and the state agency determines that a new certification is required for the alternative.[76]

EEI wants the Commission to retract its statement in the Preamble to the Final Rule allowing what it terms a "reopener" of the one-year waiver of water quality certification.[77] Specifically, EEI objects to the one-year waiver period commencing on the effective date of the Final Rule, in cases where a certifying agency had received but had not accepted for filing a request for water quality certification prior to the effective date of the Final Rule. If a state agency had not accepted or otherwise acted upon a request for certification filed more than one year ago, EEI would require the agency to come forward within 60 days of the effective date of the Final Rule to demonstrate that the request was incomplete or otherwise deficient within the meaning of the Commission's former regulations. Otherwise the water quality

[67] 33 U.S.C. § 1341(a)(1).

[68] Former 18 CFR 4.38(c)(2)(ii) and 16.8(f)(7)(i)(B).

[69] Sections 4.38(f)(7)(i)(B) and 16.8(f)(7)(i)(B).

[70] In section IV.C.2 of the Preamble to the Final Rule, the Commission stated in footnote 116: If a request for water quality certification was filed with a certifying agency prior to the effective date of this final rule, and if that certifying agency had not accepted the request for filing as of that date, then the one year in which the certifying agency must act on the request in order to avoid the waiver commences on the date of the effectiveness of this final rule. If the certifying agency had accepted the request for filing, then the one-year period commences running on the date of that acceptance for filing.

[71] Sections 4.38(f)(7)(iii), 16.8(f)(7)(iii).

[72] Wildlife Federation, American Rivers, Oregon, and California Water Board.

[73] 876 F.2d 1109 (4th Cir. 1989).

[74] Wildlife Federation, American Rivers, Oregon, and California Water Board.

[75] American Rivers.

[76] Oregon cites as an example the proposed Salt Caves Hydroelectric Project in Klamath County, Oregon (P-10199), for which a license application was filed by the City of Klamath Falls on November 21, 1986. See Final Environmental Impact Statement, FERC/EIS-0052F, June 1990.

[77] Preamble, section IV.C.2., footnote 116, quoted above.

certification would be deemed waived under the revised regulations.

EEI asks the Commission to expand its regulations on water quality certifications in order to adopt certain procedural and substantive limitations within which state agencies must operate in denying or conditioning certifications. EEI wants the Commission to require a state agency to issue notices of intent to deny or condition a certification, to explain the basis for a proposed denial or conditioning, to afford applicants an opportunity to respond to the agency's intended action and to appeal it, and to limit the bases for an agency to deny or condition certifications.

The Commission declines to make any of the requested changes in its regulations determining when the one-year waiver for a water quality certification has been granted. The requesters are asking the Commission to reinstate the regulations that existed prior to the Final Rule, as construed in City of Fredericksburg. The court's opinion in City of Fredericksburg was construing the Commission's own former regulation on when the one-year waiver period for certifications under the Clean Water Act commenced to run. The court was not asked to decide, and expressed no opinion on, whether that regulation was compelled by the terms of the Clean Water Act; [78] we think it is clearly not. The Commission explained at length in the Preamble to the Final Rule, in response to comments that were submitted, why it decided to change the rule construed in City of Fredericksburg. The former regulation forced the Commission to make judgments as to when and if an applicant had complied with state filing requirements for applications for water quality certifications. The Commission's experience has been that it is sometimes far from clear what the applicable law governing filings is.[79] It is much easier and more predictable for the Commission and all parties concerned to determine when an application for water quality certification is actually filed with a state agency and commence the running of the one-year waiver period from that date, instead of the date when an application is accepted for filing in accordance with state law.

Changing the Commission's regulations involves no invasion of state law prerogatives under the Clean Water Act. As noted in the Preamble to the Final Rule, the state certifying agencies remain totally free, as they were before, to fashion whatever procedural regulations they deem appropriate to implement their responsibilities under the Act. Nor does the new rule provide any incentive for an applicant to delay or evade compliance with state agency proceedings on requests for water quality certifications. As the Commission has pointed out,[80] under the new rule if an applicant requesting certification fails to comply fully with state law requirements for filing such requests, or fails to provide the certifying agency with timely and adequate information to allow a ruling on the merits of the request, then the certifying agency can, within one year from receiving the request, prevent waiver of the certification requirement by dismissing or denying the request.

The Commission rejects the requesters' claims that any amendment to a license or pending application requires a second water quality certification or waiver, or a determination by the state agency that a second certification is unnecessary. Nor have the requesters shown why the Commission's regulations in this area must parallel those regulations governing, for unrelated procedural purposes, when a hydropower application is materially or significantly amended.

It is true that prior to the rule revision the Commission's regulations provided that any material amendment to development plans in a license application required the applicant to file with the applicable state agency a new request for water quality certification (even if the applicant had already received a certification or waiver for its original proposal).[81] A material amendment to a license application is defined as any fundamental and significant change in a project, including, *inter alia*, a material change in the location or size of a dam.[82] However, while there may be a high correlation between a material amendment to a license application and a material adverse impact to the discharge that is the subject of the water quality certification, the real focus of a recertification requirement must necessarily be on the nature of the change, if any, to the water quality in the discharge from the proposed project. Therefore, even before the rule change, and irrespective of how extensively, why, or with what benefits, a project proposal is amended, section 401(a)(1) of the Clean Water Act requires recertification if a project proposal is revised in a way that would have a material adverse impact on the water quality in the discharge from the proposed project. Conversely, even if an amendment is material for other purposes under the Commission's regulations, if that amendment has no material adverse impact on the project discharge, there is no reason to require an applicant to request recertification.

The rule change recognizes this distinction and describes directly, rather than indirectly, what amendments require a second water quality review by certifying agencies. The Commission continues to believe that this clarification serves the interests of all parties in an efficient hydropower licensing program, recognizes the legitimate interests of state certifying agencies, and fully complies with the Clean Water Act.

The Commission does not agree with Oregon that insufficient notice and comment on this issue was afforded to the public. The NOPR addressed water quality issues presented by hydropower applications and proposed a comprehensive revision of the prefiling consultation regulations which contain the standards for determining when a new water quality certification is required. EEI and Oklahoma filed comments seeking changes in the proposal, and the Commission responded to these comments in issuing the Final Rule.[83] The rehearing process afforded all interested parties yet another opportunity to make their views known on this issue, which the Commission has carefully and fully considered.

The Commission does not believe it is appropriate at this time to attempt to insert into the regulations standards for determining when a new water quality certification or waiver is required in all cases, including those where no amendment application is filed but an alternative is explored by the Commission in the environmental review process. Such questions have arisen only rarely and are best handled on a case-by-case basis, at least until the Commission has gained more experience in this area.

The Commission declines to make the changes requested by EEI with respect to the transition rule for waivers and its request for rules to govern state procedures for processing requests for water quality certifications. Regarding

[78] The court stated (878 F.2d at 1111 n. 1): We rest our holding solely on our reading of FERC regulations and do not purport to decide the meaning of "request" under Section 401(a)(1) of the Clean Water Act * * *

[79] See Preamble, section IV.C.2., footnote 115.

[80] See, *e.g.*, Central Maine Power Company, 52 FERC ¶ 61,033 (1990) at p. 61,170.

[81] Former § 4.38(e)(3), and § 4.35.

[82] Section 4.35(f)(1).

[83] Preamble to the Final Rule, section IV.C.1.

waivers, the Commission made clear that it would not retroactively apply the revised rule II describing when the one-year period for determining eligibility for the waiver commences. If a state agency had accepted for filing a request for water quality certification prior to the effective date of the revised rule, the one-year period will run from the date of that acceptance for filing, as under the old rule. If a request had been filed but not accepted prior to this effective date, the one-year period will run from the effective date. The Commission has no authority to adopt procedural or substantive regulations to govern the processing by state agencies of requests for water quality certifications, as EEI requests. In the Clean Water Act, Congress delegated this authority to the states; EEI should therefore address its concerns on this issue to the state agencies that have responsibility for acting on requests for water quality certification.

2. Notice-and-Comment Hearing

In the Final Rule, the Commission adopted comprehensive regulations to codify and clarify the notice-and-comment procedures by which most hydropower hearings are conducted.[84] Comments on an application, including all mandatory and recommended terms and conditions for exemption or license, must be filed with the Commission within 60 days after the Commission issues a public notice declaring that the application is ready for environmental analysis.[85] Reply comments are due within 105 days of this date. The Commission could extend these comment periods if appropriate in particular cases, and parties could ask for extensions of time.[86] Agencies with responsibility for mandatory terms and conditions or prescriptions could file preliminary terms and conditions or prescriptions with the Commission by the due date, if ongoing agency proceedings prevented the filing of final terms and conditions or prescriptions with the Commission by that date.

All commenters must identify the relief sought and present their evidentiary basis; agencies submitting mandatory terms and conditions or prescriptions must explain their legal basis; and each fish and wildlife agency or Indian tribe must discuss its understanding of the resource issues presented by the proposed facilities.[87] Agencies, Indian tribes, and members of the public may modify the recommendations, terms, and conditions or prescriptions previously submitted in response to a draft environmental impact statement (DEIS) or a material amendment to the project's proposed plans of development.[88]

The Commission will analyze all timely submissions concerning fish and wildlife and other resource impacts of the proposed project, in connection with the Commission's environmental review of a hydropower application, leading, as appropriate, to an environmental assessment (EA) or an environmental impact statement (EIS). The Commission adopted procedures to comply with FPA section 10(j).[89] Finally, the hearing regulations referred to the legal standards pursuant to which the Commission decides whether and on what basis to issue licenses and exemptions for hydropower facilities.[90]

Wildlife Federation argues that the Commission lacks the authority to limit when a fish and wildlife agency may file additional or modified fish and wildlife recommendations in response to changes in a proposed project, and Interior wants to revise the regulations to allow fish and wildlife agencies to file preliminary fish and wildlife recommendations where the scientific studies conducted by the applicant are deficient or there are concerns about the impact of the project on an endangered species. Washington wants fish and wildlife agencies to have the right to change their fish and wildlife recommendations at any time prior to issuance of a final decision by the Commission on a license application. American Rivers and California Fish and Game believe that a fish and wildlife agency should be able to change its fish and wildlife recommendation in response to an EA, as well as a DEIS, and ask that the regulations be revised accordingly. American Rivers argues that NEPA requires granting liberal leave to fish and wildlife agencies to revise their fish and wildlife recommendations.

The Wildlife Federation contends that the Commission has not given adequate notice and opportunity to comment on the hearing regulations, in violation of the APA.

Washington maintains that the revised regulations permit license decisions based on incomplete information, in violation of NEPA. Washington opposes the requirement that a fish and wildlife agency discuss its understanding of resource issues presented by an application when it submits its fish and wildlife recommendations. In Washington's view, this requirement is meaningless, unsupported, and unclear. Washington believes that fish and wildlife agencies cannot be required to submit fish and wildlife recommendations prior to completion of the Commission's environmental analysis. Washington further argues that requiring the agencies to do so or lose their rights under FPA section 10(j) places the agencies in an untenable position.

North Carolina Electric asks the Commission to amend its reference to the conditions it will adopt in licenses, to refer to FPA section 10 instead of referring only to section 10(a)(1).

On further review the Commission believes that the revised regulations in general give adequate opportunity to fish and wildlife agencies to revise their fish and wildlife recommendations. In particular cases it may be appropriate to afford additional opportunity, not specifically described in the regulations, for these agencies to submit revised fish and wildlife recommendations. In such cases, of course, other agencies and parties in a proceeding should have similar rights to modify their earlier submissions. The requesters disagree amongst themselves as to when such opportunity should be granted and argue their points abstractly, without pointing to specific sets of facts that would demonstrate how a rule could be crafted to expand the opportunity to submit revised comments and recommendations without causing unnecessary delay in cases where such an opportunity is inappropriate. The Commission will therefore leave the regulations in this area as they are and rely on a case-by-case determination of when additional opportunity to revise comments and recommendations should be afforded, either in response to requests for such procedures by agencies or parties or on the Commission's own initiative. We do not see the relevance of NEPA to the Commission's choice of procedures in this regard, especially since the Commission has by rule granted to agencies the right to modify their recommendations in light of a DEIS.

We find no lack of adequate notice and comment on the hearing procedures contained in the Final Rule. They were described at length in the NOPR and set forth for comment in proposed regulatory text. The Commission adopted these hearing procedures in order to ensure fairness to all parties

[84] Section 4.34.

[85] The notice will be published in the **Federal Register** and in one local newspaper, and will be sent to all parties on the service list.

[86] Section 385.2008.

[87] Section 4.34(b) (1), (2), and (3).

[88] Section 4.34 (b)(4).

[89] Section 4.34(e). See section II.C.5., *infra*.

[90] Section 4.34(f).

and agencies involved in hydropower proceedings and to gather the record necessary for decision according to the applicable legal standards. These procedures therefore do not in any way encourage decisions based on incomplete information. In order to understand agency recommendations, to permit a response by affected parties, and to allow analysis of the recommendations in reference to all the facts in a hydropower case, the Commission set forth a number of requirements for submissions in the hearing process, including the requirement that fish and wildlife agencies discuss their understanding of resource issues presented by an application when filing fish and wildlife recommendations. Contrary to Washington's claim, this requirement is simple, straightforward, and consistent with standards commonly set for submissions in administrative hearings. Should an agency insist on submitting a fish and wildlife recommendation without such a discussion, the agency is certainly free to do so. The regulations put agencies on notice, however, that making fish and wildlife recommendations without discussing the major issues in the case or the evidence bearing on those issues is unlikely to be helpful or persuasive. It is not up to an applicant or the Commission to divine the meaning of a fish and wildlife recommendation or to guess its possible evidentiary basis.

The Commission discussed at length in the NOPR and the preamble to the Final Rule the relationship between the whole hydropower hearing and environmental review processes.[91] The Commission explained how resource agencies are given abundant opportunities, long before a hydropower application is filed, to meet with an applicant, discuss the proposed plans of development, request scientific studies, and respond to and discuss the applicant's draft application. Disputes about necessary studies can be referred to the Commission for resolution in the pre-filing process. Most applications that are filed concern either existing facilities, or new facilities for which a preliminary permit application had previously been tendered to and granted by the Commission. Hydropower applications must contain an Exhibit E, addressing environmental issues raised by the proposed hydropower facilities. The Commission's revised regulations also deferred when fish and wildlife recommendations are due until the time when the application is ready for environmental analysis. Contrary to Washington's suggestion, there is no reason to believe that pursuant to the Commission's regulations resource agencies have not had repeated opportunities over a period of years, both before and after the filing of an application, to become familiar with the resource issues presented. It is therefore reasonable and entirely consistent with NEPA to require the agencies, at the point when an application is ready for environmental analysis, to submit fish and wildlife recommendations, which may serve as a basis for the completion of the environmental review process.

The Commission appreciates the concerns of North Carolina Electric about the accuracy of the language in the regulations referring to the legal conditions on which the Commission will grant licenses. Accordingly, the Commission will modify § 4.34(f)(1)(i) of the regulations to conform to section 10 of the FPA, as requested.

3. Deadlines

The Commission found that the timely submission of all resource agency recommendations, mandatory terms and conditions, and prescriptions is extremely important to avoid unnecessary delays in processing hydropower applications and to prevent the waste of the Commission's limited resources on proposals that may have to be significantly changed to address the concerns of resource agencies. The Commission stated that it may be difficult to conduct a proper NEPA analysis of the issues presented by a hydropower application if these submissions are not made on a timely basis. The Commission therefore set in the revised regulations uniform deadlines for the submission of all public comments, resource recommendations (including fish and wildlife conditions), mandatory terms and conditions, and prescriptions. Extensions of time within which to make these submissions may be requested in particular cases. Late fish and wildlife recommendations would be considered under FPA section 10(a), not under section 10(j), and late mandatory terms and conditions or prescriptions would also be considered under section 10(a), not sections 4(e) or 18, so long as such consideration would not delay or disrupt the proceeding.[92]

Wildlife Federation states that the restrictions in the revised regulations on fish and wildlife agencies are unacceptable and inappropriate. In its view, without evidence of dilatory conduct by fish and wildlife agencies, the Commission must defer to the agencies' need for more time to submit their recommendations. It asserts that by setting deadlines for agency recommendations the Commission is attempting to regulate other agencies and to go beyond its statutory authority.[93] Wildlife Federation does not view FPA section 309 as providing the Commission with the authority to set deadlines in hydropower hearings and points to the problem complying with these deadlines would cause where there are concerns about the impact of proposed hydropower facilities on endangered species. Wildlife Federation also claims that the Commission's procedural regulations interfere with the sovereignty of the states and violate the Tenth Amendment to the U.S. Constitution, by invading powers reserved to the states.

American Rivers objects to what it characterizes as the strict time deadlines set by the Commission for the submission of fish and wildlife recommendations.

The Commission explained the basis for the adoption of the deadlines in the preamble to the Final Rule.[94] Wildlife Federation repeats arguments on this issue that the Commission has already considered and rejected. In revising the hydropower procedural regulations the Commission did not attempt to regulate other agencies but only to discharge its own responsibilities for managing the hydropower licensing program entrusted to the Commission by Congress. The revised regulations recognize the important roles played by state and federal agencies regarding hydropower proposals, and there is absolutely no basis for the claim that the regulations in any way infringe on the sovereignty of the states.

The time deadlines promulgated in the revised hearing regulations are by no means inflexible. The Commission sought comments on how they could be varied according to the type of application presented, but neither any commenter nor the Commission was able to devise a system to set in the regulations different and reasonable time deadlines for different types of applications. Therefore the Commission retains the authority to allow longer time periods for particular submissions in specific cases or to grant additional procedures, either on its own initiative or in response to requests by agencies or parties, in order to ensure fairness to all

[91] *E.g.*, Preamble to Final Rule, sections IV.B.1. and 2., IV.C.3. and 6.

[92] Section 4.34(b).

[93] Wildlife Federation and American Rivers.

[94] Preamble, section IV.C.4.

concerned with a hydropower proposal and the gathering of a complete record for analysis and decision.

4. Endangered Species Act

In response to comments filed in this rulemaking the Commission adopted a regulation recognizing its consultation responsibilities under the Endangered Species Act (ESA).[95] The regulation codifies the Commission's existing practice of consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as appropriate, concerning the impact of a hydropower proposal on federally listed endangered or threatened species and their critical habitat.[96]

Wildlife Federation argues that the Commission's "public information notices" should not contain information regarding the locations where endangered species may be found. As the Commission's public notices have not contained such information, it does not appear necessary to adopt a specific prohibition in the regulations along the lines Wildlife Federation recommends.

If a question should arise in a specific case as to whether protective measures should be taken by the Commission to prevent the disclosure of information about the precise location of an endangered species, the Commission will of course consider taking such measures, if they are within its authority and after consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, as appropriate.

5. Section 10(j) Process

The Commission adopted regulations specifying the procedures it will use to fulfill its responsibilities under section 10(j) of the FPA, concerning how the Commission will respond to fish and wildlife recommendations filed by fish and wildlife agencies.[97] The Commission adopted a six-step consultation procedure, beginning with the submittal of fish and wildlife recommendations; continuing as appropriate through clarification of those recommendations, preliminary determination of their inconsistencies (if any) with applicable law, response by the agencies and others to such determinations, and meetings with the agencies and affected parties; and ending with the issuance of the order on the license application.

Wildlife Federation contends that the Commission adopted these regulations without notice and comment. Interior and Wildlife Federation object to the requirement that fish and wildlife recommendations be supported by "substantial evidence," and Wildlife Federation asks that the section 10(j) consultation process end with the preparation by the Commission of a written set of recommended license conditions.

Interior and West Virginia want the section 10(j) process extended to include recommendations for post-licensing studies and recommendations.

Washington and Oregon are generally critical of the regulations, and Oregon wants the Commission to afford additional opportunity for negotiation and comment on section 10(j) issues and demands that the Commission do an EIS if there is any inconsistency found between a fish and wildlife recommendation and applicable law.

In the NOPR, the Commission discussed at length the section 10(j) process, putting all interested parties on notice of the procedures it had followed and intended to follow in this area.[98] The Commission received and reviewed extensive comments on this issue from a wide range of parties, who asked the Commission not merely to explain its procedures in this important area, but to codify them in the regulations.[99] There is no basis for the accusation, therefore, that the Commission has in any way failed to give to the public the notice and opportunity for comment required by law.

The Commission has not required that fish and wildlife recommendations be supported by "substantial evidence." As discussed above, the procedural regulations adopted do call for those recommendations to discuss the agency's "understanding of the resource issues presented by the proposed facilities and the evidentiary basis for the recommended terms and conditions." [100] If the Commission concludes that a fish and wildlife recommendation is not in fact supported by substantial evidence, the Commission may on that basis make the preliminary determination that the recommendation is inconsistent with applicable law and offer the agency an opportunity to show why this is not true. ECPA does not require the Commission to prepare an EIS whenever it believes that a fish and wildlife recommendation is inconsistent with applicable law, and the Commission does not believe that it would improve the hydropower licensing program to require preparation of an EIS in each such instance even though the environmental review process on an application already fully complies with NEPA.

The Commission is confident that the section 10(j) consultation process it has adopted fully complies with legal requirements and affords sufficient opportunities for the Commission and fish and wildlife agencies to attempt to work out their differences in particular cases. The Commission is not convinced that it is appropriate as a general rule to require the process to end in the preparation of recommended license terms and conditions, automatically triggering another round of comments. In their fish and wildlife recommendations, fish and wildlife agencies may recommend specific language for license terms and conditions, which the Commission will carefully consider, and the agencies, if they have intervened as parties in a case, may request rehearing and seek judicial review of any license term or condition, adopted by the Commission, to which they object.

The Commission has already considered and discussed why the section 10(j) consultation process does not apply to recommendations for post-licensing studies, and the requesters have not shown why this decision should be reversed.[101]

The Commission has had several months' experience with the new FPA section 10(j) procedures. On the whole, the process appears to be working well, but two problems have arisen. First, agencies have taken the opportunity to submit arguments and evidence unrelated to the Commission's preliminary determination of inconsistency between an agency's fish and wildlife recommendation and applicable law, as part of the agency's comments responding to the preliminary determination of inconsistency. Second, agencies have requested that conferences to settle differences between the Commission and agencies over section 10(j) matters be postponed until a significant period of time after the deadline for filing agency comments in response to the preliminary determination of inconsistency.

The 10(j) process is not designed to afford agencies, parties, or other interested persons another opportunity to submit new issues and related

[95] 16 U.S.C. 1521 *et seq.*

[96] Section 4.34(d). See generally Alabama Power Co., 53 FERC ¶ 61,217 (1990), *modified on rehearing*, 54 FERC ¶ 61.331 (1991) and 56 FERC ¶ 61.173 (1991).

[97] Section 4.34(e), discussed in the Preamble to the Final Rule at section IV.C.8.

[98] NOPR, 50 FERC ¶ 61,270 (1990), Section III.B.1. and 2.

[99] See the Preamble to the Final Rule, section IV.C.8.

[100] Section 4.34 (b) (2). See the discussion in section ii.B.2. *supra.*

[101] Section II.A.1., *supra*, and Preamble to Final Rule, section IV.A.2.

arguments and evidence to the Commission on a hydropower application. The process and the procedures codified in § 4.34(e) of the regulations to implement that process were designed solely to address how the Commission, affected resource agencies, Indian tribes, and parties could work together to identify instances where fish and wildlife recommendations and applicable law appeared inconsistent and to attempt to resolve differences over these issues. Resource agencies should limit their comments in response to any preliminary determination of inconsistency by the Commission to the identified issues and not attempt to inject new issues in the 10(j) process.[102]

Since the 10(j) process occurs at the end of the Commission's hearing on hydropower applications, it must be concluded promptly whenever possible. The 10(j) process is not designed to serve as a basis for prolonged delay of decisions on hydropower applications. Accordingly, the Commission is revising § 4.34 (e) (5) by adding a sentence to make clear that, except in extraordinary circumstances,[103] the Commission expects any meeting, conference, or further procedure used in an attempt to resolve any inconsistency, between a fish and wildlife recommendation and applicable law, to take place within 75 days of the date the Commission issues a preliminary determination of inconsistency, *i.e.*, within 30 days after comments by a resource agency and others in response to this determination are due. The regulations as revised should afford sufficient time to complete 10(j) consultations while moving the Commission expeditiously toward decisions on the merits of hydropower proposals.

6. Intervention.

The Commission's regulations permit intervention in a hydropower proceeding when the Commission issues public notice of the acceptance for filing of an application and, if applicable, in response to a DEIS. In Order No. 511, the Commission issued a policy statement on an interim basis allowing a fish and wildlife agency the opportunity to intervene after issuance by the Commission's staff of an order rejecting or materially modifying a fish and wildlife recommendation of the agency. In response to comments filed on the NOPR, seeking similar late intervention rights for other parties, the Commission decided to discontinue the policy of allowing late interventions by fish and wildlife agencies as a matter of right, concluding that it would be most fair to put all parties in hydropower proceedings on the same footing regarding intervention, and noting that the regulations do not impose any significant burden on persons, including agencies, that decide to file for intervention in a proceeding.[104]

Wildlife Federation wants an express rule allowing interventions in a proceeding on a hydropower application before it is accepted for filing, in order to avoid what it contends is confusion about the rights of persons to file such early interventions. Wildlife Federation also objects to our determination not to extend Order No. 511 and claims that this will result in the narrowing of participation by fish and wildlife agencies in the Commission's hydropower proceedings.

The Commission does not invite interventions in hydropower proceedings prior to the time when the Commission accepts an application for filing and issues a public notice inviting interventions. However, the Commission will entertain motions to intervene in a hydropower proceeding that are filed after the application has been filed but before public notice has issued.[105]

Fish and wildlife agencies have not taken issue with the Commission's decision to discontinue the interim policy on late intervention rights for fish and wildlife agencies announced in Order No. 511. Those agencies have many opportunities not only to intervene as parties in hydropower proceedings, but also to participate in them pursuant to the special statutory status of these agencies under federal law and under Commission regulations, as considered at length and revised in this rulemaking. There is no question that these regulations fully comply with the Commission's responsibilities, ensure the consideration of a wide variety of views on hydropower proposals, and treat on a fair and equitable basis all persons interested in those proposals, including resource agencies, Indian tribes, public interest groups, and applicants. The Commission is not persuaded, therefore, that there is any reason to reinstate the interim policy announced in Order No. 511.

D. Miscellaneous

1. Transition Provisions

In the revised regulations, the Commission required each applicant filing an application for original license or exemption on or after June 19, 1991, to keep a public file of the application and any supplementary filings or amendments relating to the application that the applicant submitted to the Commission.[106] In the Preamble to the Final Rule, however, the Commission stated that the Commission was requiring an applicant to retain such material and "to make available in its public file whatever such material it has in its possession."[107] Turlock requests that the Commission clarify that an applicant that filed for an original license or exemption before June 19, 1991, need not maintain a public file of its application.

The Commission intended only to require that an applicant for an original license or exemption that filed its application on or after June 19, 1991, maintain a public file of the application. Therefore, an applicant that filed such an application prior to that date need not maintain a public file.[108]

2. Clarification of Delegated Authority

In the revised regulations, the Commission clarified that the Director of the Office of Hydropower Licensing has the authority to make preliminary determinations of inconsistency between a fish and wildlife agency's fish and wildlife recommendation and applicable law, and to conduct through staff whatever consultation is appropriate to attempt to resolve such inconsistencies. The Commission also delegated to the Director the authority to waive the pre-filing consultation requirements in §§ 4.38 and 16.8 whenever the Director, in his discretion, determines that an emergency so requires or where the potential benefit of expeditiously considering a proposed improvement in hydropower facilities outweighs the potential benefit of requiring completion of the entire pre-filing consultation process.[109]

Commerce and Washington object to the delegation to the Director of the authority to waive the pre-filing consultation requirements in

[102] The hydropower hearing process, ordinarily held by means of notice and comment, is the appropriate place to raise whatever arguments and to introduce whatever evidence an agency or person wishes to bring to the Commission's attention regarding a hydropower proposal.

[103] Such circumstances may exist in complicated cases where, despite good-faith efforts by all concerned to resolve difference over a section 10(j) issue, the consultation on the issue cannot be completed prior to 75 days after the preliminary determination of inconsistency is issued by the Commission.

[104] Preamble to Final Rule, section IV.C.9.

[105] *See, e.g.*, Halecrest Company, 38 FERC ¶ 61,312 (1987).

[106] Section 4.32(b) (3), (4), and (9).

[107] Preamble to Final Rule, section IV.D.3.

[108] Applicants for new licenses must comply with the public file requirements of part 16, adopted to implement ECPA. §§ 4.32(b) (9) and 16.7.

[109] Sections 375.314(s) and (t).

appropriate cases. Commerce charges that this delegation is unconstitutional because it gives the Director total discretion to waive statutory consultation requirements. Washington argues that the delegation is beyond the Commission's authority; that the pre-filing consultation is critical to the gathering of adequate information in the licensing process; and that the waiver would enable the Director to avoid this process.

The Commission delegated to the Director the authority to waive pre-filing consultation requirements in order to ensure that the more elaborate regulations adopted in this area in the Final Rule would not have the effect of discouraging improvements in hydropower facilities or proposals that are in the public interest. The Director is only authorized to consider such waivers where he determines that "an emergency so requires, or that the potential benefit of expeditiously considering a proposed improvement in safety, environmental protection, efficiency, or capacity outweighs the potential benefit of requiring completion of the consultation process prior to the filing of an application." [110]

Contrary to the suggestion of Commerce and Washington, the Final Rule does not authorize the Director to waive any consultation requirements that are mandated by statute, such as the consultation mandated by section 10(j) of the FPA. The pre-filing consultation requirements that the Final Rule authorizes the Director to waive are not mandated by statute, but were adopted by the Commission in its discretion to assist in the preparation and processing of complete applications ready for environmental review and to expedite the hydropower administrative process. The Commission certainly has the authority to waive these regulatory requirements in appropriate circumstances, and it is quite proper to delegate this authority to the Director of OHL, who has the principal responsibility for managing the hydropower regulatory program, under the Commission's direction.

3. Filing Requirements for Certain Applicants.

The Commission adopted special filing requirements for applications for new licenses due to be filed with the Commission on or after June 19, 1991, and prior to January 1, 1992, in order to expedite the processing of the large number of such applications expected.[111] These applicants are permitted to file fewer than the otherwise required 14 copies of their application with the Commission, but they are required to serve copies of the application on the U.S. Department of the Interior in Washington, DC, and on the U.S. Bureau of Land Management District Office, the U.S. Corps of Engineers District Office, and the Commission's Regional Office for the area in which the project is located.

Interior asks that applicants serve on it six copies of applications for projects in the Eastern United States (including Minnesota, Iowa, Missouri, Arkansas, and Louisiana) and nine copies of applications for projects in the Western United States (west of the boundaries of Minnesota, Iowa, Missouri, Arkansas, and Louisiana).

Interior's request is reasonable, given the wide range of its responsibilities and the number of offices, national and field, that may be involved in the review of a hydropower application, and the requirements in the revised procedural regulations adopted by the Commission. The Commission is revising the regulations accordingly. In order to be consistent with this change and the Commission's current practices, the Commission is also revising parts 4 and 16 of the regulations to refer to those offices of federal resource agencies consulted by hydropower applicants that need multiple copies of applications served on them.[112] Attached as appendix B is a revised list of current addresses for certain federal resource agencies.[113]

4. Requests to Intervene and Late Requests

A number of requesters seek leave to intervene in this proceeding. Intervention in a rulemaking proceeding is not necessary in order to participate, and the motions to intervene are dismissed without prejudice.

Certain of the requests for rehearing and other filings in response to the Final Rule were made after the due date for rehearing requests.[114] Because of the importance of the issues raised, in this order the Commission has responded to all of the filings received. However, inasmuch as section 313(a) of the FPA [115] prescribes a 30-day deadline for the filing of requests for rehearing, all untimely requests for rehearing are dismissed.

List of Subjects

18 CFR Part 4

Electric power, Report and recordkeeping requirements.

18 CFR Part 16

Electric power.

The Commission Orders

(A) Parts 4 and 16 of chapter I, title 18, Code of Federal Regulations, are amended as set forth below.

(B) In all other respects the requests for rehearing of Order No. 533 are denied.

(C) The requests for leave to intervene are dismissed without prejudice.

(D) The untimely requests for rehearing filed by California Department of Fish and Game, Oregon Strategic Water Management Group, and West Virginia Division of Natural Resources are dismissed.

By the Commission. Commissioner Trabandt dissented in part with a separate statement to be issued later. Commissioner Moler dissented in part with a separate statement attached. Commissioner Terzic concurred.

Lois D. Cashell,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for part 4 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r; 16 U.S.C. 2601–2645; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142.

2. In § 4.30, paragraphs (b)(9)(iii) and (b)(28) are revised to read as follows:

§ 4.30 Applicability and definitions.

* * * * *

(b) * * *

(9) * * *

(iii) *Fishway* means any structure, facility, or device used for the passage of fish through, over, or around the project works of a hydropower project, such as fish ladders, fish locks, fish lifts and elevators, and similar physical contrivances, where passage of a population is necessary for the life cycle of a fish species; and those screens, barriers, and similar devices that operate to guide fish to a fishway; and flows within the fishway necessary for its operation.

* * * * *

(28) *Resource agency* means a Federal, state, or interstate agency

---

[110] Section 375.314(t) (emphasis added).

[111] Section 16.10(f).

[112] Sections 4.38 (d)(2) and 16.8 (d)(2).

[113] The list attached to the Final Rule as Appendix B inadvertently listed Corps of Engineers' Divisional instead of District offices. Pursuant to § 16.10(f), service of a copy of a hydropower application is required on the latter, not the former.

[114] See appendix A.

[115] 16 U.S.C. § 8251(a) (1988).

exercising administration over the areas of flood control, navigation, irrigation, recreation, fish and wildlife, water resource management (including water rights), or cultural or other relevant resources of the state or states in which a project is or will be located.

* * * * *

3. In § 4.32, paragraphs (b)(6), (b)(7), and (e)(2) (i) and (ii) are revised to read as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * *

(b) * * *

(6) An applicant must publish notice twice of the filing of its application, no later than 14 days after the filing date, in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must disclose the filing date of the application and briefly summarize it, including the applicant's name and address, the type of facility applied for, its proposed location, the places where the information specified in paragraph (b)(3) of this section is available for inspection and reproduction, and the date by which any requests for additional scientific studies are due under paragraph (b)(7) of this section, and must state that the Commission will publish subsequent notices soliciting public participation if the application is found acceptable for filing. The applicant must promptly provide the Commission with proof of the publications of this notice.

(7) If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Commission not later than 60 days after the application is filed and serve a copy of the request on the applicant. The Commission will issue public notice of the tendering for filing of each application for hydropower license or exemption; each such applicant must submit a draft of this notice to the Commission with its application. For any such additional study request, the requester must describe the recommended study and the basis for the request in detail, including who should conduct and participate in the study, its methodology and objectives, whether the recommended study methods are generally accepted in the Scientific community, how the study and information sought will be useful in furthering the resource goals that are affected by the proposed facilities, and approximately how long the study will take to complete, and must explain why the study objectives cannot be achieved using the data already available. In addition, in the case of a study request by a resource agency or Indian tribe that had failed to request the study during the pre-filing consultation process under § 4.38 of this part or § 16.8 of this chapter, the agency or Indian tribe must explain why this request was not made during the pre-filing consultation process and show good cause why its request for the study should be considered by the Commission.

* * * * *

(e) * * *

(2) *Patently deficient applications.* (i) If, within 90 days of its filing date, the Director of the Office of Hydropower Licensing determines that an application patently fails to substantially comply with the requirements of paragraph (a), (b), and (c) of this section and of § 4.38 of this part or § 16.8 of this chapter, or is for a project that is precluded by law, the application will be rejected as patently deficient with the specification of the deficiencies that render the application patently deficient.

(ii) If, after 90 days of its filing date, the Director of the Office of Hydropower Licensing determines that an application patently fails to substantially comply with the requirements of paragraphs (a), (b), and (c) of this section and of § 4.38 of this part or § 16.8 of this chapter, or is for a project that is precluded by law:

(A) The application will be rejected by order of the Commission, if the Commission determines it is patently deficient; or

(B) The application will be considered deficient under paragraph (e)(1) of this section, if the Commission determines it is not patently deficient.

* * * * *

4. In § 4.34, the first sentence in paragraph (b) introductory text, paragraph (e)(5), and paragraph (f)(1)(i) are revised to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene.

(a) * * *

(b) *Notice and comment hearings.*

All comments (including mandatory and recommended terms and conditions or prescriptions) on an application for exemption or license must be filed with the Commission no later than 60 days after issuance by the Commission of public notice declaring that the application is ready for environmental analysis. * * *

* * * * *

(e) *Consultation on recommended fish and wildlife conditions; Section 10(j) process.*

* * * * *

(5) If the Commission decides to conduct any meeting, telephone or video conference, or other procedure to address issues raised by its preliminary determination of inconsistency and comments thereon, the Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 75 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this subsection to discuss 10(j) issues, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes. If the Commission believes that any fish and wildlife recommendation submitted by a fish and wildlife agency may be inconsistent with the purposes and requirements of the Federal Power Act or other applicable law, the Commission will attempt to resolve any such inconsistency by appropriate means, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency.

* * * * *

(f) *Licenses and exemption conditions and required findings—(1) License conditions.* (i) All licenses shall be issued on the conditions specified in section 10 of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

* * * * *

5. In § 4.38, paragraphs (a)(1) and (d) are revised to read as follows:

§ 4.38 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files any application for an original license or an exemption from licensing that is described in paragraph (a)(4) of this section, a potential applicant must consult with the relevant Federal, State, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands or facilities utilized or occupied by the project, the appropriate State fish and wildlife

agencies, the appropriate State water resource management agencies, the certifying agency under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1341(c)(1), and any Indian tribe that may be affected by the proposed project.

* * * * *

(d) *Third stage of consultation.* (1) The third stage of consultation is initiated by the filing of an application for a license or exemption, accompanied by a transmittal letter certifying that at the same time copies of the application are being mailed to the resource agencies, Indian tribes, and other government offices specified in paragraph (d)(2) of this section.

(2) As soon as an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, as the Commission may direct the applicant must serve on every resource agency and Indian tribe consulted and on other government offices copies of:

(i) Its application for a license or an exemption from licensing;

(ii) Any deficiency correction, revision, supplement, response to additional information request, or amendment to the application; and

(iii) Any written correspondence from the Commission requesting the correction of deficiencies or the submittal of additional information.

* * * * *

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

6. The authority citation for part 16 is revised to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142.

7. In § 16.8, paragraphs (a)(1) and (d) are revised to read as follows:

§ 16.8 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files any application for a new license, a nonpower license, an exemption from licensing, or, pursuant to § 16.25 or § 16.26 of this part, a surrender of a project, a potential applicant must consult with the relevant Federal, State, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands or facilities utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate State water resource management agencies, the certifying agency under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1), and any Indian tribe that may be affected by the project.

* * * * *

(d) *Third stage of consultation.* (1) The third stage of consultation is initiated by the filing of an application for a new license, nonpower license, exemption from licensing, or surrender of license, accompanied by a transmittal letter certifying that at the same time copies of the application are being mailed to the resource agencies, Indian tribes, and other government offices specified in paragraph (d)(2) of this section and § 16.10(f) of this part, if applicable.

(2) As soon as an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, as the Commission may direct, the applicant must serve on every resource agency and Indian tribe consulted, on other government offices, and, in the case of applications for surrender or nonpower license, any state, municipal, interstate, or Federal agency which is authorized to assume regulatory supervision over the land, waterways, and facilities covered by the application for surrender or nonpower license, copies of:

(i) Its application for a new license, a nonpower license, an exemption from licensing, or a surrender of the project;

(ii) Any deficiency correction, revision, supplement, response to additional information request, or amendment to the application; and

(iii) Any written correspondence from the Commission requesting the correction of deficiencies or the submittal of additional information.

* * * * *

8. In § 16.10, paragraph (f) is revised to read as follows:

§ 16.10 Information to be provided by an applicant for new license: filing requirements.

* * * * *

(f) *Filing requirements.* For all applications for new licenses due to be filed with the Commission on or after June 19, 1991, and prior to January 1, 1992, the following number of copies must be submitted to the Commission and served on resource agencies

(1) If the application is hand-delivered to the Commission, as by messenger or courier service, only an original and five copies of the application need be delivered to the Secretary, but the filing must be accompanied by a transmittal letter certifying that at the same time five copies of the application are being hand delivered to the Director, Division of Project Review, Office of Hydropower Licensing, and copies are being mailed to the resource agencies consulted and the government offices specified in § 16.8(d)(2) of this part, including each of the following:

(i) The Regional Office of the Commission for the area in which the project is located;

(ii) The U.S. Department of the Interior, Washington, DC (6 copies for projects located in the Eastern United States, including Minnesota, Iowa, Missouri, Arkansas, and Louisiana, and 9 copies for projects located in the Western United States westward of the western boundaries of Minnesota, Iowa, Missouri, Arkansas, and Louisiana);

(iii) The U.S. Bureau of Land Management District Office for the area in which the project is located; and

(iv) The U.S. Corps of Engineers District Office for the area in which the project is located.

(2) If the application is mailed to the Commission, only an original and ten copies of the application need be sent to the Secretary, but the application must be accompanied by a transmittal letter certifying that at the same time copies of the application are being mailed to each of the offices listed in paragraphs (f)(1)(i) through (iv) of this section.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix A—List of Requests for Rehearing and Reconsideration Federal Agencies

1. U.S. Department of the Interior (Interior)
2. U.S. Department of Commerce (Commerce)

State Agencies

3. California Department of Fish and Game (California Fish and Game)*
4. California State Water Resources Control Board (California Water Board)
5. Oregon Strategic Water Management Group (Oregon)*
6. Washington Department of Fisheries and Department of Wildlife (Washington)
7. West Virginia Division of Natural Resources (West Virginia) *

Associations, Companies, and Individuals

8. American Rivers, Inc., American Whitewater Affiliation, Friends of the River, Natural Heritage Institute, and Trout Unlimited (American Rivers)
9. Congressman John Dingell **
11. Edison Electric Institute (EEI)
12. National Wildlife Federation (Wildlife Federation)

* Filed requests for rehearing after the 30-day statutory deadline of June 7, 1991.

** Filed informal comments or petitions for clarification of the Final Rule.

13. North Carolina Electric Membership Corporation (North Carolina Electric)

14. Turlock Irrigation District and Tuolumne County, California (Turlock) **

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix B—List of Addresses

Area of jurisdiction	Addressee
U.S. Department of the Interior	
Nationwide	Director, Office of Environmental Affairs, Department of the Interior, Main Interior Building, MS 2340, 1849 C Street, NW., Washington, DC 20240.
Bureau of Land Management	
Eastern States (includes all states not listed below)	Director, Bureau of Land Management, Branch of Lands (ES-962), 350 South Pickett Street, Alexandria, VA 22304.
Alaska	State Director, Bureau of Land Management, Division of Lands and Renewable Resources (AK-930), 222 W. 7th Avenue, No. 13, Anchorage, AK 99513-7599.
Arizona	State Director, Bureau of Land Management, Division of Lands and Renewable Resources (AZ-930), 3707 North 7th Street, P.O. Box 16563, Phoenix, AZ 85011.
California	State Director, Bureau of Land Management, Branch of Adjudication and Records (CA-943.5), Federal Building, Room E-2841, 2800 Cottage Way, Sacramento, CA 95825.
Colorado	State Director, Bureau of Land Management, Branch of Realty Programs (CO-932), 2850 Youngfield Street, Lakewood, CO 80215.
Idaho	State Director, Bureau of Land Management, Land Services Section (ID-943A), 3380 Americana Terrace, Boise, ID 83706.
Montana (includes North Dakota and South Dakota)	State Director, Bureau of Land Management, Branch of Land Resources (MT-932), Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings, MT 59107.
Nevada	State Director, Bureau of Land Management, Branch of Lands and Minerals Operations (NV-943.2), 850 Harvard Way, P.O. Box 12000, Reno, NV 89520.
New Mexico (includes Kansas, Oklahoma, and Texas)	State Director, Bureau of Land Management, Branch of Lands and Minerals Operations (NM-943C-2), Federal Building, South Federal Place, P.O. Box 1449, Santa Fe, NM 87501.
Oregon (includes Washington)	State Director, Bureau of Land Management, Lands and Minerals Adjudication Section (OR-943.3), 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, OR 97208.
Utah	State Director, Bureau of Land Management, Branch of Lands and Minerals Operations (UT-942), P.O. Box 45155, Salt Lake City, UT 84145-0155.
Wyoming (includes Nebraska)	State Director, Bureau of Land Management, Branch of Land Resources (WY-931), 2915 Warren Avenue, P.O. Box 1828, Cheyenne, WY 82001.
U.S. Corps of Engineers	
Lower Mississippi Valley District Offices:	
	U.S. Corps of Engineers, 167 N. Main Street, Memphis, TN 38103-1894.
	U.S. Corps of Engineers, P.O. Box 60267, New Orleans, LA 70160-0267.
	U.S. Corps of Engineers, 1222 Spruce Street, St. Louis, MO 63103-2833.
	U.S. Corps of Engineers, 3550 1-20 Frontage Rd., Vicksburg, MS 39180-5191.
New England Division Office: [116]	
	U.S. Corps of Engineers, 424 Trapelo Road, Waltham, MA 02254-9149.
Missouri River District Offices:	
	U.S. Corps of Engineers, 700 Federal Bldg., Kansas City, MO 64106-2896.
	U.S. Corps of Engineers, 215 North 17th Street, Omaha, NE 68102-4978.
North Atlantic District Offices:	
	U.S. Corps of Engineers, P.O. Box 1715, Baltimore, MD 21203-1715.
	U.S. Corps of Engineers, 26 Federal Plaza, New York, NY 10278-0090.
	U.S. Corps of Engineers, 803 Front St., Norfolk, VA 23510-1096.
	U.S. Corps of Engineers, 2nd & Chestnut Streets, Philadelphia, PA 19106-2991.
North Central District Offices:	
	U.S. Corps of Engineers, 1776 Niagara St., Buffalo, NY 14207-3199.
	U.S. Corps of Engineers, 111 N. Canal Street, Chicago, IL 60606-7206
	U.S. Corps of Engineers, P.O. Box 1027, Detroit, MI 48231-1027.
	U.S. Corps of Engineers, P.O. Box 2004, Rock Island, IL 61204-2004.
	U.S. Corps of Engineers, 180 East Kellogg Blvd., St. Paul, MN 55101-1479.
North Pacific District Offices:	
	U.S. Corps of Engineers, P.O. Box 898, Anchorage, AK 99506-0898.
	U.S. Corps of Engineers, P.O. Box 2946, Portland, OR 97208-2946.
	U.S. Corps of Engineers, P.O. Box 3755, Seattle, WA 98124-2255.
	U.S. Corps of Engineers, 602 City-County Airport, Walla Walla, WA 99362-9265.
Ohio River District Offices:	
	U.S. Corps of Engineers, 502 8th St., Huntington, WV 25701-2070.
	U.S. Corps of Engineers, P.O. Box 59, Louisville, KY 40201-0059.
	U.S. Corps of Engineers, P.O. Box 1070, Nashville, TN 37202-1070.
	U.S. Corps of Engineers, William S. Moorhead, Federal Bldg., Rm-1628, 1000 Liberty Ave., Pittsburgh, PA 15222-4186.
South Atlantic District Offices:	
	U.S. Corps of Engineers, P.O. Box 919, Charleston, SC 29402-0919.
	U.S. Corps of Engineers, P.O. Box 4970, Jacksonville, FL 32232-0019.
	U.S. Corps of Engineers, P.O. Box 2288, Mobile, AL 36628-0001.
South Atlantic District Offices:	
	U.S. Corps of Engineers, P.O. Box 889, Savannah, GA 31402-0889.
	U.S. Corps of Engineers, P.O. Box 1890, Wilmington, NC 28402-1890.
South Pacific District Offices:	
	U.S. Corps of Engineers, P.O. Box 2711, Los Angeles, CA 90053-2325.
	U.S. Corps of Engineers, 1325 J Street, Sacramento, CA 95814-2922.
	U.S. Corps of Engineers, 211 Main St., San Francisco, CA 94105-1905.

Area of jurisdiction	Addressee
Southwestern District Offices:	
	U.S. Corps of Engineers, P.O. Box 1580, Albuquerque, NM 87103-1580.
	U.S. Corps of Engineers, P.O. Box 17300, Fort Worth, TX 76102-0300.
	U.S. Corps of Engineers, P.O. Box 1229, Galveston, TX 77553-1229.
	U.S. Corps of Engineers, P.O. Box 867, Little Rock, AR 72203-0867.
	U.S. Corps of Engineers, P.O. Box 61, Tulsa, OK 74121-0061.

[1] [6] In New England, the U.S Army Corps of Engineers only has a Division office.

Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters

Issued November 22, 1991.

Moler, Commissioner, *dissenting in part:*

As I stated when we adopted this rule last May, it is an important rule that should improve our licensing process by bringing to it much needed definition and discipline. I continue to be an enthusiastic supporter of the rule. I am particularly gratified that a good rule is made better by the majority now adopting a proper definition of the term "fishway". I write separately to dissent from only two aspects of the rule: The majority's limiting the types of fish for which a fishway may be required, and the majority's failure to fix a serious shortcoming in the rule respecting the implementation of Section 401 of the Clean Water Act.[1]

Limiting Federal Action Under the Federal Power Act.

The Commission properly reverses its earlier conclusion and now finds that a fishway includes both upstream and downstream fish passage facilities.[2] But, when before, a fishway could be prescribed for any type of fish, now it may be prescribed under section 18 of the Federal Power Act only "where passage of a population is necessary for the life cycle of a fish species." [3] As with its short-lived attempt to limit the term fishway to a one-way facility, there is no basis in law or policy for this call.

In its original order, the Commission found that limiting the application of fishways under section 18 to anadromous or marine migratory fish was not supportable.[4] Now, *sua sponte*, the majority revisits the issue and finds differently.[5] The only purpose for this about face, like the original effort to limit fishways to upstream facilities, is to limit the scope of action for the Secretaries of the Interior and Commerce who, by law, are to make the call under section 18.

The first two sources cited for the Commission's new limitation are reports authored by, respectively, the Departments of Commerce and the Interior.[6] It is ironic that, in recognizing this as expert opinion, the Commission does not provide the means for the Departments to implement their expertise. But, by law, the question of determining when to require a fishway falls to the Departments of Commerce and the Interior (and their respective agencies, National Marine Fisheries Service and the Fish and Wildlife Service) not the Commission.[7] Of necessity, this decision must encompass the question of which types of fish are to be protected with fishways. The Commission here trespasses on this statutory charge no less than when it originally and wrongly decided to limit fishways to only upstream applications.[8]

The Commission's decision to limit the statutory exercise of the authority of the two Cabinet officers was accompanied by much rhetoric about our action being essential to preserve the viability of hydropower development as called for in the President's National Energy Strategy (NES). First, the proposed statutory changes in the Federal Power Act included in the NES are not yet law. Thus, the NES cannot be used as an excuse to limit the legitimate exercise of the Departments' statutory authority. Second, to the extent the NES can and should be implemented under existing law, we must assume that the Secretaries, as Cabinet officers, will carry out the Administration's policies. It is not for us, as an independent regulatory commission, to police the Secretaries on behalf of the Administration. To do so would be as improper as having the Administration police this agency.

Limiting State Action under Section 401 of the Clean Water Act

As a matter of law, before the Commission may license a hydropower project under Part I of the Federal Power Act, the license applicant must have a certification covering water quality standards for the project as required under Section 401 of the Clean Water Act.[9] A problem develops when a project, having once received such a certificate, is amended at the licensing stage or after licensing. If the change is minor, having no effect on water quality, there should be no need to require that the applicant reapply for a water quality certificate. The problems I am concerned with stem from two possible cases. First would be the case when the change to the proposed or existing project (however minor) may indeed affect water quality adversely. Second would be the case when the change is of such magnitude that we have what amounts to a materially different project.

The rule issued purportedly distinguishes between these two cases. It would recognize that situations may arise involving a fundamental alteration of the project, or proposed project, such as adding or deleting a dam or comparably significant facility, or relocating the entire project to an area that had not previously been evaluated. In those situations, we expect the applicant to request new water quality certification, and will require it to obtain one, or a waiver thereof.[10] The regulation, however, is more circumscribed, requiring that the applicant obtain a new water quality certificate only "if the amendment would have a material *odverse* impact on the water quality in the discharge from the project or proposed project." [11]

There is thus a fundamental inconsistency between the preamble and the regulatory text. Nowhere does the Commission deal with this inconsistency. This is important for, as the Commission recognized, it must allow certifying agencies a second look when, in essence, we are presented with a new

---

[1] 33 U.S.C. § 1341(a)(1)(1988).

[2] Slip op. at 13-22 and 87.

[3] Slip op. at 24 and 87.

[4] Order No. 533, Preamble, *reproduced at* FERC Stats. & Regs. ¶ 30,921 at 30,117-30,118.

[5] While comments at the initial stage had requested that fishways be limited to meeting the needs of only migratory fish, *id.* at 30,112-30,113, no one requested that the Commission revisit this issue at rehearing.

[6] Order No. 533-A, slip op at 24-27.

[7] Section 18 of the Federal Power Act reads, in pertinent part:

The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of * * * such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

16 U.S.C. 811 (1988). This is a statutory prescription. The relative expertise of our staff, Interior's and Commerce's is not at issue, nor should it be.

[8] Apologists might argue that what the Commission does here is but a short extension of its position in Lynchburg Hydro Associates, 39 FERC ¶ 61,079 (1987) and in this rule to determine where the scope of Section 18 is appropriately drawn. Such a simplistic view fundamentally misapprehends the issue involved. The question is not what type of structure we deal with, rather, it is when any structure is to be required. But, as the Commission held in *Lynchburg, supra* at 61,217-61,218, "[w]e have no discretionary authority in this regard; fishways must be required when properly prescribed by the Secretaries."

[9] Section 401 states in relevant part:

Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of [law] * * *.

33 U.S.C. 1341(a)(1)(1988).

[10] Order No. 533, Preamble, note 4 *supra* at 30,137.

[11] 18 CFR 4.38(f)(7)(iii) (for license applications) (emphasis added); see also 18 CFR 16.8(f)(7)(iii) requiring substantially the same for new licenses.

project. The problem is that the rule does not recognize the inconsistency. As promised in the Preamble, any "fundamental alteration" should, at a minimum, trigger a second look under Section 401 if that change will have *any* effect on water quality. The regulation itself falls short of that promise. The Commission is, of course, bound by its regulations and the regulations control over the preamble. What we have then is a regulation that runs counter to the plan of State certification laid out under the Clean Water Act.

Water quality certification is a matter left solely to the state or other certifying authority, not to FERC. As the Congress recognized, "[t]he purpose of the certification mechanism provided in this law is to assure that Federal licensing or permitting agencies cannot override State water quality requirements." [12] That purpose cannot be met under the Commission's regulations.

Conclusion

The two aspects of the rule from which I dissent share a common thread. In each the majority acts to limit statutorily prescribed responsibilities of other agencies, state and federal. This is a disturbing trend.[13] The error lies in the majority's seeming inability to recognize the limits of its own jurisdiction. Because I perceive that jurisdiction to be more limited than my colleagues, I must dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 91–28643 Filed 11–29–91; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 14a

[T.D. 8374]

RIN 1545–AN26

Stockholder Approval of Incentive Stock Option Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains a final regulation on the stockholder approval requirement for incentive stock option plans. The regulation affects corporations establishing incentive stock option plans and provides guidance on the method and degree of stockholder approval necessary for those plans. The guidance is the same as that set forth in a temporary regulation published in 1988. This document also removes obsolete regulations under a repealed Internal Revenue Code section pertaining to qualified stock options.

EFFECTIVE DATES: The removal of §§ 1.422–1 and 1.422–2 is effective November 5, 1990. Section 1.422–4 is effective November 5, 1990. The amendments to § 1.422–5 are effective August 13, 1981, and apply to options granted on or after that date and to certain options granted after December 31, 1975.

FOR FURTHER INFORMATION CONTACT: Charles Deliee at 202–566–4741 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Overview

Proposed regulations on incentive stock options were published in 1984. A temporary regulation on the stockholder approval requirement for incentive stock option plans was published in 1988. This document contains a final regulation on the stockholder approval requirement. In substance, the final regulation is the same as the temporary regulation. This document also removes obsolete regulations about qualified stock options.

Explanation of Provisions

Incentive stock options are now described in section 422 of the Internal Revenue Code of 1986. Section 422 was section 422A before being renumbered by section 11801 of OBRA '90 (the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508).

Proposed regulations under section 422A were published in the **Federal Register** on February 7, 1984 (49 FR 4504). One subject addressed in those proposed regulations was the stockholder approval requirement for incentive stock option plans, which appeared in section 422A(b)(1) of the Code (now section 422(b)(1)). Written comments were received from the public on the proposed regulations.

To address concerns raised in those comments, a temporary regulation on the stockholder approval requirement, § 14a.422A–2, was published in T.D. 8235, 53 FR 48639, December 2, 1988.

Under section 7805(e) of the Code, any temporary regulation issued after November 20, 1988, shall expire within 3 years after the date of its issuance. The Service expects to publish final regulations at a later date on the full range of issues addressed in the 1984 proposed regulations. Meanwhile, this Treasury decision adopts the temporary regulation in final form by redesignating it as § 1.422–5. The text of the regulation is also revised without substantive change, to eliminate the question-and-answer format and to reflect the renumbering of the underlying Internal Revenue Code section.

OBRA '90 also repealed the generally obsolete prior section 422 of the Code, pertaining to qualified stock options. This Treasury decision removes prior §§ 1.422–1 and 1.422–2, the regulations under the repealed section 422. Those removed regulations could have continuing relevance in view of the savings provision in section 11821 of OBRA '90. A new § 1.422–4 is therefore added, referring interested readers to the 1991 edition of the Code of Federal Regulations, where the removed regulations last appeared.

Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to the regulations and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Mark Schwimmer of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and Treasury participated in their development.

List of Subjects

26 CFR 1.421–1 through 1.425–1

Income taxes, Securities.

26 CFR Part 14a

Income taxes, Reporting and recordkeeping requirements, Securities.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 14a are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

[12] S. Rep. No. 92–414 (1971), *reprinted in* 1972 U.S. Code Cong. & Adm. News 3735. As one treatise puts it, "[i]n a peculiar sense, the certification requirement imposes a kind of reverse preemption on certain federally licensed or permitted activities." 1 Grad, Treatise on Environmental Law 3–219 (1990). The Commission's hydrolicensing program is explicitly recognized as being one of these activities. S. Rep. No. 92–144 *supra*, 1972 U.S. Code Cong & Adm. News at 3735.

[13] *See* Order No. 555, Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities, *reprinted in* FERC Stats. and Regs. ¶ 30,928 at 30,313 (1991) (Moler, dissenting in part.)

Authority: 68A Stat. 917; 26 U.S.C. 7805

* * *

§§ 1.422–1 and 1.422–2 [Removed]

Par. 2. Sections 1.422–1 and 1.422–2 are removed.

Par. 3. Section 1.422–4 is added, to read:

§ 1.422–4 Qualified stock options (prior law).

Section 422 of the Code, pertaining to qualified stock options, was repealed by section 11801(a)(20) of the Omnibus Budget Reconciliation Act of 1990. In view of the savings provision of section 11821(b) of that act, the regulations under the repealed section 422, which were removed from the Code of Federal Regulations, may be of continuing interest to the public. Those regulations were set forth in 26 CFR 1.422–1 and 1.422–2 as contained in 26 CFR edition revised as of April 1, 1991.

PART 14a—TEMPORARY INCOME TAX REGULATIONS RELATING TO INCENTIVE STOCK OPTIONS

Par. 4. The authority for part 14a continues to read:

Authority: 68A Stat. 917; 26 U.S.C. 7805.

Par. 5. Section 14a.422A–2 is redesignated as § 1.422–5 and revised to read as follows:

§ 1.422–5 Stockholder approval of incentive stock option plans.

This section addresses the stockholder approval of incentive stock option plans required by section 422(b)(1) of the Internal Revenue Code. (Section 422 was added to the Code as section 422A by section 251 of the Economic Recovery Tax Act of 1981, and was redesignated as section 422 by section 11801 of the Omnibus Budget Reconciliation Act of 1990.) The approval of stockholders must comply with all applicable provisions of the corporate charter, bylaws, and applicable State law prescribing the method and degree of stockholder approval required for the issuance of corporate stock or options. If the applicable State law does not prescribe a method and degree of stockholder approval in such cases an incentive stock option plan must be approved:

(a) By a majority of the votes cast at a duly held stockholders' meeting at which a quorum representing a majority of all outstanding voting stock is, either in person or by proxy, present and voting on the plan; or

(b) By a method and in a degree that would be treated as adequate under applicable State law in the case of an action requiring stockholder approval (i.e., an action on which stockholders would be entitled to vote if the action were taken at a duly held stockholders' meeting).

Dated: November 12, 1991.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–28682 Filed 11–29–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Regulatory Program; Ownership and Control Definitions; Improvidently Issued Permits

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

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would: Define "ownership and control," detail additional requirements concerning the reporting of violations and ownership and control data and the effect of that information on various permitting decisions, and, provide criteria and procedures for the identification and rescission of improvidently issued permits.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program.
II. Submission of Amendments.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of Interior approved the Maryland program. Information regarding the general background of the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15 and 30 CFR 920.16.

II. Submission of Amendments

On October 3, 1988, OSM amended its regulations at 30 CFR part 773 to define the term "owns and controls" (53 FR 38868). In this rule, OSM also amended 30 CFR 773.15 to require the review by the regulatory authority of the compliance record of the permit applicant and related parties with certain environmental laws prior to the issuance of a permit for surface coal mining operations. OSM also expanded the scope of the required review prior to the issuance of a permit concerning any willful pattern of violations.

Pursuant to the Federal regulations at 30 CFR 732.17, OSM informed Maryland by letter dated May 11, 1989, that a number of the Maryland regulations were less effective than or inconsistent with the Federal requirements as revised on October 3, 1988.

By letter dated December 6, 1990, the Maryland Bureau of Mines (the Bureau) submitted to OSM proposed amendments to Maryland's regulatory program relating to ownership and control and improvidently issued permits (Administrative Record No. MD–492).

OSM announced receipt of the proposed amendments in the February 15, 1991, **Federal Register** (56 FR 6333) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on March 18, 1991.

By letter dated August 20, 1991, Maryland resubmitted proposed amendments to its program (Administrative Record No. MD–544). OSM announced receipt of the proposed amendments in the October 29, 1991, **Federal Register** (56 FR 55642) the comment period closed on November 13, 1991, and in the same notice, reopened the public comment period.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendments submitted on December 6, 1990 (Administrative Record No. MD–492) and resubmitted on August 20, 1991 (AR No MD–544). Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions not discussed below revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Maryland's Regulations that are Substantively Identical to the Corresponding Federal Regulations

State regulation counterpart	Subject	Federal
08.13.09.01B(59)	Definitions	30 CFR 773.5
08.13.09.02I	Permit Requirements.	30 CFR 778.13
08.13.09.02I(1)	Permit Requirements.	30 CFR 778.13(b)
08.13.09.02I(3)	Permit Requirements.	30 CFR 778.13(a)
08.13.09.02I(4)	Permit Requirements.	30 CFR 778.13(c)
08.13.09.02I(5)	Permit Requirements.	30 CFR 778.13(d)
08.13.09.02I(11)	Permit Requirements.	30 CFR 778.14(c)
08.13.09.04L(2)	Permit Review	30 CFR 773.15(b)(1)
08.13.09.04L(3)	Permit Review	30 CFR 773.15(b)(1) (i), (ii)
08.13.09.04L(4)	Permit Review	30 CFR 773.15(b)(1) (ii)
08.13.09.04L(5)	Permit Review	30 CFR 773.15(b)(2)
08.13.09.04L(6)	Permit Review	30 CFR 773.15(b)(3)
08.13.09.04M(1)	Permit Review	30 CFR 778.13(i)
08.13.09.04M(3)	Permit Review	30 CFR 773.15(e)
08.13.09.05D(9)	Permit Decision	30 CFR 773.17(i)
08.13.09.05E	Improvidently Issued.	30 CFR 773.20
08.13.09.05F	Permits Improvidently Issued.	30 CFR 773.21
08.13.09.40G(10)	Permits Cessation Orders.	30 CFR 843.11(g)

At COMAR 08.13.09.04L(2), Maryland proposes, in part, that in the absence of a failure to abate cessation order, the Bureau may presume that a notice of violation issued pursuant to the regulatory program or under a Federal or State program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation. The proposed regulation is identical to the Federal regulation at 30 CFR 773.5(b)(1). However, the Secretary, in the matter of *National Wildlife Federation* v. *Lujan*, Civ. No. 88–3117 Consolidated, has expressed his intention to reconsider the issue of whether, in the absence of a failure to abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected as set forth in the Federal rule.

Therefore, pending final resolution of the rulemaking currently being pursued by the Secretary regarding the Federal rule at 30 CFR 773.15(b)(1), action on that portion of proposed COMAR 08.13.09.04L(2) dealing with the presumption discussed above is being deferred by the Director.

B. Revisions to Maryland's Regulations that are not Substantively Identical to the Corresponding Regulations

COMAR 08.13.09.02H—Permit Requirements

Maryland is proposing to require that applications for permits be submitted on forms provided by the State. The Federal regulations at 30 CFR 778.13(j) require that permit applications be submitted in any prescribed OSM format that is issued. In a letter dated August 20, 1991 (Administrative Record No. MD–544), Maryland stated it would require applicants to submit information in accordance with any format prescribed by OSM. The Director finds the proposed State regulations no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the February 15, 1991, **Federal Register** (56 FR 6333) ended on March 18, 1991. The public comment period announced in the October 29, 1991, **Federal Register** (56 FR 55642) ended on November 13, 1991. A public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of Labor, Mine Safety and Health Administration, and the Department of Interior, Bureau of Land Management concurred without comment.

V. Director's Decision

Based on the above findings, with the exceptions noted below, the Director is approving the program amendments submitted by Maryland on December 6, 1990. The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

In addition, the Director is deferring action on COMAR 08.13.09.04L(2) to the extent that this section provides that in the absence of a failure to abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected. The Secretary is in the process of initiating rulemaking regarding the presumption issue.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to an approved program. In his oversight of the Maryland program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Maryland of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean

Air Act (42 U.S.C. 7401 *et seq.*). Although the Director has determined that this amendment contains no provisions in these categories, the EPA concurred without comment.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from the preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

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

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

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

2. In section 920.15, a new paragraph (o) is added to read as follows:

* * * * *

(o) The following amendments submitted to OSM on December 6, 1990, are approved effective December 2, 1991, with the exception noted.

(1) Revision of the following rules of Code of Maryland Administrative Regulations:

08.13.09.02H	Permit Requirements—as interpreted by Maryland in a letter dated August 20, 1991 (Administrative Record No. MD–544).
08.13.09.02i	Permit Requirements
08.13.09.02i(1)	Permit Requirements
08.13.09.02i(3)	Permit Requirements
08.13.09.02i(4)	Permit Requirements
08.13.09.02i(5)	Permit Requirements
08.13.09.02i(11)	Permit Requirements
08.13.09.04L(2)	Permit Review (except for the provision relating to the presumption that a notice of violation has been or is being corrected. Action is being deferred on this issue pending final resolution of the rulemaking regarding the Federal rule at 30 CFR 773.15(b)(1)).
08.13.09.04L(3)	Permit Review

(2) Addition of the following rules of Code of Maryland Administrative Regulations:

08.13.09.01B(59)	Definitions
08.13.09.04L(4)	Permit Review
08.13.09.04L(5)	Permit Review
08.13.09.04L(6)	Permit Review
08.13.09.04M(1)	Permit Review
08.13.09.04M(3)	Permit Review
08.13.09.05D(9)	Permit Decision
08.13.09.05E	Improvidently Issued Permits
08.13.09.05F	Improvidently Issued Permits
08.13.09.40G(10)	Cessation Orders

[FR Doc. 91–28740 Filed 11–29–91; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 153

[CGD 91–041]

Pollution Fund Expenditures By District Commanders

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard District Commander's authority to expend funds from the Pollution Fund for removal costs related to a discharge of oil or hazardous substances is limited to $1,000,000. The procedure required to exceed the authorized limitation is an internal management step that unnecessarily delays removal action on a discharge. This rulemaking eliminates this limitation and makes several conforming amendments. These amendments concern internal agency procedure and are needed to expedite the process of removing oil or hazardous substances requiring over $1,000,000 in expenditures.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Allen R. Thuring, telephone (703) 235–4741, National Pollution Funds Center.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal person involved in drafting this document is CDR M. Thomas Woodward, Project Counsel and Manager, National Pollution Funds Center.

Background and Purpose

Existing 33 CFR 153.105(a)(6) delegates to Coast Guard District Commanders the authority to expend up to $1,000,000 from the Pollution Fund for removal of oil or hazardous substances from a single discharge. To exceed that amount, the District Commander must request authorization from the National Pollution Funds Center. Control and oversight of expenditures is provided by a pre-authorized allotment to each Coast Guard District. The delay created by making a request to exceed the $1,000,000 limitation is unnecessary and could delay funds needed for the rapid removal of oil and hazardous substances. Furthermore, this provision is one of internal agency procedure not required to be published as a regulation. Its existence as a regulation unnecessarily clutters the Code of Federal Regulations. This rulemaking addresses these concerns by removing paragraph (a)(6) in its entirety.

Paragraph (b)(2), in turn, delegates authority to expend funds in excess of $1,000,000 per discharge to the National Pollution Funds Center's predecessor in Pollution Fund matters. With the removal of paragraph (a)(6), paragraph (b)(2) is no longer needed because the amounts now allocated to the Districts vary from District to District and generally exceed $1,000,000 per District. Therefore, paragraph (b)(2) also is removed by this rulemaking.

Regulatory Procedure

This rulemaking concerns internal agency procedures and would not benefit from a notice for public comment. For this reason, the Coast Guard for good cause finds that notice and public procedure thereon under 5 U.S.C. 553(b) are unnecessary. Because

this rulemaking relieves an unnecessary restriction and is limited to a matter of internal agency procedure under 5 U.S.C. 553(d), it is being made effective in less than 30 days after publication.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary.

This rulemaking expedites the Coast Guard's ability to respond to discharges of oil and hazardous substances, thereby limiting the potential effect of those discharges. It has no adverse impacts.

Small Entities

As discussed in the Regulatory Evaluation section of this preamble, this rule will have no adverse impacts, economic or otherwise. It expedites the Coast Guard's ability to respond to discharges of oil and hazardous substances. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule concerns internal agency procedure. A Categorical Exclusion Determination is available in the docket for inspection or copying at the Office of the Marine Safety Council, room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

List of Subjects in 33 CFR Part 153

Hazardous materials, Oil pollution.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 153 as follows:

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

1. The authority citation for part 153 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321(j)(1)(A) and (m); 42 U.S.C. 9615; secs. 2, 5, and 7, E.O. 11735 (38 FR 21243) as amended by E.O. 12418 (48 FR 20891); E.O. 12316 (46 FR 42237); 49 CFR 1.45(b) and 1.46(l), (m), and (gg).

§ 153.105 [Amended]

2. In § 153.105, Delegations, remove and reserve paragraphs (a)(6) and (b)(2).

Dated: November 25, 1991.

M.O. Murtagh,

Captain, U.S. Coast Guard, Acting Commander, National Pollution Funds Center.

[FR Doc. 91–28785 Filed 11–29–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

36 CFR Part 327

Shoreline Management Fees at Civil Works Projects

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: On October 1, 1991, the Corps of Engineers published a Deferral of Final Rule Effective Date in the Federal Register (56 FR 49706). This document addresses the administrative requirements deferring the final effective dates and corrects action contained within the deferral. The administrative charges contained within 36 CFR 327.30, Shoreline Management at Civil Works Projects, published in the Code of Federal Regulations, July 1, 1991 edition will remain in effect. However, 36 CFR 327.31 is amended to meet current requirements and will be revised on an as needed basis.

EFFECTIVE DATE: December 2, 1991.

ADDRESSES: HQUSACE, CECW–ON, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell E. Lewis (202) 272–0247.

SUPPLEMENTARY INFORMATION: The purpose and effect of this revision is to incorporate changes deemed necessary to meet new and changing conditions. The revision is consistent with the regulation and strengthens the regulation for more effective management of Corps of Engineers water resource development projects. This revision is also intended to make the regulation consistent with Congressional requirements.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Army has determined that this document is not a major rule under E.O. 12291 and certifies that this document does not have a significant effect on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1990, 44 U.S.C. chapter 35, and its implementing regulations 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 36 CFR Part 327

Penalties, Recreation, and recreation areas, Water resources For the reasons set forth above, 36 CFR part 327 is amended as follows:

PART 327—[AMENDED]

The authority citation for part 327 continues to read as follows:

Authority: The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1)

Section 327.31 Shoreline Management Fee Schedule, is revised to read as follows:

§ 327.31 Shoreline management fee schedule.

A charge will be made for Shoreline Use Permits to help defray expenses associated with issuance and administration of the permits. As permits become eligible for removal after July 1, 1976, a charge of $10 for each new permit and a $5 annual fee for inspection of floating facilities will be made. There will be no annual inspection fee for permits for vegetative modification on Shoreline areas. In all cases the total administrative charge will be collected initially at the time of permit issuance rather than on a piecemeal annual basis.

Kenneth L. Denton,

Army Liaison Officer With the Federal Register.

[FR Doc. 91–28772 Filed 11–29–91; 8:45 am]

BILLING CODE 3710–08–M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 90-23]

Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: Proposed part 514 implements the Federal Maritime Commission's Automated Tariff Filing and Information System ("ATFI"). This action publishes a final rule establishing user charges on the user manual, user registration, and certification of batch filing capability. Additionally, § 514.91, containing an OMB control number, and exhibit 1 to part 514 (Registration Form) are finalized. The supplementary information also corrects a statement in the Commission's Fourth Report.

DATES: *Effective Date:* Part 514 is effective December 9, 1991.

User Registration Date: User registration begins January 13, 1992.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5800.

SUPPLEMENTARY INFORMATION: In order to implement its Automated Tariff Filing and Information System ("ATFI"), the Federal Maritime Commission ("Commission" or "FMC") has issued in this proceeding a series of reports which have resolved policy issues and, on September 9, 1991, a proposed new part 514 of 46 CFR (56 FR 46044). The public comment period for this proposed rule was originally scheduled to end on October 31, 1991. However, the Commission extended the deadline for public comments to December 16, 1991, except for proposed § 514.21, User charges, for which the comment period ended on November 8, 1991. See Federal Register notice of October 30, 1991, at 56 FR 55860.

The reason for the shorter comment and notice-of-effectiveness periods for user charges is that, in December 1991 or January 1992, ATFI implementation will probably involve certain pre-start-up activities, for which user charges must have been established. While the Commission does not require these activities to occur at the earliest possible date or window, we have reason to believe that there will be firms that are now ready for such phases as certification and would be disadvantaged if they had to wait for firms which are not ready. Moreover, the more gradual the phase in, the better for all concerned. Accordingly, good cause is found for effectiveness on less than the normal thirty days notice for the finalization herein of § 514.21 (b), (c) and (e), which establish charges for the user manual, user registration, and certification of batch filing capability, respectively. For the same reasons, exhibit 1 to part 514, the official registration form, needs to be effective in the near future. Since the requests for services covered by the finalized sections would be voluntary within thirty days after publication in the Federal Register, no one appears to be prejudiced by the short period of effectiveness.

Correction to Fourth Report

One of the reports issued by the Commission in this proceeding was the October 25, 1991, Fourth Report, notice of the availability of which was published in the Federal Register on October 30, 1991 (56 FR 55860). By letter of November 5, 1991, the Pacific Coast Tariff Bureau ("PCTB"), a commenter in this proceeding, has asked that the Commission issue a clarification to its statement on page 14 of the Fourth Report which is said to have misinterpreted PCTB's comments. PCTB has asked the Commission to substitute the word "impractical" for the word "impossible," so that the statement more accurately reads:

> PCTB indicates that the conversion would be impractical at the same time as implementation and that implementation of the Harmonized System for ATFI commodities in essential terms of service contracts should await further developments.

The Commission adopts the recommended clarification. The balance of the Fourth Report remains unchanged.

User Charges: Analysis of Comments

Except as further provided below, the justification for the user fees established by this rule includes the reasons set forth in the section-by-section analysis of the September 9, 1991, notice of proposed rulemaking. References to sections in the Proposed Rule which are not yet finalized herein remain in the finalized sections of this rule for the user's convenience.

Comments to the user charge section were filed on November 5, 1991, by PCTB relative to the user manual in § 514.21(b). PCTB is an ocean tariff filer and developer of a data base publishing software, and has been a commenter in this proceeding. The substance of PCTB's comments is addressed below.

Comments have also been received from the American Association of Law Libraries, which requests, *inter alia*, that the proposed remote retrieval fee in § 514.21(g) be reduced and that the Commission ensure that tariff data is furnished free of charge to Federal Depository Libraries. The Commission does not believe that ocean freight tariffs of steamship operators which may be filed with the Commission (either in paper or electronic form) are "publications" within the meaning of title 44 of the United States Code. This tariff data is not primarily Government information which vitally affects the general public, but is more akin to a record in the files of the Government which is available through Freedom-of-Information-Act procedures. The data is not created at taxpayer expense, but is carrier data of business interest to only shippers and other carriers. The law and policy considerations which demand more widespread dissemination of government information do not appear to be applicable to ATFI data. See also other Commission reports on ATFI previously appearing in the Federal Register of December 22, 1987 (52 FR 48504), June 13, 1988 (53 FR 22048) and December 29, 1988 (53 FR 52785). Nevertheless, we are not at this time finalizing paragraph (g) of § 514.21 governing user charges for remote retrieval. We will continue to analyze the request made by the Association and address it with the other comments due on December 16, 1991.

No other comments were filed.

Section 514.21(b)—User Manual

The October 1991 Fourth Report schedules full ATFI implementation for April 1992. Until that time, the Prototype Phase will continue, wherein industry filers are learning and practicing electronic filing using the user manual. A revised draft of the user manual is now being developed for issuance in the near future. The industry has indicated that it anxiously awaits all such instructional materials and it will be helpful if the next revision is issued in December 1991.

As suggested by PCTB, the Commission will make available the user manual on diskette, in WordPerfect 5.0 format instead of the older WordPerfect 4.2 version. This should be much more compatible with equipment now being used in the private sector. When available, the next revision of the user manual on diskette (WP 5.0) will automatically be sent to subscribers who already paid for a second version in the previously-offered promotional package price of $20 for two versions. However, for the future, the proposed rule's charge of $15 for diskette(s) containing one revision of the user manual has not been objected to and

appears to be reasonable. It is, therefore, carried forward to the final rule.

PCTB also urges the Commission to make the user manual available in printed, paper format, with several package options, e.g., each Guide separately, or the entire manual (all five Guides of approximately 800 pages). The voluminous nature of the manual was the factor that influenced the Commission to make it available only on diskette in the first place.

The final rule, however, at § 514.21(b)(2) makes the user manual available in paper form, with options for purchase of the entire manual, or for purchase of each of three packages, i.e., the Fundamentals Guide and System Handbook together; the Tariff Retrieval Guide; and, the (Interactive) Filer's Guide. The prices contained in the final rule are based on the Commission's general user-fee regulations at subpart E of part 503 of title 46 CFR. Thus, the basic per-page price is $.05, to which are added factors for handling, binding, postage, etc.

The ATFI Batch Filing Guide, one of the five Guides in the user manual, is intended to be incorporated by reference in the final rule and is, therefore, free of charge.

The final rule also provides a procedure whereby the user manual may be paid for and ordered. This procedure may be used as soon as the rule becomes effective, however, there may be some delay in finalizing the user manual and filling the order.

Section 514.21(c)—User Registration

For reasons similar to those described above, it will be advantageous for firms intending to use ATFI (either filers or retrievers, or both) to conclude the registration formalities as quickly as possible. This will make the entire process more orderly and avoid last-minute rushes. To implement the process of user registration, this rule will finalize not only the proposed user charges for registration, but also the related registration form (Exhibit 1 to Part 514). While the registration form will be used, it could still change in minor respects, possibly by the time of the final rule. ATFI user registration will begin on January 13, 1992.

Section 514.21(e)—Certification of Batch Filing Capability

This partial rule and the balance of the final rule in this proceeding will use the more accurate term of "Certification of Batch Filing *Capability*," rather than "*software*," since more than just software is at stake and certification will involve much more than running an applicant's diskette or tape through the ATFI system.

The Fourth Report schedules the first certification session to begin on December 9, 1991 (for reservations by December 2). While a second session is scheduled to begin on January 13, 1992, and applicants may ask for certification at any time in the future (with notice), the Commission anticipates that a few firms will be ready for certification as early as possible. The user charge to cover reasonable costs of such certification is hereby finalized to ensure that the first certification session can begin on time and that no firm is treated any differently from another.

While the final rule's user charge is the same as in the proposed rule, the final rule's certification procedures are somewhat delineated to provide reasonable parameters for the services to be provided, i.e., a certification submission may contain up to five (5) transaction sets.

Rulemaking Notices

Although the Commission is not subject to the requirements of Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or of the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As indicated in the notice of proposed rulemaking, it is estimated that the initial investment in basic equipment needed for the transition from paper to electronic filing and retrieval of tariff data will cost no more than $1,000, for a suitable off-the-shelf terminal, modem and printer, which many offices in the private sector already use for other business purposes. To this will be added reasonable user charges for services provided by the Commission. The essential electronic filing and retrieval functions that can be performed with this equipment are comparable to basic, current paper tasks of formatting a simple tariff and obtaining tariff material from the Commission's Tariff Control Center. Those shipping industry firms that desire or require a greater volume of data, with or without more sophisticated services tailored to their needs, will be voluntarily making a larger investment proportional to these needs. This is similar to what these firms do today under the paper system, and, for this purpose, many such firms will continue to utilize the value-added services of private-sector, third-party vendors, with which ATFI has been designed not to compete. After the start-up investment, it is anticipated that annual costs of electronic tariff filing and retrieval will be less than those for filing and retrieval of the same volume of tariff data in paper under the current system. Accordingly, the Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small government jurisdictions.

OMB Control Number

The collection of information requirements contained in this proposed rule were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Initially, during the first year of full operation, the public reporting burden for this collection of information is estimated to be approximately 19 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. For subsequent years, after tariffs have been converted to the electronic system and filers are more familiar with ATFI, the burden will be substantially reduced, probably below what it is currently under the paper system.

While invited in the notice of proposed rulemaking to comment on these estimates, no comments have been received from the public and OMB has not conveyed any particular concerns. On October 30, 1991, OMB approved for use through September 30, 1994, Part 514 and Exhibit 1 thereto (Form FMC 63). See § 514.91.

The public is still invited to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention:

Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

List of Subjects in 46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Incorporation by reference, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and record keeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

By the Commission.

Joseph C. Polking,
Secretary.

For the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and section 2(b) of Public Law 101–92, the Federal Maritime Commission title 46, chapter IV, Code of Federal Regulations, is amended as follows:

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS, OCEAN FREIGHT FORWARDERS, MARINE TERMINAL OPERATIONS, PASSENGER VESSELS, TARIFFS AND SERVICE CONTRACTS

1. The title of subchapter B is revised to read as set forth above.

2. A new part 514 is added to subchapter B to read as follows:

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

Sec.

514.1—514.6 [Reserved]

Subpart B—Service Contracts

514.7 [Reserved]

Subpart C—Form, Content and Use of Tariff Data

514.8—514.20 [Reserved]
514.21 User charges.
514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Exhibit 1 to Part 514—ATFI User Registration Form

Authority: 5 U.S.C 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and sec. 2(b) of Pub.L. 101–92, 103 Stat. 601.

Subpart A—General Provisions

§§ 514.1—514.6 [Reserved]

Subpart B—Service Contracts

§ 514.7 [Reserved]

Subpart C—Form, Content and Use of Tariff Data

§§ 514.8—514.20 [Reserved]

§ 514.21 User charges.

In accordance with 5 U.S.C. 552 and 31 U.S.C. 9701, the following user charges are established for services under this part:

(a) [Reserved]

(b) *User manual* (of ATFI "Guides" — § 514.8(b)).

(1) *In diskette form:* $15 for diskette(s) containing all user guides in WordPerfect 5.0 format.

(2) *Printed, in paper form* (Batch Filing Guide is free of charge and is furnished separately):

(i) *Package "A"*: Fundamentals Guide and System Handbook (125 pages) are made available jointly and are a prerequisite for use of either of the packages in paragraphs (b)(2)(ii) or (b)(2)(iii): $18.00.

(ii) *Package "B"*: Tariff Retrieval Guide: $15.00.

(iii) *Package "C"*: (Interactive) Filing Guide: $27.00.

(iv) *Package "D"*: All Guides listed in paragraphs (b)(2)(i) through (b)(2)(iii): $55.00.

(3) *Ordering manuals.* Requests for user manual package(s) should be in writing and addressed to "BTCL Manual," Federal Maritime Commission, 1100 L Street, NW, Washington, DC 20573. A check for the appropriate amount should be made to the "Federal Maritime Commission."

(4) *Updates.* Updates to the user manual in any format will not be furnished automatically and are not included in the user charge. The Commission will publicize notice of upgrades when they occur.

(c) *Registration for user* (filer and/or retriever) ID and password (See exhibit 1 to this part and §§ 514.8(f) and 514.20): $100 for initial registration for firm and one individual; $25 for additions and minor changes.

(d) [Reserved]

(e) *Certification of batch filing capability* (§ 514.8(l))

(1) *User charge:* $200 per certification submission.

(2) *Each certification submission:*

(i) Shall be made for only one scheduled certification period; and,

(ii) May contain up to five (5) transaction sets.

§ 514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. The Commission intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

Part/Section	Current OMB Control No.
Part 514 and Form FMC-63 [Exhibit 1].	3072–0055

BILLING CODE 6730–01–F

OMB 3072-0055
Approved for use through 09/30/94

Exhibit 1 to Part 514 - ATFI User Registration Form
ADMINISTRATIVELY RESTRICTED
Federal Maritime Commission

Check one: ☐ Initial Registration (Firm) (Incl. 1 individual) ☐ Additional Individual User or Change

[Filing fee] [$100 - Incl. 1 individual] [$25]

Check: ☐ Retrieval *and/or* ☐ Filing

Use reverse side, additional sheets and/or form(s) as necessary. One form must be submitted for each individual. Obtain blank forms from BTCL [(202) 523-5796] and send completed form(s) in triplicate, with one copy of necessary documentation, and check for proper fee made payable to "Federal Maritime Commission," to:

ATFI Registration (BTCL)
Federal Maritime Commission
1100 L Street, N.W.
Washington, DC 20573

1. _____
[Contact Person (name and telephone number)]

_____
[Signature of authorized official and date]

A. FIRM

Org. Type: Other: _____ or
(Underline): Conf; Ocean; NVO; Domestic; Terminal; Agent/Pub.

FMC Org. # (if known): _____

_____
[Exact Org Name - as per corporate charter, etc.]

_____

Address: _____
[Home office]

_____

_____

Phone/FAX ( )_____/_____

B. INDIVIDUAL

_____
[Name and title]

FMC Org. # (if known): _____

_____
[Exact Org Name - as per corporate charter, etc.]

_____

Address: _____

_____

_____

Phone/FAX ( )_____/_____

ADDITIONAL INFORMATION REQUIRED FROM/PROVIDED BY FILERS

2. _____
[Name of person responsible for Organization Record Maintenance, if different from "B"]

3. Comments: _____

_____

_____

_____

4. Attached: ☐ Necessary documentation [e.g., delegation(s) of authority. See 46 CFR 514.4(d).] ☐ Additional information.

[FOR ADMINISTRATIVE USE ONLY] *Initials (date):* _____

Tariff Owner is / is not a controlled carrier. *Anti-rebate certification is / is not current.*

ATFI Function	*Logon USERID*	*Initial Password(s)*
Org. Record Maintenance:	_____	_____
Filing:	_____	_____
Retrieval:	_____	_____

Form FMC-63 (8/91)

Org Number: _____

[FR Doc. 91-28723 Filed 11-29-91; 8:45 am]
BILLING CODE 6730-01-C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-246; RM-7665]

Radio Broadcasting Services; Bay Minette, AL

AGENCY: Federal Communications Commission

ACTION: Final Rule.

SUMMARY: This document substitutes Channel 293C3 for Channel 293A at Bay Minette, Alabama, and modifies the permit for Station WFMI(FM) to specify operation on the higher powered channel, as requested by Baldwin Broadcasting Company. See 56 FR 41813, August 23, 1991. Coordinates for Channel 293C3 at Bay Minette are 30–42–30 and 87–49–35. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–246, adopted November 8, 1991, and released November 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 293A and adding Channel 293C3 at Bay Minette.

Federal Communications Commission.

Michael C. Rogers,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–28848 Filed 11–29–91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-242; RM-7329]

Radio Broadcasting Services; Bay City, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sandlin Broadcasting Company, Inc., licensee of Station KMKS–FM, Channel 273C2, Bay City, Texas, substitutes Channel 273C1 for Channel 273C2 at Bay City, and modifies Station KMKS–FM's license to specify operation on the higher powered channel. See 56 FR 42017, August 26, 1991. Channel 273C1 can be allotted to Bay City in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.0 kilometers (29.2 miles) west to avoid short-spacing conflicts with Station KMJQ–FM, Channel 271C, Houston, Texas, and the pending applications for the vacant but applied for Channel 273C2 at Beaumont, Texas. The coordinates for Channel 273C1 are North Latitude 29–06–00 and West Longitude 96–26–00. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–242, adopted November 7, 1991, and released November 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 273C2 and adding Channel 273C1 at Bay City.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–28847 Filed 11–29–91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-222; RM-7204]

Radio Broadcasting Services; Crane, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Albert L. Crain, permittee of Station KAIR–FM, Channel 265A, Crane, Texas, substitutes Channel 267C1 for Channel 265A at Crane, and modifies Station KAIR–FM's construction permit to specify operation on the higher powered channel. See 56 FR 40591, August 15, 1991. Channel 267C1 can be allotted to Crane in compliance with the Commission's minimum distance requirements at the site specified in Station KAIR–FM's construction permit. The coordinates for Channel 267C1 at Crane are 31–21–56 and 102–20–22. Since Crane is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket 91–222, adopted November 8, 1991, and released November 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 173

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 265A and adding Channel 267C1 at Crane.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-28850 Filed 11-29-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-80; RM-7672]

Radio Broadcasting Services; Derby Center, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Steele Communications Company, Inc., licensee of Station WMOO-FM, Channel 221A, Derby Center, Vermont, substitutes Channel 221C3 for Channel 221A at Derby Center, and modifies Station WMOO-FM's license to specify operation on the higher powered channel. See 56 FR 14226, April 8, 1991. Channel 221C3 can be allotted to Derby Center in compliance with the Commission's Minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) northeast to accommodate petitioner's desire to use its present licensed transmitter site. The coordinates for Channel 221C3 are 44-58-23 and 72-04-30. We have obtained Canadian approval for this channel as a specially negotiated short-spaced allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-80, adopted November 7, 1991, and released November 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 221A and adding Channel 221C3 at Derby Center.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-28845 Filed 11-29-91;8:45am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-245; RM-7775]

Radio Broadcasting Services; Prairie Grove, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 235C2 for Channel 235A at Praire Grove, Arkansas, and modifies the permit for Station KDAB(FM) to specify operation on the higher powered channel, as requested by Vinewood Communications, a Limited Partnership. *See* 56 FR 41814, August 23, 1991. Coordinates for Channel 235C2 at Prairie Grove are 35-51-00 and 94-23-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 10, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-245, adopted November 8, 1991, and released November 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 235A and adding Channel 235C2 at Prairie Grove.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-28849 Filed 11-29-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSCG-3; Notice No. 8]

RIN 2130-AA45

Grade Crossing Signal System Safety; Revised Effective Date

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of revised effective date.

SUMMARY: FRA is issuing a notice of the revised effective date of the final rule on grade crossing signal system safety published on July 23, 1991 (56 FR 33722). The new effective date is January 1, 1992. Because the effective date has been extended, we are also extending until July 1, 1992 the deadline for submission of FRA Form 6180.87, "Grade Crossing Signal System Information."

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Acting Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0628).

SUPPLEMENTARY INFORMATION: On July 23, 1991, FRA published in the **Federal Register** (56 FR 33722) a final rule regarding Grade Crossing Signal System Safety. FRA stated that—

> [I]n accordance with the Paperwork Reduction Act of 1980, the recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. This rule will become effective on October 1, 1991 if the recordkeeping and reporting requirements have been approved by OMB; if

not, a notice will be published in the **Federal Register**.

The Office of Management and Budget has approved all recordkeeping and reporting requirements contained in the final rule.

In order to provide sufficient lead time to enable the industry to become familiar with FRA Form 6180.83, "Highway-Rail Grade Crossing Warning System Failure Report," a copy of which is published as Appendix A to this notice, we are extending the effective date of the final rule to January 1, 1992.

In addition to extending the effective date of the rule, we are also extending the date by which FRA Form 6180.87, "Grade Crossing Signal System Information," must be filed with FRA. A copy of Form 6180.87 is published as Appendix B to this notice. Section 234.13 originally required that the forms be submitted to FRA by April 1, 1992. That date is being extended to July 1, 1992 to enable railroads to become familiar with, and to gather information for, the new form.

Issued in Washington, DC on November 22, 1991.

Perry A. Rivkind,

Deputy Administrator.

BILLING CODE 4910-06-M

Appendix A

HIGHWAY-RAIL GRADE CROSSING WARNING SYSTEM FAILURE REPORT

OMB Approval No.: 2130-0534

Each railroad shall submit a report of each failure of a highway-rail grade crossing warning device. Each activation failure shall be reported to FRA within 15 days after the failure occurs. Each false activation shall be reported within 30 days after the expiration of the month in which the failure occurred. Copies of this form may be obtained from the Federal Railroad Administration, Office of Safety, 400 7th Street, S.W., Washington, D.C. 20590.

A false activation means the activation of a highway-rail grade crossing warning system caused by a condition that requires correction or repair of the grade crossing warning system. (This failure indicates to the motorist that it is not safe to cross the railroad tracks when, in fact, it is safe to do so.)

An activation failure means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.)

A train means one or more locomotives, with or without cars.

Mail To:	Name of Railroad	RR Code
Federal Railroad Administration Office of Safety 400 7th Street, S.W. Washington, D.C. 20590		
	Region/Division (Optional)	
	Reporting Employee (Signature/Title)	Date Signed
	DOT/AAR Crossing Number	

CLASSIFICATION

Current Active Warning Device (Check all that apply)	Type of Failure (check one) (State nature and cause below)
1 ☐ Gates 2 ☐ Cantilevered Flashing Lights 3 ☐ Flashing Lights 4 ☐ Wig Wags 5 ☐ Hwy Traffic Signals 6 ☐ Bell 7 ☐ Other (Describe)_____	1 ☐ Activation Failure False Activation 2 ☐ Continuous 3 ☐ Intermittent

LOCATION

Street/Road	County	City	State	RR Milepost

CORRECTIVE ACTION

Failure Reported/Discovered		Repairs Completed	
Date (mm/dd/yy)	Time ☐ AM ☐ PM	Date (mm/dd/yy)	Time ☐ AM ☐ PM

Nature and Cause of failure and corrective action taken: (Note temperature and weather conditions, if appropriate.)

FRA F 6180.83 (10/91)

Appendix B

GRADE CROSSING SIGNAL SYSTEM INFORMATION

Name of Railroad	RR Code	Page _____ of _____

DOT/AAR Crossing Number	Railroad Division (Optional)	Railroad Subdivision (Optional)	Railroad Branch (Optional)	
Milepost or Spur Designation	Street Name or Highway Number	County	State	Total No. of Tracks

Current Active Warning Devices (check all that apply)

1 ☐ Gates 2 ☐ Cantilever Flashing Lights 3 ☐ Flashing Lights 4 ☐ WigWags

5 ☐ Hwy. Traffic Signals 6 ☐ Bell 7 ☐ Other (Describe) _____

Train Speeds (Optional)

Maximum Time Table Speed: _____

Typical Speed Range Over Crossing:
From _____ to _____

For each track approach (i.e., each track has two approaches), complete the following:

Track Identifications (Names and/or Numbers)	Number of Tracks with Identical Approach Configuration	Is there an Island Circuit? ☐ Yes ☐ No

APPROACH A

Control Circuit Code (Codes listed on back)	If Code "H" or "J" was used describe:
Design Length from Outer Limit to Crossing, in Feet (Optional)	Service Date (mm/dd/yy)

APPROACH B: If Approach B information is identical to Approach A, check here _____ and skip (leave blank) remainder of Approach B

If Approach B information is different than Approach A, circle time table direction of Approach B and fill in Approach B information

Northbound Southbound Eastbound Westbound

Control Circuit Code (Codes listed on back)	If Code "H" or "J" was used, describe:
Design Length from Outer Limit to Crossing, in Feet (Optional)	Service Date (mm/dd/yy)

Track Identifications (Names and/or Numbers)	Number of Tracks with Identical Approach Configuration	Is there an Island Circuit? ☐ Yes ☐ No

APPROACH A

Control Circuit Code (Codes listed on back)	If Code "H" or "J" was used, describe:
Design Length from Outer Limit to Crossing, in Feet (Optional)	Service Date (mm/dd/yy)

APPROACH B: If Approach B information is identical to Approach A, check here _____ and skip (leave blank) remainder of Approach B

If Approach B information is different than Approach A, circle time table direction of Approach B and fill in Approach B information

Northbound Southbound Eastbound Westbound

Control Circuit Code (Codes listed on back)	If Code "H" or "J" was used describe
Design Length from Outer Limit to Crossing, in Feet (Optional)	Service Date (mm/dd/yy)

FRA F 6180.87 (11/91) OMB Approval No 2130 0534

BILLING CODE 4910-06-C

Track Circuit Codes for Predominant Track Approach

Code

A. Conventional Track Circuit
B. Conventional Track Circuit with Timing Sections
C. Audio Frequency Overlay Track Circuit (AFO)
D. AFO with Timing Sections
E. Motion Sensitive Track Circuit
F. Constant Warning Time Track Circuit
G. Manual Operation, e.g., by key
H. None, explain (e.g., operating rules proscribe approach in this direction on this track; train moves made by special instructions, etc.)
J. Other, describe (e.g., wheel counters, presence detectors, transducers, etc.)

Definitions

Each Approach

—Length in Feet
Length of track circuit, from outer limit to crossing, in feet. (Provision is optional.)
—Service Date
Date the present train detection circuit configuration went into service (mm/dd/yy if available, or, if estimated, enter only mm/yy or yy).
Upgrade of major component is considered to be a configuration change rather than a replacement. The date of such upgrade should be indicated as "Service Date."

[FR Doc. 91-28724 Filed 11-29-91; 8:45 am]
BILLING CODE 4910-06-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Plants, Blennosperma Bakeri (Sonoma Sunshine or Baker's Stickyseed), Lasthenia Burkei (Burke's Goldfields), and Limnanthes Vinculans (Sebastopol Meadowfoam)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status for three plants: *Blennosperma bakeri* (Sonoma sunshine or Baker's stickyseed), *Lasthenia burkei* (Burke's goldfields), and *Limnanthes vinculans* (Sebastopol meadowfoam). These plant species occur in vernal pools and shallow streams or swales in the Cotati Valley of Sonoma County, California. In addition, *Blennosperma bakeri* occurs in the Sonoma Valley, which is southeast and adjacent to the Cotati Valley. *Lasthenia burkei* is also known from Lake County and historically from Mendocino County. These species are in danger of extinction principally as the result of urban development, conversion of native habitats to agriculture ("agland conversion"), competition from alien grasses, overgrazing by livestock, and stochastic (random) extinction by virtue of the small isolated nature of many of the remaining populations. This rule implements the protection and recovery provisions afforded by the Act for these plants.

EFFECTIVE DATE: January 2, 1992.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E-1803, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Jim A. Bartel, at the above address (916/978-4866 of FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Limnanthes vinculans, *Blennosperma bakeri*, and *Lasthenia burkei* are annual plants that occur in vernal pools and intermittent swales (Ornduff 1977a, 1977b; Brown and Jain 1977; Wainright 1984; California Natural Diversity Data Base (CNDDB) 1989; Waaland 1989; Patterson 1990). Vernal pools form in regions with Mediterranean climates where shallow depressions fill with water during fall and winter rains. Downward percolation is prevented by the presence of an impervious subsurface layer, such as a clay bed, hardpan, or volcanic stratum (Holland 1976). Plant species occurring in vernal pools are uniquely adapted to this "amphibious ecosystem," seasonal alteration of very wet and very dry conditions (Zedler 1987, Stone 1990). Upland plants cannot tolerate the temporarily saturated to flooded soils of winter and spring, while the seasonal drying makes the pool basins unsuitable for marsh or aquatic species requiring a permanent source of water. Plants adapted to the vernal pool regime typically germinate when the ground is inundated and flower as the pool dries.

Vernal pools can be found in relative abundance in two regions of California, the Great Central Valley (Hoover 1937) and the coastal terraces of San Diego County and neighboring northwestern Baja California, Mexico (Zedler 1987). Other vernal pool habitat exists "in the valleys, foothills, and lower montane environments of the Coast and Peninsular Ranges, the Sierra Nevada, the Modoc Plateau, and southwestern Oregon (Stone 1990)." Through seasonal wetlands similar to vernal pools occur in other parts of the world, California's vernal pools are well known because of their unique flora (Stone 1990).

Despite the widespread nature of vernal pools in California, the distribution of these seasonal wetlands is highly discontinuous and fragmented due to differences in climate, substrate, and topography. Moreover, vernal pool plants are frequently narrow endemics because of a "variety of historical, genetic, ecological, and anthropogenic factors (Stone 1990)." This narrow endemism coupled primarily with urbanization and ag-land conversion threatens many of the vernal pool plants in California with extinction.

Blennosperma bakeri, *Lasthenia burkei*, and *Limnanthes vinculans* primarily occur in the Cotati Valley of Sonoma County, California (Waaland 1989), where these species are associated with other common to rare vernal pool plants (e.g., *Downingia concolor*, *D. humilis*, *Navarraetia plieantha*, *Lasthenia glaberrima*, *Perideridia gairdneri* ssp. *gairdneri*, *Pleuropogon davyi*, *P. californicus*, and *Ranunculus lobbii*) (Patterson 1990). In addition, *B. bakeri* occurs in the Sonoma Valley, which is southeast and adjacent to the Cotati Valley. *Lastlenia burkei* is also known from Lake County and historically from Mendocino County. The portion of the Cotati Valley harboring these plants is approximately 16 miles (26 kilometers) long and 5 to 11 miles (8 to 18 kilometers) wide. The valley encompasses approximately 90,000 acres (36,423 hectares) of generally flat, hummocky, rolling terrain. The valley extends north to near Healdsburg and south to the City of Cotati. The range of these plants within the Cotati Valley is bounded on the west by the Laguna de Santa Rosa (a broad tributary of the Russian River) and on the east by low elevation ranges (e.g., Sonoma Mountains). This area is locally known as the Santa Rosa plains. Urbanization, ag-land conversion, and over-grazing by livestock have altered about 90 percent of the original native habitats within the Cotati Valley.

In the Cotati and Sonoma Valleys, vernal pools form on nearly level to slightly sloping loams to clay loams to clays where a clay layer or hardpan approximately 2 to 3 feet (0.6 to 0.9

meters) below the surface prevents downward percolation (Miller 1972). The Huichica-Wright-Zamora association dominates the soils in the northern portions of these valleys, while the Clear Lake-Reyes and Haire-Diablo associations prevail in the southern portions of the valleys. In contrast, a volcanic layer prevents downward percolation and permits the formation of vernal pools at Manning Flat in Lake County.

Most of the vernal pools or swales of the Cotati Valley are privately owned. One site, the Todd Road Reserve, is owned by the California Department of Fish and Game (Fish and Game) and is managed for the protection of two of the three species, *Blennosperma bakeri* and *Limnanthes vinculans*. Three sites are probably within rights-of-way owned by the California Department of Transportation. Another site is owned by the Sixth Army and managed by the Federal Emergency Management Agency. This small federally-owned parcel, which is adjacent to the Santa Rosa Air Center, contains habitat for *L. vinculans*. Principally as a result of mitigation for urban development, five sites are owned and/or managed by county or city agencies (Patterson 1990). All Lake County sites are privately-owned (Patterson 1990). The precise location of the Mendocino County occurrence is unknown, but it is likely extirpated given the age of the specimen and development in the Ukiah area since 1886.

Blennosperma bakeri (Sonoma sunshine or Baker's stickyseed) was first collected by Milo Baker on April 2, 1946, and described by Charles Heiser in 1947 (Heiser 1947). *Blennosperma bakeri*, an annual herb of the sunflower family (Asteraceae), reaches 12 inches (30.5 centimeters) in height (Ornduff 1977b). From March through April, the plants produce yellow daisy-like flowers (Patterson 1990). The yellow disk flowers have white pollen and stigmas. The sterile ray flowers, which are yellow or sometimes white, bear red stigmas. The alternate leaves are narrow, with one to three lobes. The stems and leaves are mostly glabrous (hairless). The shape and presence or number of lobes on the lower leaves and the color of the stigmas of the ray flowers separate *B. bakeri* from another species, *B. nanum*. Based on a compilation of largely incongruous reports (Waaland 1989, Patterson 1990), personal communications (Betty Lovell Guggolz, Milo Baker California Native Plant Society, July 25 and August 2, 1990; Catherine Ashley, botany graduate student, California State University, Sonoma, and Marco Waaland, Colden Bear Consultants, Santa Rosa, California, May 4, 1990), and other data, the species evidently has been documented from no more than 35 sites in the Cotati Valley and 7 sites from the Sonoma Valley. From north to south in the Cotati Valley, *B. bakeri* ranges from near the community of Fulton to Scenic Avenue, which is between the Cities of Santa Rosa and Cotati (CNDDB 1989, Waaland 1989, Patterson 1990). In the Sonoma Valley, the species extends or extended from near the community of Glen Ellen to near the junction of State Routes 116 and 121.

Lasthenia burkei (Burke's goldfields) originally was described as *Baeria burkei* by E.L. Greene in 1887 from a specimen collected by J.H. Burke in 1886 from near Ukiah in Mendocino County, California (Greene 1887). Later Greene (1894) placed all *Baeria* in the genus *Lasthenia*, including *L. burkei*. Though Munz (1959) did not recognize *L. burkei* as a distinct taxon, Robert Ornduff (1966) treated the plant as a species in his biosystematic study of *Lasthenia*. In a subsequent paper, Ornduff (1969a) discussed the origin and relationships of *L. burkei*. The species, a small branched annual herb of the sunflower family, blooms from April through June. Both the ray and disk flowers of *L. burkei* are bright yellow, while the pappus of the species usually consists of one long bristle and several short bristles. In similar members of the genus, the pappus usually is absent or consists of two or more long bristles. Based on the same compilation data used to estimate the number of historical *B. bakeri* sites, *L. burkei* evidently has been recorded from no more than 39 sites in the Cotati Valley, 2 sites in Lake County, and 1 site in Mendocino County. From north to south in the Cotati Valley, *L. burkei* ranges from north of the community of Windsor to east of the city of Sebastopol (CNDDB 1989, Waaland 1989, Patterson 1990). This species also occurs at Manning Flat and Steurmer Winery in Lake County (Patterson 1990). The precise location of the Mendocino County occurrence is unknown, but it is likely extirpated given the year of collection (i.e., 1886) and general development in the Ukiah area since the turn of the century.

Limnanthes vinculans (Sebastopol meadowfoam) apparently was first collected by Mrs. A.E. Alexander from "between Bodega and Petaluma" on April 23, 1946. Ornduff (1969b) described the species from a collection made along Todd Road in Sonoma County by Peter Rubtzoff. *Limnanthes vinculans* is a small (2–12 inches or 5–30.5 centimeters) multi-stemmed annual herb of the false mermaid family (Limnanthaceae). The first foliage leaves of seedlings are narrow and undivided. Mature plants bear long-petioled pinnately divided leaves with three to five undivided leaflets. The shape of the mature leaves separates *L. vinculans* from other members of the genus. The white flowers are borne singly at the ends of stems. *Limnanthes vinculans* has not been recorded outside of the southwestern portion of the Cotati Valley, where it reportedly has been documented from 29 locations (Guggolz, pers. comm., July 25, 1990). The species ranges from near the community of Graton, east to Santa Rosa, southeast to Scenic Avenue, and southwest to the community of Cunningham; largely surrounding the northern and western perimeter of the City of Sebastopol (Wainright 1984, Waaland 1989, Patterson 1990).

Federal government actions on these three plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In the report, *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* were included as endangered species. On July 1, 1975 (40 FR 27823), the Service published a notice in the **Federal Register** of its acceptance of the report as a petition within the context of section 4(c)(2) (now Section 4(b)(3)) of the Act and of the Service's intention thereby to review the status of the plant taxa named within. *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* were included in that notice. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* were included in the proposed rule. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication, which also determined 13 plant species to be endangered or threatened (43 FR 17909).

On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had expired due to a procedural requirement of the 1978 amendments. The withdrawal notice included *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans*. On December 15, 1980, the Service published a revised notice of review of native plants in the **Federal Register** (45 FR 82480); *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* were included as category 1 candidates (species for which data in the Service's possession are sufficient to support a proposal for listing). On November 28, 1983, the Service published in the **Federal Register** (48 FR 53640) a supplement to the 1980 notice of review. This supplement treated *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* as category 2 candidates (species for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* were included in category 2 in the September 27, 1985, revised notice of review for plants (50 FR 39526). Subsequently, additional survey information and occurrence data was provided on these three species by Marco Waaland (1989) and CNDDB (1989). In addition, individuals and staff from several agencies provided information on pending projects that would adversely affect these plants.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans*, because the 1975 Smithsonian report was accepted as a petition. In October 1983, 1984, 1985, 1986, 1987, 1988, and 1989, the Service found that the petitioned listing of *Blennosperma bakeri*, *Lasthenic burkei*, and *Limnanthes vinculans* was warranted, but that the listing of these species was precluded due to other higher priority listing actions.

On June 6, 1990 (55 FR 23109), the Service published a proposal to list *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* as endangered species. This proposal was based, in large part, on the aforementioned additional survey information and occurrence data, and information on pending projects that would adversely affect the three plants. The Service now determines *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* to be endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the June 6, 1990, proposed rule (55 FR 23109) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published inviting general public comment. Though no public hearing was requested, the Service anticipated that it would receive numerous hearing requests. As a result, the Service published (55 FR 28665) a notice of a public hearing on July 12, 1990, and conducted the hearing on July 25, 1990, at the City of Santa Rosa Council Chambers in Santa Rosa, California. Testimony was taken from 6 p.m. to 9 p.m. Notice of the proposal and public hearing were published in the Oakland Tribune, San Francisco Chronicle, and Santa Rosa Press-Democrat.

During the comment period, the Service received 56 comments (e.g., letters and oral testimony) from 42 individuals. Fish and Game was among 18 commenters expressing support for the listing proposal, while 15 commenters opposed or asked for a delay in the listing proposal. Nine commenters were neutral, although some of these individuals provided locality or miscellaneous data on the three plants or inquired as to the possible effects of listing on their activities or interests. Written comments or oral statements obtained during the public hearing and comment period are combined in the following discussion. Opposing comments and other comments questioning the rule have been organized into 13 specific issues. These issues and the Service's response to each are summarized as follows:

Issue Many commenters requested the Service delay or not list the three plants because the "best available data" were not used in the proposed rule. In addition, they variously contended that one study cited in the rule, Waaland (1989), was inadequate, incomplete, inconclusive ill timed, and/or unscientific. The primary support for this contention was that Waaland (1989) did not include some population sites known to local individuals, he reportedly underestimated population size because he relied on "windshield surveys," and he did not survey the entire Cotati Valley or the entire ranges of the three plants. Some respondents requested that the Service initiate a comprehensive, scientifically-based study prior to any final listing action. Another commenter requested that an independent review of Patterson (1990) versus Waaland (1989) be conducted prior to any final listing decision. Several commenters, however, asserted that the distribution of the three plants, which has been the subject of botanical study for more than 20 years, is well known and not in need of further study.

Service Response: Aside from previously cited studies (Wainright 1984, Waaland 1989) and reports in the proposed rule, the Service received only three comments providing precise data on vernal pool areas and/or population sites of the three plants. A map submitted by Ralph Osterling (Ralph Osterling Consultants, San Mateo, California, pers. comm., August 3, 1990) detailed 48 pool "sites" west of Santa Rosa in an area included in Waaland's (1989) study. Osterling, however, did not report any new significant pool areas not previously reported in Waaland (1989) or discussed in the proposed rule. Though other commenters did address a larger geographic area than Waaland (1989), Patterson (1990) and Guggolz (pers. comm., August 2, 1990) only reported a few additional population sites. These data have been incorporated into this rule. No commenters provided substantive data to support their claim that Waaland conducted an inappropriate study. Moreover, no new significant distributional data affecting the status of the three species were reported by any respondent. Although future surveys likely will reveal additional small and isolated pool sites within less-accessible portions of the Cotati Valley and other areas known to harbor the three plants (Patterson 1990) these newly discovered sites likely will be threatened by the same activities affecting the other known populations. The Service maintains that this decision is based on the best information available. In addition, the Service believes that sufficient information is available on these three species to warrant making a determination on their status.

Issue 2: Many respondents contended that the proposed rule did not accurately discuss the local success of vernal pool "creation" efforts. For example, one

commenter claimed that Patterson (1990) verified that pool creation is "overwhelming successful for the purpose of relocating the three species," and that a national wildlife refuge proposed by then Congressman Doug Bosco for the Laguna de Santa Rosa would provide an excellent relocation opportunity. Another commenter asserted that "mitigation can be achieved through synthetic habitat enlargement and enhancement," while a third respondent claimed that pool creation efforts "grossly expanded" *Blennosperma bakeri* and *Lasthenia burkei* on his property. On the other hand, one commenter maintained that pool creation is "completely experimental and can fail unpredictably," while others claimed that transplantation projects are too new to be accurately evaluated. Another respondent pointed out that long-term studies of the effect of mixing genotypes in created pools are needed before transplantation should proceed. Furthermore, several commenters felt that protection of the three plants is best assured via the preservation of extant habitat.

Service Response: The Service recognizes that vernal pool creation or transplantation efforts in the Santa Rosa area have not been a failure. *Blennosperma bakeri* and *Lasthenia burkei* introduced into artificial basins have germinated, flowered, and set seed (Patterson 1990). Moreover, even in a drought year, many of the created basins held water (Patterson 1990). However, pool creation efforts in the Santa Rosa region cannot be judged successful by any standard, especially after only 1 to 4 years of monitoring. Of 36 artificial "pools" created at 4 mitigation sites, 11 basins failed (i.e., did not hold sufficient water to maintain introduced pool flora). Nineteen of the remaining 25 artificial pools were plagued with "weeds," hydrologic problems, and low densities of target species, like *B. bakeri and L. burkei*, and required remedial action of some kind (Patterson 1990). Regardless of the eventual success of these remedial actions, the effects on donor" populations evidently have been ignored. Moreover, the principal pool creation technique (i.e., relocation of soil from excavated pool bottoms versus inoculation of a known quantity of seed) and lack of sophistication regarding ongoing monitoring will not allow for the collection of data necessary to determine the long-term viability of target species populations.

In a review of 21 vernal pool creation projects dispersed throughout California, Ferren and Gevirtz (1990) concluded that no conclusive data exist to substantiate the hypothesis "that vernal pools can be restored or created to provide functional values within the range of variability of natural pools." Though some individuals, like Patterson (1990), have claimed complete or some degree of success, these conclusions are generally based on the attainment of specific, restricted criteria (e.g., ponding, germination and flowering of pool flora) or short-term establishment of target species (Jones & Stokes Associates 1990). In a study on the preservation and management of vernal pools (Jones & Stokes Associates 1990), the researchers concluded that the "science of vernal pool creation is still in its infancy and is primarily an experimental mitigation technique." Given the experimental nature of pool creation, the Service continues to maintain that transplanting target species (e.g., listed species) into constructed vernal pools cannot be viewed as compensation for the loss of occupied pool habitat. Moreover, even if such transplantation and habitat creation were a documented "cookbook" procedure rather than an evolving experiment, artificial pool creation still requires significant money, time, and land with appropriate soils and topography within the historical range of the three plants. As a result, the Service concludes that the continued existence of the three plants can only be assured, at this time, by the preservation of extant vernal pools and their associated watersheds.

Issue 3: Numerous people expressed economic concerns in their comments. One commenter maintained that mitigation requirements should not be the responsibility of the landowner, but "should fall" to the Service and "not hamper production agriculture." Another respondent remarked that the cost of implementing a plan to protect the vernal pool habitat of the three plants would be "onerous". Others discussed the need for compromise regarding mitigation to ensure affordable housing in the Santa Rosa area.

Service Response: Under section 4(b)( )(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions" H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "economic considerations have no relevance to determinations regarding the status of species * * *" *Id.* at 20. Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service has not examined such impacts and cannot respond to comments concerning possible economic consequences of listing the three plants.

Issue 4: Several respondents claimed that the three plants are not in immediate danger of extinction. Two respondents remarked that some of the threats have been "overstated" (e.g., trampling), while one commenter asserted that the three plants "have been subjected to only minor disruption from urbanization." Two commenters objected specifically to the reference in the proposed rule that development threatens 50 to 70 percent of remaining ranges of the three species. One respondent stated that agricultural activities were "largely an empty threat." A few commenters suggested that significant vernal pool areas harboring the species are protected. For example, one respondent disagreed with the contention in the proposed rule that no vernal pools have been protected from "all potential threats." This commenter noted that many pool areas are "set aside" with deed restrictions or protected via fee title transfer to Fish and Game. A few respondents noted that colonies of the three plants are protected at two Sonoma County airports. Conversely, one commenter stated that one-quarter of the populations of *Limnanthes vinculans* are threatened by a single action, the City of Santa Rosa's southwest annexation of 4,500 acres. Another commenter implied that no true preserve exists and called for the establishment of a preserve in Sonoma County to prevent the extinction of the three plants.

Service Response: Despite the above protestations, no data were presented to contradict the Service's contention that the three species are imminently threatened by rapid urban development and other threats in Sonoma County (see Factor A in "Summary of Factors Affecting the Species"). The few data submitted during the comment period confirmed the vulnerable status of the three plants. For example, Patterson (1990) stated that "(v)ernal pool habitats and their associated flora continue to decline in both extent and quality in Sonoma County." He reported the loss of three sites to urban development, four to ag-land conversion, and four to neglect and weed encroachment. Patterson (1990) also indicated that

"(o)nly a few sites [harboring one or more of the three plants] are currently protected and only a few natural sites even remain intact." He reported that only 7 of 40 population sites were protected in some fashion. The status of the remaining 33 sites is unknown, extirpated, unprotected, or threatened (Patterson 1990). Based on these data, ongoing and future urban growth may reduce the remaining ranges of the three species in the Santa Rosa region by approximately 65 percent. Guggolz (pers. comm., August 2, 1990) noted that the only protected sites for the three plants are artificially created and/or "airport populations," which may have reduced biological value and are subject to airport-related development and maintenance. Guggolz claimed that some of the so-called protected population sites are jeopardized by adjoining agricultural operations. Patterson (1990) noted that two colonies continue to decline even after being set aside for preservation. Moreover, stochastic events, like the recent prolonged drought, facilitate the invasion of vernal pools by weedy grasses at the expense of the three plants. As discussed in detail in the "Summary of Factors Affecting the Species" section, the Service concludes that nearly all of the remaining populations of the three plants are threatened.

Issue 5: One commenter maintained that seed collection does not threaten the three plants. Another respondent noted that *Limnanthes vinculans* is not threatened by commercial utilization because the species reportedly has been cultivated.

Service Response: The Service stated in the proposed rule and continues to maintain that overutilization of *Limnanthes vinculans* for commercial use is unlikely to constitute a threat (see Factor B in "Summary of Factors Affecting the Species"). Regarding the effect of seed collection, no reliable conclusions can be drawn from available vernal pool research. Despite numerous "pool creation" studies involving extensive seed collection from extant pools throughout California, no study investigated the effect of seed harvest on donor populations.

Issue 6: The utilities department of the City of Santa Rosa contended that their reclamation project will not irrigate wetland areas (e.g., vernal pools) or "rare and endangered plant habitat" with treated wastewater. In addition, the utilities department clarified that the project "does not facilitate growth" but rather "is being developed so as not to constrain general plan growth and to meet the environmental concerns that come with growth."

Service Response: Though the Service does not see a significant difference between facilitating growth and not constraining general plan growth, the latter phrase is discussed under Factor A in "Summary of Factors Affecting the Species".

Issue 7: One respondent claimed that the three plants "flourished" under "heavy grazing and pasturage by livestock." Other commenters asserted that the maintenance of the three plants required grazing of pool habitat to remove alien grasses. A third commenter indicated that the three species respond variously to differing levels of grazing and other minor surficial disturbances of the soil (e.g., discing).

Service Response: In referring to data from the CNDDB (1989), the Service reported in the proposed rule that livestock grazing has extirpated or greatly reduced some population localities of *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans*. Nonetheless, the extent of this damage is not fully understood or documented. Zedler (1987) stated that in spite of the adverse impact of trampling, moderate livestock grazing "does not seem to pose much of a threat to the persistence of vernal pool plants." However, he noted that grazing often "promotes the invasion of weedy introduced species that are less palatable and better able than native plants to exploit the disturbed soil created by animals." This observation is in contrast to claims that grazing reduces alien vegetation or selects for native forbs. In a study of the distribution and autecology of a rate subspecies of *Limnanthes* recently proposed for endangered status (56 FR 6345), James Jokerst (1989) said the meadowfoam seemed to persist in areas receiving light to moderate grazing to periodic heavy grazing. He reported that sites receiving intensive long-term grazing were devoid of the *Limnanthes*. The Service concludes that although the effect of moderate livestock grazing remains open to question, overgrazing probably has adversely affected and likely continues to threaten the three plants.

Issue 8: One commenter indicated that the Fish and Game's regulatory process was an "active and effective program for mitigation, enhancement and preservation of these species." However, others contended that the local process has been "houses must go through" and, thus, mitigation has occurred off-site. Other commenters noted that the City of Santa Rosa and County of Sonoma are developing a Country-wide mitigation plan for the three plants, though one respondent stated that both governments have had ample opportunity to provide a local resolution to necessary vernal pool protection. Other commenters maintained that local control of this issue (i.e., protection and mitigation of vernal pool habitat) should continue and that the Service's proposed listing of the three plants has prompted the restarting of this effort. One respondent stated that the "preservation" of the three plants has been "well served" by the U.S. Army Corps of Engineers (Corps), Fish and Game, and local government. This commenter noted that the Corps frequently requires 1:1 or greater mitigation (i.e., pool creation) for wetland fills falling within the parameters of Nationwide Permit Number 26 pursuant to section 404 of the Clean Water Act. Another commenter reported that 92 percent of the vernal pools surveyed in the Santa Rosa plains are under an acre in size and, thus, would fall within limits of a nationwide permit.

Service Response: On June 2, 1988, the Service met with representatives of the City of Santa Rosa and local biologists regarding the development of a comprehensive vernal pool preservation program. Despite the recent establishment of the Sonoma County Vernal Pools Task Force, little progress has been made towards a comprehensive program since that time. With the cooperation of the City of Santa Rose and County of Sonoma, Fish and Game funded a study of the vernal pools of the Santa Rosa plains. Nonetheless, the State agency indicated that without the provisions of Federal listing (e.g., recovery monies, development of recovery plans), the three plants are "in danger of extinction." See the discussion under Factory D ("Summary of Factors Affecting the Species") for a complete discussion of the inadequacy of existing regulatory mechanisms for *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans*.

Issue 9: One respondent recommended that the Service designate critical habitat for the three plants, while another commenter contended that designation could lead to destruction of vernal pools by landowners and developers.

Service Response: Under section 4(a)(3)(A) of the Act, the Secretary must designate critical habitat to the maximum extent prudent and determinable at the time a species is

determined to be endangered or threatened. In the proposed rule, the Service found that determination of critical habitat was not prudent for these species. As discussed under the "Critical Habitat" section below, the Service continues to find that designation of critical habitat for these plants is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Issue 10: One commenter requested that the Service conduct a Takings Implications Assessment under Executive Order 12630 "as part of any final rulemaking to evaluate the risk of and strategies for the avoidance of the taking of private property."

Service Response: Regarding Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and Attorney General has issued guidelines to the Department of the Interior (Department) on implementation of the Executive Order. Under these guidelines, a special rule applies when an agency within the Department is required by law to act without exercising its usual discretion—that is, to act solely upon specified criteria that leave the agency no discretion.

In this context, an agency's action might be subject to legal challenge if it did not consider or act upon economic data. Therefore, in these cases, the Attorney General's guidelines state that Taking Implications Assessment (TIAs) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policymakers of areas where unavoidable taking exposures exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact. In enacting the Endangered Species Act, Congress required the Department to list species based solely upon scientific and commercial data indicating whether or not they are in danger of extinction. The Service is forbidden by law from withholding a listing based on concerns regarding economic impact and is required to act, with appropriate public notice, under strict timetables. Any failure to comply subjects the agency to legal action. The provisions of the guidelines relating to nondiscretionary actions clearly are applicable to the determination of endangered status for the three plant species that are the subject of this rule.

Issue 11: One commenter indicated that taxonomic studies and status surveys should be completed for all members of each genus (*Blennosperma, Lasthenia,* and *Limnanthes*) of the three plant species. Absent this action, the commenter implied listing should be deferred.

Service Response: The Service used the best taxonomic and status information for each of the three plants. These data came from a number of reliable sources: university researcher (Ornduff 1966, 1969a, 1969b, 1977a, 1977b; Jain 1976; Brown and Jain 1977), a Service-contracted researcher (Wainright 1984), local biologists (e.g., Waaland 1989, Patterson 1990), a State-operated data base (CNDDB 1989), and commenters on the proposed rule (e.g., Guggolz, pers. comm., August 2, 1990). After reviewing and assessing this information, the Service maintains that the taxanomic and threat status is conclusive and listing should not be deferred.

Issue 12: One commenter stated it would be "unreasonable" to protect one species of *Blennosperma, Lasthenia,* or *Limnanthes* and not other widespread members of the three genera (e.g., *B. nanum*).

Service Response: Pursuant to the definitions in section 3 of the Act, an "endangered species" is "any species which is in danger of extinction throughout all or a significant portion of its range." A "threatened species" is "any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." *Blennosperma bakeri, Lasthenia burkei,* and *Limnanthes vinculans* are species that fit the former definition, whereas other species of *Blennosperma, Lasthenia,* and *Limnanthes* do not meet the requirements of the Act. Given that section 4 of the Act directs the Service to list species fitting these definitions and meeting one or more of the five factors discussed below, designation of the three plants as endangered is reasonable.

Issue 13: One respondent requested that the Service include a recovery plan for the three plants in any final rulemaking. Furthermore, she requested that the plan provide section 7 guidelines for the various Federal agencies, detail a mechanism for intergovernmental cooperation with Fish and Game, and address "biological solutions" like transplantation.

Service Response: Section 4(f) of the Act directs the Secretary to develop and implement recovery plans for the conservation and survival of listed endangered and threatened species. Though the Service intends to pursue the development of a recovery plan for the three plants as soon as possible, such action must occur after the species have been listed pursuant to section 4(b). Section 4(f)(1)(B) requires that each recovery plan include: 1) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; 2) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and 3) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and achieve intermediate steps toward the goal. As a result, the recovery plan will describe a process to provide for the interagency cooperation among local, State, and Federal agencies. In addition, the plan will address all appropriate solutions needed to recover the three plants.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Blennosperma bakeri* Heiser (Sonoma sunshine or Baker's stickyseed), *Lasthenia burkei* (Greene) Greene (Burke's goldfields), and *Limnanthes vinculans* Ornduff (Sebastopol meadowfoam) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Blennosperma bakeri, Lasthenia burkei, and *Limnathes vinculans* were once discontinuously distributed in the vernal pools and interconnecting vernal swales in the Cotati Valley from north of Windsor to near the City of Cotati, a distance of approximately 16 miles (25.7 kilometers) (Wainright 1984, CNDDB 1989, Waaland 1989, Patterson 1990). The area supporting the three plants is threatened by urbanization, ag-land conversion, and overgrazing (CNDDB 1989, Waaland 1989). About 40 percent of this valley has already been urbanized and about 50 percent of the land is irrigated for agricultural purposes (Waaland 1989). Because little

overlap exists between irrigated and urbanized portions in the Cotati Valley, about 90 percent of the land has been altered to the detriment of the three plants.

The County of Sonoma has approved the Windsor Specific Plan that allows for extensive development in Windsor. This plan does not provide adequate protection of the plants. The complete development of the Windsor Specific Plan would result in the loss of most, if not all, of the northern remaining localities of *Lasthenia burkei*, and, therefore, approximately 35 percent of the plant's known range.

Many ongoing housing development projects near the City of Santa Rosa are resulting in the further losses of *Lasthenia burkei*, *Limnathes vinculans*, and *Blennosperma bakeri*. Because housing in the Cotati Valley is relatively inexpensive, individuals working in the San Francisco Bay area are discovering that affordable housing can be found in the Santa Rosa area. The demand for such housing has resulted in the rapid urbanization of much of the Cotati Valley, especially in and around Santa Rosa. Based on Patterson's (1990) assessment of the extent of protected habitat, ongoing and future urban growth may reduce the remaining ranges of the three species in the Santa Rosa region by approximately 65 percent. Unfortunately, more than half of the "protected" vernal pool habitat discussed by Patterson (1990) occurs on Sonoma County Airport lands, which have been and continue to be subject to airport-related maintenance and development. For example, Patterson (1990) reported that the entire airport was graded in the 1940's, which likely altered or destroyed these pools. In addition, with the exception of the Todd Road Reserve owned by Fish and Game, the remaining "preserves" largely consist of "created" vernal pools. The long-term viability and biological value of this artificial habitat is unknown.

Habitat loss is not limited to the direct destruction caused by grading and leveling or other activities that fill the pools for urban or agricultural purposes. Plant species that occur in vernal pools are dependent upon maintenance of the existing hydrologic regime—inundation during wet winters, followed by spring and summer drying. The composition of plant species in vernal pools or swales can change if the hydrologic regime is altered. The subsurface clay layer or hardpan can be broken during construction or plowing. Water would drain from such pools rather than remain ponded for a few months. Upland invasive plant species can spread into these pools when conditions become sufficiently dry. A prolonged drought can effect similar dry conditions within pool basins. Conversely, if water from urban or agricultural run-off continues to fill pools during spring and summer months, invasion by plant species adapted to permanent inundation can be expected.

The City of Santa Rose proposes to increase the capacity of its Subregional Wastewater Treatment Plant so as to not "constrain general plan growth and to meet the environmental concerns that come with growth" (Miles Ferris, City of Santa Rosa, Utilities Department, pers. comm., July 30, 1990). Reclaimed waste water is used for "agricultural irrigation of 4,800 acres" in the Santa Rosa area (Ferris, pers. comm., July 30, 1990). The proposed expanded facility would provide irrigation or overland flow to an additional 7,500 acres (Griffes *et al.* 1989). The treatment facility design includes the use of terraces that would be planted with a grass species that is tolerant of inundation. Sewage effluent would be used to irrigate the terraces for treatment purposes. The resulting run-off would be reclaimed and used for further irrigation. The potential area designated for the placement of terraces or receipt of reclaimed wastewater extends from the northern boundary of the City of Santa Rosa to the south covering the southern two-thirds of the range of these plant species. Although no vernal pool lands are to be irrigated or subject to overland flow (Ferris, pers. comm., July 30, 1990), impacts to vernal pools would occur indirectly by eliminating a major constraint (i.e., insufficient wastewater treatment capacity to further urbanization in the Santa Rose region.

These plant species are similarly threatened outside of the Cotati Valley. The extirpation of *Blennosperma bakeri* from four of seven historic sites in the Sonoma Valley was caused by home construction and the planting of a vineyard (CNDDB 1989; Guggolz, pers. comm., August 2, 1990). The remaining sites are either threatened by the ag-land conversion or have been "vandalized by off road vehicles" (Guggolz, pers. comm., August 2, 1990). Manning Flat, one of the two known Lake County sites of *Lasthenia burkei*, is threatened by erosion. The Ukiah collection of *L. burkei* in Mendocino County is likely extirpated.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The three species possess attractive flowers, and some plant species have become vulnerable to illegal collection for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants following Federal listing.

All species of *Limnanthes* have the potential to be of high agronomic value because of the oil contained within their seeds. Because the lubricating qualities of *Limnanthes* oil are retained under high temperature and pressure, the seed oil is similar to that produced by sperm whales (Jain *et al.* 1977). Although no overutilization is known to have occurred in this regard, the increased publicity brought about by listing could make *Limnanthes viculans* vulnerable to collection.

C. Disease or Predation

Though livestock graze many of the sites that support *Limnanthes vinculans*, *Lasthenia burkei*, and *Blennosperma bakeri*, local biologists disagree on the effect of grazing on the three species. Osterling (pers. comm., August 3, 1990) noted that populations have "flourished" under "grazing and pasturage" pressure. Patterson (1990) asserted that "the removal of grazing" threatens *Lasthenia burkei* because livestock reduce the cover of competing grasses (i.e., *Hordeum*, *Lolium*, *Pleuropogon*). Acknowledging that the effect of grazing is not well known, he suggested that *Blennosperma bakeri* may be similarly affected. However, Patterson (1990) concluded that livestock crush *Limnanthes vinculans* and eliminate much of plant cover associated with the species. According to various individuals filing data with the CNDDB (1989), some populations have been extirpated or greatly reduced by foraging livestock. Nevertheless, all of these conclusions are based on casual observations and not on carefully designed experiments. In light of studies discussed in the "Summary of Comments and Recommendations" section, although the effect of moderate livestock grazing remains open to question, overgrazing probably has adversely affected and likely continues to threaten the three plants.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (Chapter 1.5 § 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (Chapter 1.5 § 2050 *et seq.*), the California Department of Fish and Game has listed two of these three species (*Lasthenia burkei* and *Limnanthes vinculans*) as endangered (14 California Code of Regulations 670.2), while the third species (*Blennosperma bakeri*) is a State

candidate. Though both statutes prohibit the "take" of State-listed plants (Chapter 1.5 §§ 1908 and 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Chapter 1.5 § 1913).

Part of the environmental review process under the California Environmental Quality Act (CEQA) for projects that result in the loss of sites supporting these plant species generally includes the development of mitigation plans. Such plans usually involve the transplantation of the affected species to an off-site vernal pool location and/or the artificial creation of vernal pools. As discussed in the "Summary of Comments and Recommendations" section, these transplantation and creation efforts are experimental in nature and cannot be viewed as compensation for the loss of extant habitat. Nonetheless, following development of the transplantation and creation plan, the original site is destroyed. As a result, CEQA has not prevented the rapid ongoing loss of vernal pool habitat in the Santa Rosa region.

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into waters of the United States, including wetlands. To be in compliance with the Clean Water Act, applicants are required to notify the Corps prior to undertaking any activity (e.g., grading, discharge of soil or other fill material) that would result in the fill of wetlands under the Corps' jurisdiction. Nationwide Permit Number 26 (see 33 CFR 330.5(a)(26)) has been issued to regulate the fill of wetlands that are 1–10 acres in size. Where fill would occur in a wetland 1–10 acres in size, the Corps circulates for comment a predischarge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit Number 26. Because the Corps must respond within 20 days or the proposed activity will be authorized under Nationwide Permit Number 26, many projects may be authorized by default.

Individual permits are required for the discharge of fill into wetlands that are greater than 10 acres in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit.

With respect to the vernal pools harboring the three species, most vernal pools and swales in the Cotati Valley encompass less than 10 acres. Moreover, the discontinuous distribution of the pools and swales has allowed landowners in the past to divide large projects into several smaller projects. The wetland acreage on these smaller projects is usually under 10 acres, and, therefore, most projects have qualified for Nationwide Permit Number 26. The discontinuous configuration of the pools and swales further obscures the separation of these wetland losses. Although the San Francisco District of the Corps has not asserted its jurisdictional authority and required individual permits for all projects filling vernal pools or swales, the Corps, by proposing to add a condition to Nationwide Permit Number 26 on September 13, 1991, would require a predischarge notice for any fill, regardless of size, in the Cotati Valley.

Even though the Corps has proposed implementation of predischarge notification, listing affords greater protection to threatened or endangered species. With listing, the Corps (and other Federal agencies) is required to consult with the Service prior to final determination on a proposed activity.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Trampling associated with grazing has reduced some populations of the three plant species (CNDDB 1989, Patterson 1990). In addition, a few of the pools supporting these species are adjacent to roadways. Routine maintenance of the road shoulders may adversely affect the plant species through grading or application of herbicides.

Alien grasses and forbs invaded the low-elevation, plant communities of California during the days of the Franciscan missionaries. Today, these grasses can account for 50 to 90 percent of the vegetative cover (Heady 1956) and stand up to a meter (3.3 feet) in height (Holland 1976). By germinating or initiating growth in late fall prior to the germination of native forbs, alien grasses have outcompeted (for nutrients and water) and displaced much of the native flora throughout California. Although Zedler (1987) reported that vernal pools are "relatively immune" to the competition of alien plants, Patterson (1990) asserted that dense stands of alien grasses threaten many of the populations of the three plants in the Cotati Valley. The effect of grazing livestock (see Factor C "Summary of Factors Affecting the Species") in concert with the ubiquitous presence of alien plants on the three species needs further study.

Natural fluctuations in rainfall patterns resulting in little to no water in the vernal pools may effect localized extinctions or population declines (Patterson 1990). Though climatic-induced extirpations have not been documented for *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans*, the small isolated nature of the remaining populations make stochastic extinction more likely. A prolonged drought of several years is the most likely stochastic phenomenon that would result in the localized extinction of vernal pool plants like the three species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Blennosperma bakeri*, *Lasthenia burkei*, and *Limnanthes vinculans* as endangered. The habitat that supports these plant species has been reduced by about 90 percent, and further reductions are anticipated. With the possible exception of the Todd Road Reserve, no vernal pool habitat is protected from all potential threats discussed above. Existing regulations do not provide sufficient protection to prevent further losses, and many actions are ongoing at the present time. Further, several sites have recently been graded or disced, apparently without appropriate permits. Six of 14 high priority sites identified by Waaland (1989) have been destroyed. In addition, Patterson (1990) reported that the status of 33 of 40 sites in the Cotati Valley is unknown, extirpated, unprotected, or threatened. Because these three plants are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. For the reasons discussed below, the Service is not proposing to designate critical habitat for these plant species at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent

prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for these species at this time. The three species occur primarily on private land that is undergoing rapid urban and agricultural development (see Factor A in "Summary of Factors Affecting the Species"), and their habitat areas are usually small and easily identified. The information contained in a status survey prepared by Waaland (1989) may have been used to destroy about 12 sites supporting these species in recent months. Therefore, the publication of precise maps and descriptions of critical habitat in the Federal Register would make these plants more vulnerable to incidents of vandalism and could contribute to the decline of these species. A listing of these species are endangered would also publicize the rarity of these plants and, thus, could make them attractive to researchers or collectors of rare plants. The proper agencies have been notified of the locations and management needs of these plants. Landowners will be notified of the location and importance of protecting habitat of these species. Protection of these species' habitats will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, because such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Army Corps of Engineers will become involved with these plant species through its permitting authority as described under section 404 of the Clean Water Act. By regulation, nationwide or individual permits cannot be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act. In addition, the Department of Housing and Urban Development may wish to insure housing loans in areas that support these plants; the funding of these loans would also be subject to review by the Service under section 7 of the Act. The Federal Emergency Management Agency manages a small federally-owned parcel adjacent to the Santa Rosa Air Center that contains habitat for *Limnanthes vinculans*. Any action affecting these vernal pools would be subject to section 7 review. The Bureau of Reclamation proposes to lend the City of Santa Rosa funds for the expansion of the wastewater treatment facility. Other sewage treatment facilities within the range of these species may receive funding through the Bureau of Reclamation or Environmental Protection Agency. This funding would also be subject to the requirements of section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the three vernal pool plants, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. The Service anticipates that few trade permits would ever be sought or issued for any of the three species. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2104).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Brown, C., and S. K. Jain. 1977. Rare plant status report for *Limnonthes vinculons*. Unpubl. rept., California Native Plant Society.

California Natural Diversity Data Base. 1989. Unpubl. rare plant occurrence data. Sacramento, California.

Ferren, W. R., Jr. and E. M. Gevirtz. 1990. Restoration and creation of vernal pools: Cookbook recipes or complex science? Pp. 147–178 *In* Ikeda, D.H. and R.A. Schlising (eds.). *Vernal Pool Plants: Their Habitat ond Biology*. California State University, Chico.

Greene, E. L. 1887. Studies in the botany of California and parts adjacent. Bull. Calif. Acad. Sci. 2:125–154.

_____. 1894. Manual of the botany of the region of San Francisco Bay. Cubery and Co., San Francisco.

Griffes, D., M. Waaland, and R. Smith. 1989. Santa Rosa long-term study—reclamation alternative phase 1 wetland study. Technical Memorandum No. W.6 (dated January 23, 1989). Unpubl. rept., City of Santa Rosa.

Heady, H. F. 1956. Evaluation and measurement of the California annual type. J. Range Manage. 9:25–27.

Heiser, C. H. 1947. A new species of *Blennosperma* from California. Madroño 9:103–104.
Holland, R. F. 1976. The vegetation of vernal pools: a survey. Pp. 11–15 *In* Jain, S. (ed.). *Vernal Pools: Their Ecology and Conservation.* A Symposium sponsored by the Institute of Ecology, University of California, Davis, May 1 and 2, 1976. Institute of Ecology Publ. No. 9.
Jain, S. K. 1976. Evolutionary studies in the meadowfoam genus *Limnanthes:* an overview. Pp. 50–57 *In* Jain, S. (ed.). *Vernal Pools: Their Ecology and Conservation.* A Symposium sponsored by the Institute of Ecology, University of California, Davis, May 1 and 2, 1976. Institute of Ecology Publ. No. 9.
Jain, S. K., R. O. Pierce, and H. Hauptli. 1977. Meadowfoam: Potential new oil crop. Calif. Ag. 18–20 March.
Jokerst, J. D. 1989. A draft plan for the conservation of Butte County meadowfoam in the City of Chico, *Limnanthes flaccasa* ssp. *californica.* Unpubl. rep., City of Chico.
Jones & Stokes Associates. 1990. Sacramento County vernal pools: Their distribution, classification, ecology, and management. Unpubl. rept., County of Sacramento.
Miller, V.C. 1972. Soil survey of Sonoma County, California. U.S. Department of Agriculture. Forest Service and Soil Conservation Service. U.S. Government Printing Office, Washington, DC.
Munz, P.A. 1959. A California flora. University of California Press, Berkeley.
Orndduff, R. 1966. A biosystematic survey of the goldfield genus *Lasthenia* (Compositae: Heleniae). Univ. Calif. Publ. Bot. 40:1–92.
———. 1969a. The origin and relationships of *Lasthenia burkei* (Compositae). Amer. J. Bot. 56:1042–1047.
———. 1969b. *Limnanthes vinculans,* a new California endemic. Brittonia 21:11–14.
———. 1977a. Rare plant status report for Lasthenia burkei. Unpubl. rept., California Native Plant Society.
———. 1977b. Rare plant status report for *Blennosperma bakeri.* Unpubl. rept., California Native Plant Society.
Patterson, C.A. 1990. Vernal pool creation and rare plant transplantation in Sonoma County, California. Unpubl. rept. prepared in response to proposed rule.
Stone, R.D. 1990. California's endemic vernal pool plants: Some factors influencing their rarity and endangerment. Pp. 89–107 *In* Ikeda, D.H. and R.A. Schlising (eds.). *Vernal Pool Plants: Their Habitat and Biology.* California State University, Chico.
Waaland, M. 1989. Santa Rosa plains endangered plant protection program report, Section A. Unpubl. rept., Sonoma County Planning Department and California Department of Fish and Game.
Wainright, T.C. 1984. Status report on Sebastopol meadowfoam, *Limnanthes vinculans* Ornduff. Unpubl. rept., U.S. Fish and Wildlife Service, Sacramento Endangered Species Office.
Zedler, P.H. 1987. The ecology of southern California vernal pools: A community profile. U.S. Fish and Wildlife Service Biol. Rep. 85(7.11).

Author

The primary author of this proposed rule is Jim A. Bartel, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825 (916/978–4866, FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

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

1. The authority citation for part 17 continues to read as follows:

Authority: 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.

2. Amend § 17.12(h) by adding the following species, in alphabetical order under the family "Asteraceae—Aster family and by adding a new family "Limnanthaceae—False mermaid family", in alphabetical order, to the List of Endangered and Threatened Plants:

17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	
Asteraceae—Aster family:						
•	•	•	•	•	•	
Blennosperma blanket	Sonoma sunshine (=Baker's stickyseed).	U.S.A. (CA)	E	453	NA	NA
•	•	•	•	•	•	
Lasthenia burkei	Burke's goldfields	U.S.A. (CA)	E	453	NA	NA
•	•	•	•	•	•	
Limnanthaceae—False mermaid family:						
Limnanthes vinculans	Sebastopol meadowfoam	U.S.A. (CA)	E	453	NA	NA
•	•	•	•	•	•	

Dated: November 19, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–28813 Filed 11–29–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 900124–0127]

Atlantic Surf Clam and Ocean Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary notification requirements.

SUMMARY: NMFS issues this notice to implement temporary notification requirements in the surf clam and ocean quahog fishery. Vessel owners or operators are required to provide notice

to NMFS before departure for fishing, under the existing authority of Section 652.9(a) that allows NMFS to specify such requirements to facilitate enforcement. The intended effect is to establish notification procedures to aid enforcement and allow for adequate monitoring of the fishery.

EFFECTIVE DATES: November 26, 1991, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Myles A. Raizin, Resource Policy Analyst (508–281–9104).

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) allow the Regional Director to specify notification requirements that vessel owners or operators would have to comply with prior to departure from or return to port to fish for surf clams or ocean quahogs. Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) was published on June 14, 1990 (55 FR 24184) with the regulations becoming fully effective on September 30, 1990. With Amendment 8, the management system has changed from one of strict effort restrictions to an individual transferable quota (ITQ) based system. Individual allocations are issued as a proportion of a total annual quota. Vessel operators fish for their respective individual allocations as long as there is remaining allocation to be caught. Under such a system, the monitoring of the harvest becomes critical. This is accomplished through the use of an enhanced reporting system and shellfish cage tagging requirements.

To aid this monitoring, it is necessary to determine who is fishing at any given time. To achieve this, NMFS proposed notification requirements on October 11, 1991 (56 FR 51368), that would establish a telephone call-in notification system, similar to the one employed prior to implementation of Amendment 8 for the bad weather makeup day.

Comments and Responses

One set of written comments was received on the proposed notification requirements during the 30-day public comment period:

Comment: Further reporting is not warranted or necessary in a system that is already administratively over-burdened. Additionally, it places further administrative work loads on the company.

Response: The purpose of this notice is to provide enhanced enforcement capability. NMFS believes notification requirements to be the most efficient method.

Comment: If the Federal government imposes these regulations, it should provide an 800 call-in number.

Response: From an administrative and cost standpoint, NMFS is not willing to provide an 800 number for all of its enforcement offices. Furthermore, these offices are located in areas where offloading occurs, thus, minimizing costs to the vessel owners or operators.

Secretarial Action

After considering public comments, NMFS has decided to finalize those notification requirements as set forth in this final notice. This will provide the necessary information while still keeping with the intent of Amendment 8 of simplifying regulatory requirements.

Vessel owners or operators are required to provide the following information at least 24 hours prior to departure:

1. The name of the vessel;
2. The NMFS permit number assigned to the vessel;
3. The expected date and time of departure from port;
4. Whether the trip will be directed on surf clams or ocean quahogs;
5. The expected date, time and location of landing; and
6. The name of the individual providing notice.

If, because of bad weather, mechanical breakdown, or similar circumstance, it becomes necessary to cancel or postpone the trip, the vessel owner or operator must contact the same office. In this situation, the vessel owner or operator must identify who is calling, the name of the vessel, and indicate that it will not be fishing.

Vessel owners or operators that have provided notice are presumed to be working in the exclusive economic zone (EEZ) for the duration of the trip indicated and the landings would be counted against the allocation for which they are fishing.

To provide notice, vessel owners or operators are required to call the Office of Enforcement nearest to offloading at the following locations:

Rockland, ME—(207) 594–7742
Otis AFB, MA—(508) 563–5721
Wakefield, RI—(401) 789–8022
Brielle, NJ—(908) 528–3315
Marmora, NJ—(609) 390–8303
Shinnecock, LI, NY—(728) 728–0078 ext. 105
Salisbury, MD—(301) 749–3545
Newport News, VA—(804) 441–6760

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 1991.

David S. Crestin,

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

[FR Doc. 91–28762 Filed 11–26–91; 4:11 pm]

BILLING CODE 3510–22–M

---

50 CFR Part 652

[Docket No. 900124–0127]

Atlantic Surf Clam and Ocean Quahog Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of suspension of surf clam minimum size limit.

SUMMARY: NMFS issues this notice to inform the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 1992 fishing year. This action is taken under the authority of § 652.22(a)(1), which allows for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to reduce a regulatory burden while allowing for more selective harvest practices.

EFFECTIVE DATES: January 1, 1992, through December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA, 01930 (508–281–9104).

SUPPLEMENTARY INFORMATION: A final rule implementing Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP) was published on June 14, 1990 (55 FR 24184). Section 652.22(a)(1) allows the Regional Director to suspend annually by publication of a notice in the **Federal Register** the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent of the clams are smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density dependent factors.

At its September meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Statistical and Scientific Committee and Surf Clam/Ocean Quahog Committee and voted to recommend that the Regional Director suspend the minimum size limit. This action was taken after the most recent research vessel survey data indicated that 26.97 percent of the surf clams from the Mid-Atlantic area, 17.20 percent of the surf clams from the Southern New England area, and 15.64 percent of the surf clams from the Georges Bank area, were less than 4.75 inches (12.065 cm). Discard data from interviewed commercial trips reported an average discard rate of 12.5 percent as applied to the previous minimum size limit of 5 inches.

Other Matters

This action is authorized by 50 CFR part 652, and is taken in compliance with E.O. 12291.

Authority: 16 U.S.C. 1081 *et. seq.*

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: November 25, 1991.

David S. Crestin,

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

[FR Doc. 91-28770 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 231
Monday, December 2, 1991

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): Food Package for Breastfeeding Women

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of intent to propose rulemaking and solicitation of comments.

SUMMARY: Major professional health organizations, such as the American Academy of Pediatrics, recognize the nutritional and immunological components of human milk and the physiological, psychosocial, hygienic and economic benefits of breastfeeding. This, according to professionals, make it the optimal way to nurture infants. However, there is growing concern within the health and scientific communities over the recent decreases in the incidence and duration of breastfeeding among certain populations in the United States. Support of breastfeeding is a priority for many public health programs, including the Special Supplemental Food Program for Women Infants and Children (WIC). Recently, the Secretary of Health and Human Services, Dr. Louis W. Sullivan, established as a national goal the improvement of the incidence of breastfeeding in "Healthy People 2000—National Health Promotion and Disease Prevention Objectives." In acknowledgement of this, and at the direction of Catherine Bertini, Assistant Secretary for Food and Consumer Services, the Food and Nutrition Service (FNS) is soliciting comments on the modification of the WIC food package available to exclusively breastfeeding women in an effort to better meet their nutritional needs. WIC Food Package V (7 CFR 246.10 (c)(5)) is designed for both pregnant and breastfeeding women. However, FNS is considering revising this food package only as it applies to exclusively breastfeeding women. The current types and quantities of supplemental foods will be retained in Food Package V for pregnant women and for women who are supplementing breastfeeding with any degree of infant formula provided by WIC. Therefore, only public comments pertaining to revisions in Food Package V for exclusively breastfeeding women will be considered in the development of a proposed rulemaking. Directors of WIC State and local agencies, individuals with expertise in the fields of nutrition and public health, as well as other interested parties are encouraged to comment on the Department's intent to enhance the WIC food package made available to exclusively breastfeeding participants.

DATES: To be assured of consideration, comments must be received on or before January 2, 1992.

ADDRESSES: Comments should be sent to Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1017, Alexandria, Virginia 22302. Comments on this Notice should be clearly labeled "Food Package for Breastfeeding Women Notice." All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at the office of the Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 20302.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Chief, Program and Policy Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1017, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION: This Notice has been reviewed under Executive Order 12291 and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related Notice published June 24, 1983 (48 FR 29114)).

Background

The authorizing legislation for the WIC Program, section 17 of the Child Nutrition Act of 1966, as amended (CNA), (42 U.S.C. 1786) established the WIC Program to provide supplemental foods and nutrition education to low income pregnant, breastfeeding and postpartum women, infants and children up to age 5 who are at nutritional risk. The Program also serves as an adjunct to health care during critical times of growth and development to prevent the occurrence of health problems and to improve the health status of Program participants.

The CNA clearly established the WIC Program as "supplemental" in nature; that is, the WIC food packages, including Food Package V designed for pregnant and breastfeeding women, are not intended to provide a complete diet but are designed to complement additional wholesome foods needed for a balanced diet. In addition to WIC, the Department administers a variety of other complementary food assistance programs which can work together to provide a more nutritious diet to the Nation's low income persons. Low income families can, and frequently do, receive benefits from several of the Departments food assistance programs simultaneously. The largest of these programs, the Food Stamp Program, provides general food assistance in the form of food stamps which are used to increase the food buying power of low income individuals and families.

Additionally, other Departmental food assistance programs are available to low income populations. For example, the National School Lunch Program and the School Breakfast Program provide free and reduced price meals to low income children in school. Also, the Child and Adult Care Food Program provides meals to persons in child and adult care centers and family day care homes. A variety of commodity donation programs are also available to low income persons.

WIC Program food packages are intended to help meet the special nutritional needs of a very specific population. In addition, the nutrition education provided by WIC enables participants to make informed decisions in choosing foods which, together with the supplemental foods contained in the WIC food packages, can meet their total dietary needs.

Section 17(b)(14) of the CNA defines "supplemental foods" as "those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary." The legislation provides substantial latitude to the Department in designing WIC food packages but obligates the Department to prescribe foods which successfully supply those nutrients critical to growth and development and which are typically lacking in diets of the WIC eligible population. Historically, the Department has based its prescriptions of WIC foods on nutritional research and input from various sources, including State and local agencies, the health and scientific communities, industry and the general public. Further, these prescriptions have been developed with regard to a set of fundamental principles which are discussed below.

Food Package History

Food package requirements appear in 7 CFR 246.10 of the WIC Program regulations. To better meet the nutritional needs of participants, the Department created six different monthly packages in a 1980 rulemaking (45 FR 74854 (1980)): One for infants 0–3 months, one for infants 4–12 months, one for children and women with special dietary needs, one for children 1-5 years of age, one for pregnant and breastfeeding women (see table 1 in appendix), and one for nonbreastfeeding postpartum women. These packages were designed to better meet infants' developmental needs and to follow current pediatric feeding recommendations, complement the eating patterns of preschool children, and address the special requirements of pregnant and breastfeeding women. In addition, the current food packages were initially designed and adopted in 1980 with the following five considerations in mind:

1. Great consideration is given to the provision of foods that are rich sources of the nutrients and that tend to be lacking in the diets of the WIC eligible population. The original legislation for the WIC Program, contained in the 1972 School Lunch Program Food Service Act (Pub. L. 92–433), specifically identified protein, iron, calcium and vitamins A and C as the target nutrients. However, subsequent legislation in 1975 (Pub. L. 94–105) deleted the references to specific target nutrients and instead directed the Department to prescribe appropriate nutrients. The Department determined, through an examination of nutritional research that the original five target nutrients continued to be lacking among the WIC eligible population. Given the supplemental nature of the WIC Program, the food packages were not intended to supply 100 percent of the Recommended Dietary Allowances (RDAs) of each specified nutrient, nor were they intended to meet any pre-established percentage goals for RDAs. As mentioned previously, participants are expected to obtain the remainder of the RDAs from other food sources. This, in some cases, would include the Department's other food assistance programs. However, the packages do provide categories of foods which are high in one or more of the previously targeted nutrients and are capable of providing a substantial portion, and in some instances the entire amount, of the RDAs for the targeted nutrients.

2. The fat, sugar and salt content of WIC foods is a consideration which is required by statute. Section 17 (f)(12) of the CNA, among other things, directs the Department to assure that, to the extent possible, the fat, sugar and salt content of WIC foods is appropriate. Several changes made to the WIC food packages in the 1980 rulemaking responded specifically to this mandate. For example, the Department established a limit on the amount of sugar permitted in WIC cereals and on the amount of cheese that can be issued, in part to moderate the salt content of the packages. Additionally, the limit on cheese quantities addressed fat content to some extent. However, it was decided to maintain a wide range of variability in fat levels within the food packages, depending on the particular foods prescribed. This flexibility was necessary to enable competent professional authorities to tailor packages to individual participant's needs for high or lower fat levels, as well as to limit salt and sugar content as appropriate.

3. Aside from considerations which are specified in legislation, a prime consideration in any food package design is cost. The Department is committed to serving as many eligible persons as possible while maintaining the nutritional integrity of the program. WIC is not an entitlement program, and the number of potentially eligible individuals who can be served is determined by the amount of money appropriated by Congress. Therefore, efficiency in providing nutrients is important because increases in the total cost of the food packages reduce the number of participants served by the program. Thus, cost is an important consideration in the selection of WIC foods, and the packages are designed to encourage further cost control by permitting State and local agencies the flexibility to specify lower cost food brands, types and container sizes within regulatory parameters.

4. Considerations of food package quantities and cultural eating patterns are also significant. State and local agencies are permitted flexibility in such aspects of the food packages as well. The quantities in the packages are expressed as maximum levels which must be made available to participants as needed to supplement their diets. However, State and local agencies have the authority to tailor quantities according to the needs of individuals participants or categories of participants when based on a sound nutritional rationale. these tailoring provisions, established in program regulations (7 CFR 246.10) and supplemented by FNS Instruction 804–1 "WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring," are designed to permit State and local agencies to implement their own nutrition policies and philosophies within the parameters of food package requirements. Section 17(b)(14) of the CNA and § 246.10(c)(7) of the WIC Program regulations also give the Department the authority to approve substitution of foods by State agencies which allows for different cultural eating patterns under certain circumstances. State agencies must demonstrate that the substitute foods are nutritionally equivalent to those in the food package established by the Department. Pursuant to section 17(f)(1)(c)(iv) of the CNA (added by Pub. L. 100–435, the Hunger Prevention Act of 1988), WIC regulations give State agencies even greater flexibility to adapt food packages to the circumstances of homeless persons.

5. In addition, the food packages are designed to address a number of practical considerations which reflect participant and program needs. The WIC foods should be readily available, offer variety and versatility to participants, be relatively nutrient dense, and have broad appeal. The WIC food package is an individual food prescription which, in order to have full effect in improving nutritional status, must be consumed by the participant and not other family members. Thus, a consideration in the selection of a WIC food is its potential for inappropriate sharing. Further, the foods should generally be of domestic origin with minimal processing. The WIC Program, along with other food assistance programs administered by the Department, participates in a longstanding partnership with American agriculture and endeavors to provide foods which support the nation's farming industry. Lastly, the packages should be administratively manageable for State and local agencies and vendors.

Food Package V for Breastfeeding Women

Food Package V (7 CFR 246.10(c)(5)) is currently provided to pregnant and breastfeeding women, two distinct populations with different nutrient requirements. Based on National Research Council Findings, in general, the daily nutrient requirements for breastfeeding women are greater than those for pregnant women. The recommended dietary allowances (RDAs) for energy and numerous nutrients, including protein, vitamin A and C, and zinc are greater for breastfeeding women compared to pregnant women. With this in mind, there are differences in mean percents of RDAs provided to breastfeeding and pregnant women receiving the same Food Package (V). Some differences are noted in Tables 2–4 and Chart 1 of the appendix. Commenters should take note of this, but still limit comments only to issues related to how the food package can be revised to better meet the nutritional needs of exclusively breastfeeding women. The following is a description of the allowable supplemental foods in WIC Food Package V available to both pregnant and breastfeeding participants as found in § 246.10(c)(5) (also see table 1 in appendix):

1. Pasteurized fluid whole milk which is flavored or unflavored and which contains 400 International Units of Vitamin D per quart (.9 liter) or pasteurized fluid skim or lowfat milk which is flavored or unflavored and which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or pasteurized cultured buttermilk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per fluid quart (.9 liter); or evaporated whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or evaporated skimmed milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or dry whole milk which contains 400 International Units of vitamin D per reconstituted quart (.9 liter); or nonfat or lowfat dry milk which contains 400 International Units of vitamin D and 2000 International Units of vitamin A per reconstituted quart (.9 liter); or domestic cheese (pasteurized process American, Monterey Jack, Colby, natural Cheddar, Swiss, Brick, Muenster, Provolone, Mozzarella Part-Skim or Whole).

2. Adult cereal (hot or cold) which contains a minimum of 28 milligrams of iron per 100 grams of dry cereal and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

3. Single strength fruit juice or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters; or frozen concentrated fruit or vegetable juice, or both, which contains a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

4. Eggs or dried egg mix.

5. Peanut butter or mature dry beans or peas, including but not limited to lentils, black, navy kidney, garbanzo, soy, pinto and mung beans, crowder, cow, split and black-eyed peas.

Summation of Food Package V Considerations

Given the critical importance of the supplemental foods, commenters should carefully weigh the potential effects of their recommendations on the overall integrity of the food package. Responses to this notice should be developed with serious regard to the nutritional needs of the breastfeeding WIC eligible population, the supplemental nature of the WIC Program (as it relates to other sources of food assistance, such as the Food Stamp Program), and the impact of cost on program services. In addition, the Department encourages commenters to submit suggestions about Food Package V with the following considerations in mind: (1) Cultural and ethnic food preferences; (2) the wide availability, variety and appeal of foods; (3) ease and versatility in food preparation; (4) feasibility of apportionment into daily servings for an individual over a month's time; (5) domestic origin of foods; (6) State and local agency flexibility; and (7) administrative flexibility.

A critical consideration when changing program benefits is participant input. For this reason, the Department is encouraging commenters who have contact with WIC eligible populations to broaden the scope of their comments by soliciting comments and reactions from members of that population.

The principles outlined above (and discussed elsewhere in this Notice) constitute a framework within which all WIC Food Packages have been developed. The Department encourages commenters to present their recommendations for modifying Food Package V for exclusively breastfeeding women mindful of these principles or to alternate principles which the commenter believes should be considered.

Further, comments should include justification in terms of current nutritional research. Simple expressions of opinion or statements of positions, without benefits of a clearly stated rationale based on scientific evidence, are of minimal use to the Department in the consideration of this issue.

TABLE 1.—MAXIMUM QUANTITY OF SUPPLEMENTAL FOODS AUTHORIZED PER MONTH FOR FOOD PACKAGE V

Food	Quantity
Milk:	
Fluid whole milk	28 qt. (26.5 L).
or	
Fluid skim or lowfat milk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.
or	
Cultured buttermilk	May be substituted for fluid whole milk on a quart-for-quart (.9 L) basis.

TABLE 1.—MAXIMUM QUANTITY OF SUPPLEMENTAL FOODS AUTHORIZED PER MONTH FOR FOOD PACKAGE V—Continued

Food	Quantity
or	
Evaporated whole milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Evaporated skimmed milk	May be substituted for fluid whole milk at the rate of 13 fluid oz. (.4 L) per qt. (.9 L) of fluid whole milk.
or	
Dry whole milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk.
or	
Nonfat or lowfat dry milk	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 5 qt. (4.7 L) of fluid whole milk.
or	
Cheese	May be substituted for fluid whole milk at the rate of 1 lb. (.4 kg) per 3 qt. (2.8 L) of fluid whole milk. 4 lbs. (1.8 kg) is the maximum amount which may be substituted.[1]
Eggs:	
Eggs	2 doz. or 2-½ doz.
or	
Dried egg mix	May be substituted at the rate of 1.5 lb. (.7 kg) egg mix per 2 doz. fresh eggs, or 2 lb. (.9 kg) egg mix per 2-½ doz. fresh eggs.
Cereals:	
Cereals (hot or cold)	36 oz. dry (1 kg).
Juice: [2]	
Single strength juice	276 fluid oz. (8.2 L).
or	
Frozen, concentrated juice	288 fluid oz. reconstituted (8.5 L).
or	
Legumes:	
Dry beans or peas	1 lb. (.4 kg).
or	
Peanut butter	18 oz. (.5 kg).

[1] Additional cheese may be issued on an individual basis in cases of lactose intolerance, provided the need is documented in the participant's file by the competent professional authority.

[2] Combinations of single strength or frozen concentrated juice may be issued as long as the total volume does not exceed the amount specified for single strength juice.

TABLE 2.—PERCENT OF RDA PROVIDED PER DAY IN FOOD PACKAGE V FOR PREGNANT WOMEN (12–50 YRS) NOT INCLUDING A HIGHLY FORTIFIED CEREAL

Nutrient	Mean total per day	RDA	% RDA
Food Energy (Kcal)	863.0	2500.0	34.6
Protein (gm)	42.5	60.0	70.9
Vitamin A (IU)	3775.0	2650.0	142.5
Thiamin (mg)	1.08	1.5	72.4
Niacin (mg)	9.6	17.0	56.7
Riboflavin (mg)	2.2	1.6	136.6
Vitamin B_6 (mg)	1.1	2.2	54.4
Vitamin B_{12} (mcg)	3.5	2.2	162.9
Vitamin C (mg)	141.0	70	202.8
Vitamin D (IU)	427.0	400	106.8
Folacin (mcg)	323.0	400	80.8
Iron (mg)	11.1	30	37.1
Calcium (mg)	1193.0	1200	99.5
Phosphorus (mg)	1065.0	1200	88.0
Magnesium (mg)	193.0	320	60.5
Zinc (mg)	4.7	15	31.5

Maximum Content of Sample Food Package Per Month:

Kix (36 oz.), lowfat (2%) milk (28 qts.), eggs (2 doz.), orange juice (72 oz.), peanut butter (18 oz.)

Note: This is a sample food package, and the types of foods chosen do not necessarily represent the most frequently prescribed or selected WIC foods for pregnant participants.

TABLE 3.—MEAN PERCENT OF RDA PROVIDED PER DAY IN FOOD PACKAGE V (FOR BREASTFEEDING WOMEN DURING THE FIRST 6 MOS.)

Nutrient	Mean total per day	RDA	Percent RDA
Food Energy (Kcal)	837	2700	31
Protein (gm)	41.8	65	64.3
Vitamin A (IU)	3723	4350	85.6
Thiamin (mg)	1.09	1.6	68.1
Niacin (mg)	8.6	20.0	43
Riboflavin (mg)	2.11	1.8	117.2
Vitamin B_6 (mg)	1.1	2.1	52.4
Vitamin B_{12} (mcg)	3.4	2.6	130.8
Vitamin C (mg)	141	95	148.4
Vitamin D (IU)	402	400	100.5
Folacin (mcg)	344	280	122.9
Iron (mg)	11.4	15.0	76
Calcium (mg)	1172	1200	97.7
Phosphorus (mg)	1045	1200	87.1
Magnesium (mg)	183	355	51.5
Zinc (mg)	4.7	19.0	24.7

Maximum Content of Sample Food Packages Per Month:

A. Kix (36 oz.), lowfat (2%) milk (28 qts.), eggs (2 doz.), orange juice (72 oz.), peanut butter (18 oz.)

B. Kix (36 oz.), lowfat (2%) milk (28 qts.), eggs (2 doz.), orange juice (72 oz.), red kidney beans (1 lb.)

C. Kix (36 oz.), lowfat (2%) milk (24 qts.), eggs (2 doz.), orange juice (72 oz.), peanut butter (18 oz.), cheddar cheese (1 lb.)

D. Kix (36 oz.), lowfat (2%) milk (24 qts.), eggs (2 doz.), orange juice (72 oz.), red kidney beans (1 lb.), cheddar cheese (1 lb.)

Note: These are sample food packages, and the types of foods chosen do not necessarily represent the most frequently prescribed or selected WIC foods for breastfeeding participants.

The mean nutritional values were derived from A, B, C, and D sample food packages, thus % RDAs were based on these means.

TABLE 4.—MEAN PERCENT OF RDA PROVIDED PER DAY IN FOOD PACKAGE V (FOR BREASTFEEDING WOMEN DURING THE SECOND 6 MOS.)

Nutrient	Mean total per day	RDA	Percent RDA
Food Energy (Kcal)	837	2700	31
Protein (gm)	41.8	62.0	67.4
Vitamin A (IU)	3723	4000	93.1
Thiamin (mg)	1.09	1.6	68.1
Niacin (mg)	8.6	20.0	43.0
Riboflavin (mg)	2.11	1.7	124.1
Vitamin B_6 (mg)	1.1	2.1	52.4
Vitamin B_{12} (mcg)	3.4	2.6	130.8
Vitamin C (mg)	141	90.0	156.7
Vitamin D (IU)	402	400	100.5
Folacin (mcg)	344	260	132.3
Iron (mg)	11.4	15.0	76
Calcium (mg)	1172	1200	97.7
Phosphorus (mg)	1045	1200	87.1
Magnesium (mg)	183	340	53.8

TABLE 4.—MEAN PERCENT OF RDA PROVIDED PER DAY IN FOOD PACKAGE V (FOR BREASTFEEDING WOMEN DURING THE SECOND 6 MOS.)—Continued

Nutrient	Mean total per day	RDA	Percent RDA
Zinc (mg)	4.7	16.0	29.4

Maximum Content of Sample Food Packages Per Month:

A. Kix (36 oz.), lowfat (2%) milk (28 qts.), eggs (2 doz.), orange juice (72 oz.), peanut butter (18 oz.)

B. Kix (36 oz.), lowfat (2%) milk (28 qts.), eggs (2 doz.), orange juice (72 oz.), red kidney beans (1 lb.)

C. Kix (36 oz.), lowfat (2%) milk (24 qts.), eggs (2 doz.), orange juice (72 oz.), peanut butter (18 oz.), cheddar cheese (1 lb.)

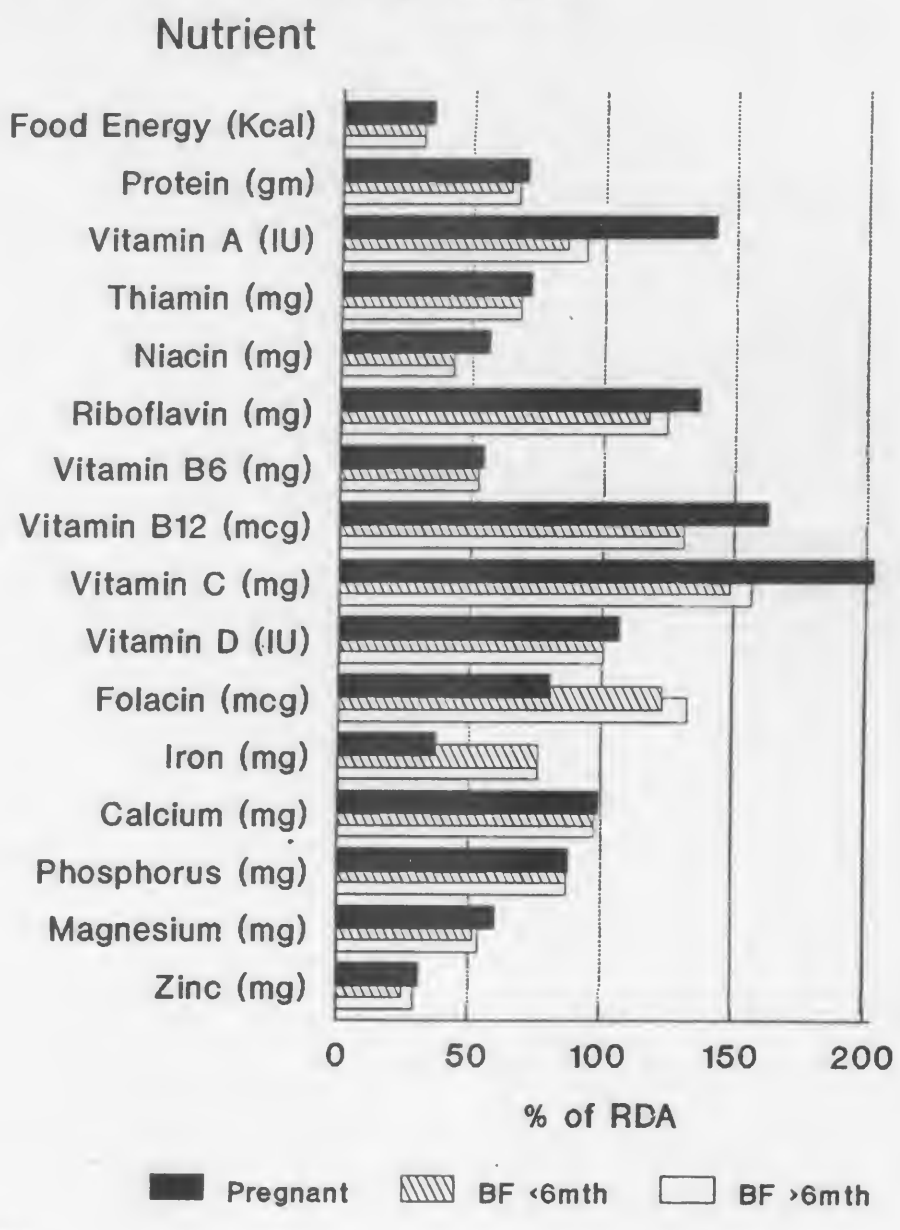
D. Kix (36 oz.), lowfat (2%) milk (24 qts.), eggs (2 doz.), orange juice (72 oz.), red kidney beans (1 lb.), cheddar cheese (1 lb.)

Note: These are sample food packages, and the types of foods chosen do not necessarily represent the most frequently prescribed or selected WIC foods for breastfeeding participants.

The mean nutritional values were derived from A, B, C, and D sample food packages, thus % RDAs were based on these means.

BILLING CODE 3410-30-M

Chart 1. % of RDA Provided/Day in Fd. Pkg. V.
Breastfeeding (BF) vs. Pregnant
(Summary of Tables 2-4)



BILLING CODE 3410-30-C

Authority: Sec. 123, Pub L. 101–147, 103 Stat. 894; Sec. 645, Pub. L. 100–460, 102 Stat. 2229; secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786) sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786); sec. 3, Pub. L. 96–499, 94 Stat. 2599; sec. 203, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

Dated: November 25, 1991.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 91–28679 Filed 11–29–91; 8:45 am]

BILLING CODE 3410–30–M

Commodity Credit Corporation

7 CFR Part 1435

Sugar and Crystalline Fructose Marketing Allotment Regulations for Fiscal Years 1992 Through 1996

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth regulations to implement the provisions of part VII of subtitle B of title III of the Agricultural Adjustment Act of 1938 (1938 Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), with respect to marketing allotments for sugar processed from domestically-produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996. With respect to marketing allotments, the proposed regulations address: (1) Establishment of marketing allotments; (2) adjustments due to changes in the estimates of consumption, stocks, production and imports; (3) allocation of marketing allotments; (4) adjustment of allotments and allocations; (5) assignment of deficits; (6) processor assurances; (7) establishment of proportionate shares for producers; (8) transfer and reservation of production history; (9) assessment of penalties, waiver of penalties, and collection of penalties, and (10) appeals.

DATES: Comments must be received on or before January 2, 1992, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments should be mailed or delivered to Dean Ethridge, Deputy Administrator for Program Planning and Development (DAPPD), Agricultural Stabilization and Conservation Service (ASCS), Room 3090, South Agriculture Building, U.S. Department of Agriculture (USDA), Washington, DC 20250. Comments received may also be inspected between 9 a.m. and 4:30 p.m., Monday through Friday except holidays, in Room 3741, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Barry, Assistant to DAPPD, ASCS; telephone: (202)447–3391. Preliminary regulatory flexibility and impact analyses are available from the above-named person.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as a "major" rule. It has been determined that the provisions of this proposed rule will result in:

(1) An annual effect of the economy of $100 million or more;

(2) Major increases 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 on the ability of United States (U.S.)-based enterprises to compete in domestic or export markets.

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, an Environmental Assessment and an Environmental Impact Statement are not necessary for this proposed rule.

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule applies are: Commodity Loans and Purchases; 10.051.

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The public reporting burden for this collection of information is estimated to average 45 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; or to the OMB, Paperwork Reduction Project (OMB #0560–0004), Washington, DC 20503.

The programs covered by this proposed rule are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Statutory Background

Title IX of the 1990 Act (Pub. L. 101–624), which was enacted on November 28, 1990, amended subtitle B of title III of the 1938 Act to provide, in a new part VII, under certain circumstances, for the establishment of marketing allotments for sugar and crystalline fructose for fiscal years 1992 through 1996. Part VII also provides for the monthly reporting of certain information with respect to the importation, distribution and stock levels of sugar and crystalline fructose for fiscal years 1992 and subsequent years.

Consultations With The Industry

Section 359h(a)(2) of the 1938 Act, as amended, provides that prior to proposing any regulations to implement part VII of subtitle B of title III, the Secretary of Agriculture shall consult with representatives of domestic sugar processors and producers with regard to ensuring that the regulations achieve the objectives of part VII. Sugar consultations were held on behalf of the Secretary on April 19, 1991. At that meeting eighteen individuals, companies, or organizations presented testimony and written papers regarding the implementation of the sugar program. Comments received have been considered in developing these proposed regulations.

The principal concern of the private sector participants was the weights that would be assigned to the three elements (past marketings, processing and refining capacity, and the ability to market) used to determine the percentage factors for the overall cane sugar and beet sugar allotment. Suggestions for the weight factor to be used for "past marketings" ranged from 100 percent to less than 5 percent, and weight factors for "processing and refining capacity", and "ability to market" ranged from over 47 percent to 0 percent each.

It was suggested that in determining "past marketings" a 5-year average, disregarding the high and low years be used. It was also suggested that the highest production year be used.

Other principal suggestions of the participants were as follows:

(1) USDA should count sugar under loan against a processor's market allocation, but if the sugar is forfeited or put under loan a second time, it should not be counted against the allocation a second time;

(2) USDA should provide for a reasonable amount of carry-over stocks when applying the trigger formula for the marketing allotment;

(3) USDA should adjust or suspend marketing allotments once the minimum import level has been reached and allow domestic supplies and reserves to meet further needs, and

(4) USDA should develop a fair and workable sugar equivalency standard for crystalline fructose.

Discussion of Proposed Rule

This proposed rule would implement the amended provisions of the 1938 Act with respect to sugar marketing quotas and allotments. The statute as enacted contains numerous provisions that are ambiguous. The proposals as set forth in this proposed regulation attempt to clarify these issues and to implement the statute in a manner that will result in a viable and effective sugar program.

In developing the proposed regulations, the following interpretations of the statute were made.

1. No restriction or allotments shall be established on marketings of any liquid fructose produced from corn.

2. Reasonable carryover stocks would be considered in determining whether marketing allotments apply.

3. If marketing allotments are not implemented at the beginning of the fiscal year, they cannot be triggered by subsequent quarterly reestimates during that fiscal year.

4. If a sugar beet processor subject to an allotment is unable to market that allotment, such deficit shall be reassigned proportionately to all other sugar beet processors, not just to processors within the vicinity of the processor.

5. Farm proportionate shares would be established in sugarcane States whenever an allotment is in effect and there are in excess of 250 sugarcane producers in such States.

6. Proportionate shares would be established on a farm basis, not by producer.

7. In determining farm sugarcane acreage bases, sugarcane acreage on a farm that fails and is not harvested due to conditions beyond the control of producers would be considered as planted. Prevented planted acreage would not be considered as planted.

8. The quantity of sugar pledged as collateral by the processor shall be included in the processor's allotment quantity, however, it shall not be counted a second time when the loan is subsequently redeemed.

Significant provisions of the proposed regulations are described below.

Reasonable Carryover Stocks

Section 359b(a)(1) of the 1938 Act provides that before the beginning of each of the fiscal years 1992–1996, the Secretary shall estimate (1) the quantity of sugar that will be consumed in the customs territory of the U.S. during the fiscal year, (2) the quantity of sugar that will be available from carry-in stocks or from domestically produced sugarcane and sugar beets for consumption in the U.S. during the year, and (3) the quantity of sugar that will be imported for consumption during the year, based on the difference between (i) the quantity of estimated consumption; and (ii) the quantity of sugar estimated to be available from domestically produced sugarcane and sugar beets and from carry-in stocks. In addition, section 359c(b) of the 1938 Act requires the Secretary, in establishing the overall allotment quantity for the fiscal year, to deduct 1,250,000 short tons, raw value, and carry-in stocks of sugar including sugar in Commodity Credit Corporation (CCC) inventory from the estimated sugar consumption.

A carryover stocks level for the purpose of determining marketing allotments is not explicitly provided in the statutory language. This omission was recognized by the sugar industry in numerous statements presented at the sugar consultations. The industry recommended that the Secretary consider "reasonable carryover stocks" when estimating the amount of sugar available for consumption each year. This proposed regulation at § 1435.502 provides for the consideration of "reasonable carryover stocks."

Crystalline Fructose Allotments

Section 359b(c) of the 1938 Act provides, for any fiscal year that allotments are established for the marketing of sugar, that the Secretary shall establish for that year appropriate allotments for the marketing by manufactures of crystalline fructose manufactured from corn, at a total level not to exceed the equivalent of 200,000 tons of sugar, raw value, during the fiscal year, in a manner that is fair, efficient, and equitable to manufacturers.

Section 1435.502 of the proposed regulations would provide that 159,757 tons of crystalline fructose is equivalent to 200,000 tons of sugar, raw value. This level was selected because it represents the superior sweetness of crystalline fructose relative to refined sugar (117-to-100 ratio); this ratio can be determined by means of well-established tests, and precludes the controversy about changes in sweetener equivalence when crystalline fructose is used in a diversity of products, each with its own sweetness equivalence to crystalline fructose.

Timing of Marketing Allotment Announcement

Section 359b(a)(1) and § 359c(a) of the 1938 Act provides that before the beginning of the fiscal year the Secretary shall determine whether marketing allotments will be established. Also, section 359b(a)(2) provides that the Secretary shall make quarterly reestimates of sugar consumption, stocks availability, and imports for a fiscal year no later than the beginning of each of the second through fourth quarters of the fiscal year. Further, section 359d(a)(2) of the 1938 Act provides that whenever marketing allotments are established the Secretary shall make allocations for cane and beet sugar after such hearing and on such notice as the Secretary by regulation may prescribe.

Sections 1435.509–.510, 1435.512–.513 and 1435.515 of the proposed regulation provides for the announcement of the overall marketing allotment and allocation of such allotment to the cane and beet sugar sectors; the cane sugar States; and to cane and beet sugar processors before the beginning of the fiscal year, with quarterly reestimate announcements. If allotments are triggered, a hearing will be held within 5 working days after the announcement to afford processors the opportunity to comment on the proposed allocations. This timing permits the latest supply-use estimates to be included in the program decision.

Percentage Factors for Allocation of Allotment

Sections 359c(d)(1) of the 1938 Act provides that the Secretary shall establish percentage factors for the overall beet sugar and cane sugar allotments applicable for a fiscal year. It further provides that the Secretary shall establish the percentage factors in a fair, equitable, and efficient manner on the basis of past marketings of sugar (considering for such purposes the marketings of sugar processed from sugarcane and sugar beets of any or all of the 1985 through 1989 crops), processing and refining capacity, and

the ability of processors to market the sugar covered under the allotments (the "three-factor criteria").

In addition, section 359c(f) provides that the allotment for sugar derived from sugarcane shall be further allotted among the five States in the U.S. in which sugarcane is produced, in a fair and equitable manner on the basis of the "three-factor criteria". With regard to past marketings of sugar, the Secretary shall consider a two-year average of processed sugarcane marketings, using the two highest years of production in each State from the 1985 through 1989 crops.

Section 1435.512(c) and other applicable subparts of this proposed regulation provides that each year allotments are in effect, the weights for each of the "three-factor criteria" would be established annually. This provides maximum program flexibility and enables the Secretary to establish allotments based on current conditions within the industry. At the sugar consultations, the industry recognized the need for flexibility in setting weights; however, the industry also showed wide disparity in recommending appropriate weights.

Each of the three criteria has limitations that are inherent in a system wherein rules rather than the "invisible hand" of the free market operate to allocate resources and determine prices. "Past marketings" can claim some semblance of fairness and equity by reflecting an established sharing of the market. Over time, however, this criterion becomes a less accurate measure of fairness and equity, and other criteria are needed.

Giving some weight to both "processing capacity" and "ability to market" may not only be fair and equitable; it would also reward efficiency in the sense that it is the lower-cost or more competitive elements of the industry that tend to expand their processing capacity and ability to market. The downside of encouraging production capacity, however, is that it increases the likelihood of marketing allotments and surplus sugar stocks for disposal.

It was proposed at the sugar consultations that "processing capacity", a relatively ambiguous concept, be defined as the maximum crop-year production achieved since the 1985 crop. This would seem to be a reasonable proxy for capacity, with the qualification that it should be selected from a moving range of years (in fiscal 1992, from crop years 1986–1990; in fiscal 1993, from 1987–1991; and so on, to fiscal 1996).

At the sugar consultations, weights recommended for "past marketings" ranged from less than 5 percent to 100 percent, and for "processing capacity" and "ability to market" the recommendations ranged from 0 percent to over 47 percent each. The wide disparity in recommended weights suggests that equal weights (33⅓ percent each) may best meet the need for balance between fairness and equity, on the one hand, and efficiency on the other. However, the targets of fairness, equity, and efficiency are loose concepts whose relative weights are not specified by statute.

Three-Factor Criteria Considerations

The need for some flexibility in establishing weights for the three-factor criteria is underscored by several considerations. While "past marketings" from the 1985–1989 crops is a fixed quantity, "processing capacity" is expected to vary over time, and "ability to market" will not only vary but can be grossly unpredictable because of weather, crop conditions, and processing factors. In the interest of fairness, equity, and efficiency, some consideration may have to be given to circumstances such as, but not limited to:

When a substantial increase in "production capacity" and "ability to market" may result in some processors incurring a substantial reduction in their allocation.

When the "ability to market" of either the beet sugar or cane sugar sectors of the sugar industry is below their respective preliminary allocation and a second iteration with revised weights is determined to be an efficient way to lower a potential surplus in the other sugar-producing sector. This is to be distinguished from cases of inability to market an allotment quantity, after weights and allotments have been established for the fiscal year. In the latter situation, the Act clearly indicates that imports and not any surplus sugar in the other sugar-producing sector are to make up the difference.

When foreign suppliers of U.S. tariff-rate quota imports are likely to be substantially short of their quota and it may be necessary to assure domestic sugar supplies in sufficient quantity to avoid disruption of the market.

Section 1435.512(b)(1) of this proposed regulation provides that when establishing the percentage factors for allocating the overall beet sugar and cane sugar allotments, the past marketings component of the "three-factor criteria" would be determined using the average marketings for the 1985 through 1989 crops dropping the highest and lowest years. Use of this formula is consistent with other programs that utilize a 5-year historical period, and will mitigate the impact of anomalous crops. This formula was recommended by the cane industry during the sugar consultations. Percentage weights recommended by sugar representatives at the consultations ranged from 51 to 54 percent for beet sugar and 46 to 49 percent for cane sugar. These values are for illustration purposes only and do not imply that percentage factors, when applicable, would necessarily fall within these ranges.

Inclusion of Products in Allotments

Section 359b(b)(2) of the 1938 Act provides that the Secretary may include products of sugar in the allotments if deemed appropriate.

Section 1435.508 and § 1435.509 of the proposed regulations provides that processed cane and beet sugar used by the processor for intermediate and sugar containing products will be considered within the allotment allocated to the processor. This discretionary provision is proposed to be implemented because: (1) It accounts for products having a high sucrose content; (2) includes sugar equivalents which could otherwise be used to circumvent the objectives of the marketing allotment program; and (3) improves program management of domestic supplies and prices. This proposal also conforms with comments by representatives of the industry during the sugar consultations.

Determining U.S. Market Value—Civil Penalty

Section 359b(d)(3) and Section 359f(b)(5)(B) provides for a civil penalty when: (1) A cane or beet processor markets sugar in excess of the assigned allocation; (2) a crystalline fructose manufacturer markets crystalline fructose in excess of the allotment, or (3) a sugarcane producer who has received a proportionate share knowingly harvests excess sugarcane acreage. The processor and manufacturer shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time of the commission of the violation, of that quantity of sugar or crystalline fructose involved in the violation. A producer shall be liable for an amount equal to 3 times the U.S. market values of the quantity to be based on the per-acre goal established to determine proportionate shares for sugarcane.

Section 1435.502 of the proposed regulation provides that the U.S. market value for either cane producer or cane processor violators would be the daily New York No. 14 contract price; for refined beet sugar violators, it would be the weekly-published Midwest price; for

crystalline fructose violators, the price would be the Midwest price, times a factor of 1.5. The time of the commission of the violation would be handled in the same manner as for other commodity program violators. The prices to be used are generally widely known and readily available to the industry.

Processor Assurances

The first sentence of Section 359f(a) of the 1938 Act provides that whenever allotments for a fiscal year are allocated to processors, the Secretary shall obtain from the processors such assurances as are considered adequate that the allocation will be shared among producers served by the processor in a fair and equitable manner that adequately reflects producers' production histories.

Section 1435.521 of the proposed regulations provide that processors would be required to submit a report to the Secretary in sufficient detail to support that their allocation will be shared among producers served by such processors in a fair and equitable manner.

Arbitration By the Secretary

The last sentence of Section 359f(a) of the 1938 Act provides that any dispute between a processor and a producer, or group of producers, with respect to the sharing of the processor's allocation shall be resolved through arbitration by the Secretary on the request of either party.

Section 1435.521(b) of the proposed regulations provides that an ASCS employee at the State level will be designated to initially arbitrate between producers and processors. Review of the State specialist arbitration decision by the Administrator of ASCS can be requested by either party. The final administrative appeal is to an Administrative Law Judge as required by the 1938 Act. This process allows State ASCS personnel who have familiarity with the parties and the issues, to attempt to resolve the dispute. A review by the Administrator of ASCS will provide for consistent application of policy.

Per-Acre Yield Goal

Section 359f(b)(3)(A) of the 1938 Act provides that the Secretary shall establish the State's per-acre yield goal for a crop at a level (not less than the average per acre yield in the State for the preceding 5 years, as determined by the Secretary) that will ensure an adequate net return per pound to producers in the State, taking into consideration any available production research data that the Secretary deems relevant. These provisions only apply to sugarcane and only in States where proportionate shares are established.

Section 359f(b)(1)(A) of the 1938 Act provides that proportionate shares apply in a State for which a cane sugar allotment is established and in which there are in excess of 250 producers in such State.

Section 1435.502 of the proposed regulations provides that the State's per-acre yield goal would be set at a minimum of the preceding 5-year average yield per acre for the State but the Secretary may increase such yield to achieve program objectives. This process was selected because it provides greater program management flexibility and permits variation in per-acre yield goals to adjust to changing situations.

Appeals

Sections 359i (a) and (b)(2) of the 1938 Act provides that an appeal may be taken to the Secretary from any decision under Section 359d (Allocation of Marketing Allotments) or under Section 359f (Provisions Applicable to Producers), by any person adversely affected by reason of any such decision. It further provides that the Secretary shall provide each appellant an opportunity for a hearing and shall appoint an Administrative Law Judge to conduct a hearing.

Section 1435.530(b) of the proposed regulations provides that only those issues specifically required by statute to be heard by an Administrative Law Judge would be subject to such review. This procedure was selected to permit ASCS to handle all other sugar issues in the same manner as for other programs. Because of the heavy case load of Administrative Law Judges, resolution of cases not specifically required to be heard by an Administrative Law Judge would be handled more promptly by the existing ASCS appeals process.

Producer Requirements

The 1938 Act refers to a producer in Section 359f and Section 359g. This proposed rule would use the definition for "producer" found at 7 CFR 719.2, which is defined as follows: "A person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producing the crop, and is entitled to share in the crops available for marketing from the farm or would have shared had the crops been produced * * *." Section 359f of the Act refers to establishment of an acreage base for a farm. The proposed rule will use the same definition of "farm" as is used for other ASCS programs as provided in § 719.3 of title 7. A State that is subject to proportionate shares will not be allowed to reconstitute farms across State lines. This proposed rule will not require submission of yield data for individual farms for sugar beets and sugarcane.

Section 359g.(a) allows the transfer of planted and considered planted (P&CP) history under certain conditions. Such transfer will decrease the P&CP for the base period, the current year, and future years on the transferring farm and increase the P&CP for the base period, the current year, and future years on the receiving farm. The Act provides that "* * * For the purpose of establishing proportionate shares for producers under § 359f, the Secretary, on application of any producer, may transfer the production history of land owned, operated, or controlled by the producers to any other parcels of land of the applicant." The proposed rule allows producers (operators, tenants, or owners), to transfer the production history to any farm in the State on which that producer also has an interest. However, the owner would be required to sign an application filed by an operator or tenant. This allows the owner to have the ultimate control of the transfer, while permitting other producers on the farm to utilize unused shares. The transfers may be requested any time during the year and may be for the total acreage or any part of the base.

Section 359g.(b) allows the temporary transfer of proportionate shares under certain conditions. The temporary transfer will preserve the production history on the transferring farm for a period from 1 to 3 years. Under this proposed rule owners may transfer the proportionate shares only if a natural disaster prevents the use of the proportionate share. This section also provides that "* * * The proportionate shares may be redistributed to other farm owners or operators, * * * by virtue of the redistribution of the proportionate share * * *."

The transfer would be arranged privately between owners and producers. However, owners would be required to record any transfer at the county ASCS office by a specified date. It is intended that this deadline should be approximately five days before normal sugarcane harvest for the county or parish. This transfer would be effective for one year. The acreage base for any crop shall be the number of acres that is equal to the average of the acreage planted and considered planted for harvest for sugar or seed on the farm in each of the five crop years preceding the crop year. The Act provides that "* * * Acreage that producers on a farm

were unable to harvest to sugarcane for sugar or seed because of drought, flood, other natural disaster, or other condition beyond the control of the producers shall be considered as harvested to sugarcane for sugar or seed for purposes of this paragraph * * *." Under this proposed rule an acreage that is prevented from planting will not be included in the planted and considered planted.

Section 359f(b)(5) of the Act provides that "Whenever proportionate shares are in effect in a State for a crop of sugarcane, no producer in the State knowingly may harvest for sugar or seed an acreage of sugarcane of the crop in excess of the farm's proportionate share for the crop or otherwise violate proportionate share regulations issued by the Secretary under § 359h(a)." Any producer who violates by knowingly harvesting for sugar, or seed, sugarcane in excess of the farm's proportionate share shall be liable to CCC for a civil penalty in an amount equal to 3 times the U.S. market value, at the time of the commission of the violation, of that quantity of sugar involved in the violation. This proposed rule provides that no civil penalties shall be assessed when producers harvest sugarcane acreage in excess of the farm's proportionate share if such harvesting was completed prior to the Secretary's announcement that proportionate shares are to be in effect or adjusted in a State for a crop of sugarcane. Civil penalties will be calculated by multiplying the U.S. market value times 3, times the acreage of sugarcane knowingly harvested in excess of the farm's proportionate State share, times the State's per-acre yield goal. However, producers shall not be liable to a penalty if the excess production is diverted to a use other than sugar or seed as defined in § 1435.528 of this part or if the sugarcane was harvested before the Secretary announced that proportionate shares were in effect.

Section 359h(b) of the Act provides that any person knowingly violating any regulation of the Secretary issued under this part shall be subject to a civil penalty of not more than $5,000 for each violation. This proposed rule requires producers of sugarcane to file an acreage report for the sugarcane crop according to part 718 of this title. Such report would include the number of acres, failed acres, and acres harvested for sugar or seed. The reports shall be filed with the county Agricultural Stabilization and Conservation (ASC) committee (county committee) by the operator of the farm, the farm owner, or duly authorized representative. The applicable final reporting date will be established by Deputy Administrator, State and County Operations (DASCO) and will be publicized by and available at the applicable State and county ASCS office. The required acreage report will be used to determine program eligibility and benefits and will be filed on forms prescribed and in accordance with instructions issued by DASCO. A late-filed acreage report for a sugarcane crop may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to the existence and use of the sugarcane crop, or the lack of the crop or a disaster condition affecting the crop. The operator filing a late-filed acreage report must pay the cost of a farm visit by an authorized ASCS employee, unless the county committee has determined that failure to report in a timely manner was beyond the producer's control. The operator may revise a report of acreage to change the acreage reported. The revised report must be filed in accordance with instructions issued by DASCO and shall be accepted at any time if evidence exists for inspection and determination of the existence and use of the crop, the lack of the crop, or a disaster condition affecting the crop, and until the time that harvesting has begun. A revised acreage report cannot be accepted if the farm has been selected for inspection and acreage has been determined.

This proposed rule requires tolerances as articulated in 7 CFR 718.40. Such tolerance for sugarcane shall be the larger of 1.0 acre or 5 percent of the reported acreage, not to exceed 10.0 acres. The sugarcane crop acreage will be considered to meet the requirements of an accurate report if the determined acreage for the crop does not differ from the reported acreage by more than the tolerance.

Filing of a false or inaccurate acreage report will result in an assessment when the difference between the reported acreage and determined acreage for sugarcane exceeds the tolerance. A waiver of the assessment can be made by the county ASC committee if it determines that the sugarcane producer has made a good faith effort to accurately report the sugarcane acreage. The assessment will be based on the difference between the reported and determined acreage multiplied by the State yield-goal times 25 percent of the National loan rate for sugar not to exceed $5,000 for each violation.

If the county committee determines that the sugarcane producer did not make a good faith effort to accurately report the sugarcane acreage, the sugar production from the farm will not be eligible for price support benefits.

List of Subjects in 7 CFR Part 1435

Loan programs/agriculture, Price support programs. Reporting and recordkeeping requirements, Marketing allotments, Sugar.

Accordingly, 7 CFR part 1435 is proposed to be amended by adding a new Subpart (§§ 1435.500 through 1435.530) as follows:

PART 1435—SUGAR

Subpart—Marketing Allotments for Sugar and Crystalline Fructose

Sec.

1435.500 Applicability.
1435.501 Administration.
1435.502 Definitions.
1435.503–.505 Reserved
1435.506 Basis for allotments, estimates, and reestimates.
1435.507 Annual estimate and quarterly reestimates.
1435.508 Procedure for estimating imports.
1435.509 Overall marketing allotment.
1435.510 Adjustment of overall marketing allotment.
1435.511 Crystalline fructose allotment.
1435.512 Marketing allotments for cane and beet sugar.
1435.513 State cane sugar allotment.
1435.514 Cane and beet sugar allotment adjustments.
1435.515 Allocation of marketing allotments to processors.
1435.516 Reassignment of deficits.
1435.517–.520 [Reserved]
1435.521 Assignment of processor's allocation to producers.
1435.522 Proportionate shares for producers of sugarcane.
1435.523 Establishment of acreage bases.
1435.524 Transfer of production history by producers with proportionate shares.
1435.525 Temporary disaster transfers.
1435.526 Acreage reports.
1435.527 Farm inspections.
1435.528 Tolerance rules.
1435.529 Penalties and assessments.
1435.530 Appeals.

Authority: 7 U.S.C. 1359aa–1359jj; 15 U.S.C. 714b and 714c

Subpart—Marketing Allotments for Sugar and Crystalline Fructose

§ 1435.500 Applicability.

(a) The regulations of this subpart are applicable to the establishment and allocation of marketing allotments for:

(1) The marketing by processors during fiscal years 1992 through 1996 of sugar processed from domestically produced sugarcane and sugar beets;

(2) The marketing by manufacturers during fiscal years 1992 through 1996 of crystalline fructose manufactured from corn;

(3) The distribution of the processor's allotment allocation to producers; and

(4) The harvesting of sugarcane by producers subject to proportionate shares.

(b) The regulations of this subpart do not apply to:

(1) The marketing of imported raw or refined sugar or imported crystalline fructose;

(2) The marketing of sugar processed from imported sugarcane or sugar beets;

(3) The marketing of liquid fructose produced from corn; or

(4) The sale or transfer of sugar or crystalline fructose for exportation from the customs territory of the U.S.

(c) The provisions of this subpart are applicable throughout the U.S., including Puerto Rico and the District of Columbia.

§ 1435.501 Administration.

The provisions of this subpart shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, ASCS), and shall be carried out in the field by State and county ASC committees ("State and county committees," respectively).

(a) State and county committees, and their representatives and employees, do not have authority to modify or waive any provisions of this subpart.

(b) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(c) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC (Administrator, ASCS), or a designee, from determining any questions arising under this subpart or from reversing or modifying any determination made by a State or county committee.

(d) The Executive Vice President, CCC (Administrator, ASCS), or a designee, may authorize State or county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of this subpart.

§ 1435.502 Definitions.

The definitions set forth in this section are applicable throughout this subpart. The definitions contained in parts 718 and 719 of this title and part 1413 of this chapter are also applicable.

Acreage base period means the five crop years preceding the current crop year for which the acreage base is established.

Allocation means the division of the sugar beet allotment among processors of sugar beets in the U.S. and the allocation to a State in which sugarcane is produced among the sugarcane processors of that State.

ASCS means Agricultural Stabilization and Conservation Service.

Available for consumption means sugar capable of being sold for consumption.

Beet sugar means sugar derived directly or indirectly from sugar beets produced in the U.S. (including sugar produced from sugarbeet molasses).

Beet sugar allotment means that portion of the marketing allotment allocated to sugarbeet processors.

Cane sugar means sugar derived directly or indirectly from sugarcane produced in the U.S. (including sugar produced from sugarcane molasses).

Cane sugar refiner means any person who processes raw cane sugar into refined sugar or liquid sugar. The same person may be both a *cane sugar refiner* and either a *sugarcane processor* or *sugar beet processor* or both.

Carry-in stocks means inventory on hand at the beginning of the fiscal year.

CCC means the Commodity Credit Corporation.

Crop year means the period beginning July 1 and ending June 30 of the following calendar year. The "1991 crop" within the context of this subpart means sugar processed from domestically produced sugar beets or sugarcane during the 1991 crop year.

Crystalline fructose means a monosaccharide and reducing sugar, manufactured from field corn, appearing as freeflowing white crystals with the chemical formula $C_6H_{12}O_6$ and molecular weight of 180.16.

Crystalline fructose allotment means the total quantity of crystalline fructose that each manufacturer of crystalline fructose may market in any fiscal year in which a marketing allotment is in effect. An allotment for crystalline fructose will be imposed whenever allotments are established for cane and beet sugar at a maximum level equivalent to 200,000 tons of sugar, raw value, or 159,757 tons of crystalline fructose, during the fiscal year or other period in which marketing allotments are in effect.

DAPPD means the Deputy Administrator for Program Planning and Development.

DASCO means the Deputy Administrator, State and County Operations.

Deficit means the estimated quantity of sugar covered by an allocation of an allotment that a processor of sugarcane or sugar beets will be unable to market.

Direct consumption sugar means any sugar which is not to be further refined or improved in quality, whether such sugar is principally of crystalline structure or is liquid sugar or edible molasses.

Distribution means the sale or other disposition of sugar or crystalline fructose, including (but not limited to) the forfeiture of sugar to the CCC and the disposition of sugar or crystalline fructose for retail sale, for further processing or refining, or for exportation.

Edible molasses means molasses which is not to be further refined or improved in quality and which is to be distributed for human consumption, either directly or in molasses-containing products.

Farm means that entity as defined in § 719.3 of this title. When a State is subject to proportionate shares, it will not be allowed to have farms reconstituted across State lines even if the farm land is adjoining. For example: if a producer farms in Mississippi and has a farm in an adjoining parish in Louisiana, that farm operation may not be reconstituted as a single farming unit under the regulations now applicable in § 719.3 under this regulation because proportionate shares are applicable in Louisiana and not in Mississippi.

Fiscal year means the year beginning October 1 and ending September 30.

Imports means sugar or crystalline fructose entered into the customs territory of the U.S., whether or not the sugarcane processor, sugar beet processor, sugar refiner, or manufacturer of crystalline fructose was the importer of record or consignee of the imported sugar or crystalline fructose.

Inedible molasses means molasses other than edible molasses, including molasses to be used in producing animal feed.

Invert sugar means a mixture of glucose (dextrose) and fructose (levulose) formed by the hydrolysis of sucrose.

Liquid sugar means a finished sugar product which is not principally of crystalline structure and in which sucrose or the sucrose equivalent of invert sugars, or both, account for 70

percent or more of the total soluble solids.

Marketing means the sale or any other disposition of sugar subsequent to the initial processing of either sugarcane or sugar beets, including the disposition of sugar for retail sale or for further processing or refining, unless the sale is made to enable the processor buying the sugar to fill that processor's allocation. A processor's granting to CCC of a security interest in the sugar as collateral for a price support loan is also a "marketing" for the purpose of this subpart; however, the disposition of sugar which was formerly collateral and which has been redeemed is not a "marketing".

Marketing allotment means that portion of the overall sugar allotment quantity allotted to:

(1) Sugar processed from domestically grown sugarcane, and

(2) Sugar processed from domestically grown sugar beets.

Minimum Import Quantity means 1.25 million short tons of sugar, raw value, which must be imported in the prospective fiscal year or other period in which marketing allotments are in effect.

Molasses means any thick syrup which is a byproduct of processing sugar beets and sugarcane, or of refining raw cane sugar containing sucrose in which sucrose or the sucrose equivalent of invert sugars, or both, account for less than 70 percent of the total soluble solids.

Normal carryover inventory means inventory on hand at the end of the fiscal year.

Overall marketing allotment means, on a national basis, the total quantity of raw sugar or its equivalent of refined sugar processed from domestically produced sugarcane or sugar beets, and sugar products, that is permitted to be marketed by processors, during a fiscal year or other period in which marketing allotments are in effect.

P&CP means planted and considered planted acreage as defined in part 1413 of this chapter.

Past marketings means a combination, as determined by CCC, of the average of marketings between 1985 through 1989 crop years, excluding the highest and lowest years.

Per-acre yield goal means the yield level for a State established at not less than the average per-acre yield in the State for the preceding 5 years or such other higher yield established by CCC that will ensure an adequate net return per pound to producers in the State.

Processing facility means a distinct physical facility, at a single location, which processes sugarcane or sugar beets into sugar.

Products of sugar means processed cane and beet sugar used by processors for intermediate and sugar-containing products.

Proportionate share means the total acreage from which a producer can harvest sugarcane in a State in which an allotment and proportionate share is in effect.

Raw sugar means any sugar principally of crystalline structure which is to be further refined or improved in quality.

Raw value of any quantity of sugar means its equivalent in terms of raw sugar testing ninety-six sugar degrees, as determined by a polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis (ICUMSA). Sugar testing ninety-two sugar degrees or more by the polariscope shall be translated into terms of raw value in the following manner: raw value = {[(actual degree of polarization − 92) × 0.0175] + 0.93} actual weight. For example, with respect to cane sugar testing ninety-two sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by 0.93; for cane sugar testing more than ninety-two sugar degrees by the polariscope, derive raw value by multiplying the actual number of pounds of such sugar by the figure obtained by adding 0.93 to the result of multiplying 0.0175 by the number of degrees and fractions of a degree of polarization above ninety-two degrees. For sugar and liquid sugar, testing less than ninety-two sugar degrees by the polariscope, derive raw value by dividing the number of pounds of the "total sugar content" (i.e., the sum of the sucrose and invert sugars) thereof by 0.972.

Reasonable carryover stocks means desirable inventory on hand at the end of the fiscal year as determined by the Secretary.

Refined sugar means white, crystalline sugar which is not to be further refined or improved in quality.

State means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

State sugarcane allotment means that portion of the sugarcane allotment assigned to Florida, Hawaii, Texas, Louisiana, or Puerto Rico.

Stocks means inventory of sugar or crystalline fructose on hand at the beginning and at the end of the calendar month for which data are being reported.

Sugar means any grade or type of saccharine product derived, directly or indirectly, from sugarcane or sugar beets (including sugar produced from sugar beet or sugarcane molasses) and consisting of, or containing, sucrose or invert sugar, including all raw sugar, refined sugar, liquid sugar, and edible molasses.

Sugar beet processor means a person who commercially produces refined sugar or liquid sugar directly or indirectly from sugar beets (including sugar produced from sugar beet molasses). The same person may be both a *sugar beet processor* and a *cane sugar refiner.*

Sugarcane processor means a person who commercially produces raw sugar or refined sugar directly or indirectly from sugarcane (including sugar produced from sugarcane molasses). The same person may be both a *sugarcane processor* and a *cane sugar refiner.*

Syrup means a viscous, concentrated sugar solution resulting from the evaporation of water, or the remaining liquor after crystallization of sugar from a solution.

Tan means a short ton or 2,000 pounds.

United States means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

USDA means the United States Department of Agriculture.

U.S. Market Value means for sugarcane the daily New York No. 14 contract price for raw sugar; for sugar beets the weekly-published Midwest price; and for crystalline fructose 1.5 times the Midwest price.

§§ 1435.503–1435.505 [Reserved]

§ 1435.506 Basis for allotments, estimates, and reestimates.

Calculation of all allotments, allocations, estimates, and reestimates in this subpart will be made by using the data supplied by the industry in reports submitted pursuant to the reporting requirements set forth in §§ 1435.400 and 1435.499 of this part and other available USDA statistics and estimates of production, consumption, and stocks.

§ 1435.507 Annual estimate and quarterly reestimates.

(a) The amount of sugar that will be consumed; available; and imported in the prospective fiscal year will be estimated annually. This estimate will be announced prior to the beginning of the fiscal year.

(b) Sugar consumption, availability, and imports will be reestimated and announced on a quarterly basis.

§ 1435.508 Procedure for estimating imports.

The import requirement for the next fiscal year will be calculated by establishing the difference between:

(a) The sum of the quantity of estimated consumption and reasonable carryover stocks; and

(b) The quantity of sugar estimated to be available from domestically grown sugarcane and sugar beets, sugar products, and carry-in stocks.

§ 1435.509 Overall marketing allotment.

(a) Whenever it is estimated that the import of sugar will be less than 1.25 million short tons, raw value, for the prospective fiscal year, an overall allotment will be established for that fiscal year at a level that will result in imports of sugar of not less than 1.25 million short tons, raw value. This overall allotment will be announced prior to the beginning of the fiscal year.

(b) The overall marketing allotment for the prospective fiscal year will be calculated by deducting from the sum of estimated sugar consumption and reasonable carryover stocks:

(1) 1,250.000 short tons, raw value; and

(2) Carry-in stocks of sugar, including sugar in CCC inventory and sugar products.

§ 1435.510 Adjustment of overall marketing allotment.

(a) The overall allotment will be adjusted to the maximum extent practicable, upward, downward, or will be suspended, to prevent the accumulation of sugar acquired by the CCC. Such increase, decrease, or suspension will be effective at the beginning of the quarter of the fiscal year for which the determination is made.

(b) If the overall marketing allotment is reduced under this section and the quantity of sugar marketed for the fiscal year in which the reduction is made, including that pledged as price support loan collateral, exceeds the decreased overall allotment, the quantity of excess sugar marketed will be deducted from the next year's overall marketing allotment, if any.

§ 1435.511 Crystalline fructose allotment.

(a) An allotment for crystalline fructose will be imposed whenever allotments are established for cane and beet sugar at a maximum level equivalent to 200,000 tons of sugar, raw value, or 159,757 tons of crystalline fructose, during the fiscal year or other period in which marketing allotments are in effect.

(b) At any time a crystalline fructose allotment is in effect, no manufacturer may market crystalline fructose in excess of the manufacturer's allotment.

§ 1435.512 Marketing allotments for cane and beet sugar.

(a) An allotment for beet sugar and an allotment for cane sugar will be established for each year that an overall marketing allotment is in effect. The beet sugar allotment and cane sugar allotment will be calculated as a percent of the overall marketing allotment. These percentage factors will be announced at the same time as the overall marketing allotment.

(1) Each allotment will be equal to the product of multiplying the overall allotment quantity for the fiscal year by the percentage factor established for beet sugar and cane sugar, respectively.

(2) The sum of the cane allotment and beet allotment may never exceed the total overall marketing allotment.

(b) The overall marketing allotment for sugar will be apportioned between beet sugar and cane sugar based on percentage factors established by taking into consideration:

(1) Past marketings of sugar processed from sugarcane and sugar beets based on the average production for sugarcane and sugar beets from the 1985 through 1989 crops, dropping the highest and lowest production years;

(2) Processing and refining capacity in the beet and cane sectors; and

(3) The ability of the cane and beet sectors to market the allotment assigned to it.

(c) Each of the three criteria used to determine the percentage factors specified in paragraph (b) of this section will be weighted as determined appropriate by CCC for each year that an overall allotment is in effect.

(d) Except in the case when deficits are reassigned in accordance with § 1435.516 of this subpart, the beet sugar allotment must be filled from sugar processed directly or indirectly from domestically produced sugar beets and the cane sugar allotment must be filled from sugar processed directly or indirectly from domestically produced sugarcane.

§ 1435.513 State cane sugar allotment.

The allotment for cane sugar will be allotted among cane-producing States, based on:

(a) The average of marketings of sugar processed from sugarcane in the two highest years of production from each State from the 1985 through 1989 crops;

(b) Processing capacity in each State; and

(c) The ability of processors in the State to market the sugar covered under the allotment assigned to the State.

(1) The weights given these criteria will be the same as those used to determine the overall cane allotment in accordance with § 1435.512(c) of this subpart.

(2) The cane sugar allotment may be filled only with sugar processed from sugarcane grown in the subject to the allotment.

§ 1435.514 Cane and beet sugar allotment adjustments.

(a) Cane and beet sugar marketing allotments may be increased, decreased, or suspended as appropriate based on procedures and considerations specified in accordance with §§ 1435.507 and 1435.510 of this subpart. Such adjustment will be effective at the beginning of the quarter of the fiscal year for which the determination is made.

(b) If the beet marketing allotment is decreased under paragraph (a) of this section and the quantity of beet sugar marketed for that fiscal year by all processors covered by the allotment, including sugar pledged as loan collateral for a price support loan, exceeds the reduced allotment, the marketing allotment, if any, next established for beet sugar will be reduced by the excess marketed.

(c) If State marketing allotments are reduced due to a decrease in the cane allotment under paragraph (a) of this section and the quantity of cane sugar marketed for that fiscal year by all processors covered by a particular State allotment, including sugar pledged as loan collateral for a price support loan, exceeds the reduced State allotment, the marketing allotment, if any, next established for that State will be reduced by the excess marketed.

§ 1435.515 Allocation of marketing allotments to processors.

Whenever cane sugar and beet sugar marketing allotments are established for a fiscal year under this Subpart, both cane sugar and beet sugar processors will receive marketing allocations for that fiscal year.

(a) Allocation to processors of the State cane sugar allotment will be based on the processor's

(1) Processing capacity,

(2) Average of marketings of sugar processed from sugarcane during the crop years 1985 through 1989 excluding the highest and lowest production years. and

(3) Ability to market sugar covered by that portion of the State allotment allocated.

(b) Allocation to processors of beet sugar will be based on the processor's

(1) Processing capacity,

(2) Marketings of sugar processed from sugar beets during the crop years 1985 through 1989 excluding the highest and lowest production years, and

(3) Ability to market sugar covered by that portion of the allotment allocated.

(c) Hearings will be held within 5 working days following the announcement of proposed allotments and allocations, to afford all interested persons the opportunity to comment on the allocations. After consideration of comments obtained at the hearings, a final determination on allocations will be announced.

(d) Each allocation of the allotment to the processor shall be increased or decreased by the same percentage that the allotment was increased or decreased.

(e) At any time allotments are in effect and allocated to processors, the total of:

(1) The quantity of sugar marketed by a processor, and

(2) The quantity of sugar pledged as collateral by the processor for a CCC price support loan, shall not exceed the quantity of the allocation of the allotment made to the processor.

(f) Paragraph (e) of this section shall not apply:

(1) To the marketing during a fiscal year of sugar pledged in that fiscal year as collateral for a CCC price support loan after the sugar has been subsequently redeemed; or

(2) To any sale of sugar by a processor to another processor made to enable the other processor to fulfill the quantity of the allocation of the allotment made to the other processor.

§ 1435.516 Reassignment of deficits.

(a) Quarterly reestimates as specified in § 1435.507 of this subpart will be made to determine whether processors of sugarcane or sugar beets will be able to market sugar covered by the portion of the allotment allocated to them. These determinations will be made giving due consideration to current inventories of sugar, estimated production of sugar, and expected marketings and any other pertinent factors.

(b) If it is estimated that a sugarcane processor will be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) Be reassigned proportionately to the allocations of processors within that State;

(2) If the deficit cannot be eliminated after reassignment within the same State, the deficit will be reassigned to processors in the other cane sugar States based on the State's ability to market the deficit assigned to it; and

(3) If any portion of the deficit remains after paragraphs (b)(1) and (b)(2) of this section have been implemented, it will be assigned to imports.

(c) If it is estimated that a sugar beet processor will be unable to market the full amount of the processor's allocation for the fiscal year in which an allotment is in effect, this deficit will:

(1) Be reassigned proportionately to the allocations of other sugar beet processors depending on the capacity of the other processors to fill the portion of the deficit to be assigned to them.

(2) If any portion of the deficit remains after paragraph (c)(1) of this section has been implemented, it will be assigned to imports; and

(d) The fiscal year allocation of each processor who receives an additional reassigned deficit amount will be increased to reflect the reassignment.

§ 1435.517–1435.520 [Reserved]

§ 1435.521 Assignment of processor's allocation to producers.

(a) Every cane sugar and beet sugar processor shall share its allocation with every producer served by the processor in a fair and equitable manner.

(b) Whenever allotments for a fiscal year are allocated to processors pursuant to § 1435.515 of this subpart, or when allocations are modified due to reestimates, every processor of sugarcane or sugar beets must provide to CCC such adequate assurances as are required to ensure that the processor's allocation will be shared among producers served by the processor in a fair and adequate manner which reflects each producer's production history.

(c) Every processor subject to this section will provide CCC with assurances that every producer it serves, proportionate to his production history, will be treated the same as every other producer with whom it contracts in that fiscal year. Such information must be furnished to CCC within 60 days following the announcement that allotments will be in effect for a fiscal year or the announcement that processor allocations have been modified due to a reestimate.

(d) Any producer or group of producers, or processor can request arbitration of a dispute between a processor and a producer, or a group of producers, with respect to the sharing of the processor's allocation. Arbitration will be available from CCC at the State ASCS office in which the processor is located. Subsequent review of the arbitration decision is available with the Executive Vice President, CCC, or a designee. Any arbitration will be subject to appeal to an the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

§ 1435.522 Proportionate shares for producers of sugarcane.

(a) Proportionate shares may be implemented by CCC in any State in which a cane sugar allotment has been established and in which there are more than 250 sugarcane producers.

(b) For each State allotment described in paragraph (a) of this section, CCC will determine whether the production of sugar, in the absence of proportionate shares, will be greater than the quantity needed to enable processors to fill their allotment and provide a normal carryover inventory. If the determination made that the quantity of sugar produced in the State, plus a normal carryover inventory, will exceed the State's allotment for the fiscal year, proportionate shares shall be established for the crop of sugarcane harvested during the fiscal year that the allotment is in effect.

(c) Method of Determining. For purposes of determining proportionate shares for any crop of sugar:

(1) CCC shall establish the State's per-acre yield goal;

(2) The State allotment as determined in accordance with § 1435.513 of this subpart shall be converted into a State acreage allotment by dividing the State allotment by the per-acre yield goal;

(3) A uniform reduction percentage shall be established for the crop by dividing the State acreage allotment by the sum of all acreage bases in the State as determined under § 1435.523 of this subpart; and

(4) The uniform reduction percentage shall then be applied to the acreage base established for each farm in a State covered by a State allotment to determine the farm's proportionate share for the crop.

§ 1435.523 Establishment of acreage bases.

(a) A sugarcane crop acreage base shall be established for a farm shall as the simple average of sugarcane harvested for sugar and seed cane on the farm in each of the five crop years preceding the crop year for which proportionate shares are being established.

(b) In establishing crop acreage bases or proportionate shares for sugarcane, CCC will not take into consideration prevented planting, but credit will be allowed for failed acreage.

(c) In establishing crop acreage bases, producers who have not reported their sugarcane acreage will be allowed to do so by a date determined and announced by CCC.

(d) The crop acreage base established for the farm shall be used to determine the farm's proportionate shares.

(e) The regulations at 7 CFR parts 718 and 719 of this title shall be applicable to this subpart except:

(1) as provided in § 1435.528 of this subpart; and

(2) the reconstitution of farms with a sugar crop acreage base shall not be allowed across State lines if one of the States is subject to the implementation of proportionate shares for sugarcane.

§ 1435.524 Transfer of production history by producers with proportionate shares.

(a) A sugarcane producer on a farm may transfer the P&CP history of land owned, operated, or controlled by the producer to any other farm in the State that is owned, operated, or controlled by that producer. The transfer will permanently reduce the transferring farm's sugarcane base and increase the receiving farm's crop acreage base.

(b) The owner of the farm must agree to the transfer by signing the application. The application for transfer must be requested on a form approved by CCC.

(c) Producers will be allowed to transfer P&CP history any time of the year, but not later than 5 days before the beginning of harvest in the county.

(d) Producers may transfer a portion or all of the P&CP history for a farm in the manner prescribed by CCC.

§ 1435.525 Temporary disaster transfers.

(a) An owner of a farm may transfer for a year a proportionate share if a natural disaster prevents the use of the proportionate share on such farm in such year.

(b) The production history on the transferring farm will be preserved for a period from 1 to 3 years.

(c) P&CP history will not be increased on the receiving farm.

(d) Producers will be required to:

(1) Initiate the transfer in the county ASCS office where the proportionate shares are established, and

(2) Obtain approval from both the transferring and receiving county ASC committee.

(e) A date shall be established by the State ASC committee by which time all transfers are required to be reported but in no event shall the deadline be later than 5 days before normal harvest of sugarcane in the county.

§ 1435.526 Acreage reports.

(a) A report of planted and failed acreage shall be required with respect to farms that produce sugarcane for sugar or seed. Such report shall also specify the acreage intended for harvest as sugar or seed.

(b) The reports required under paragraph (a) of this section shall be on farms prescribed by CCC and shall be filed with the county ASC committee by the applicable final reporting date established by CCC which is available at the applicable State and county ASCS office. Such report shall be filed by:

(1) Farm operator;

(2) Farm owner; or

(3) A duly authorized representative;

(c) Acreage reports will be used to determine compliance with the proportionate share and eligibility for future proportionate shares.

(d) An acreage report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to:

(1) The existence of the crop;

(2) The use made of the crop;

(3) The lack of crop; or

(4) A disaster condition affecting the crop.

(e) The farm operator shall pay the cost of a farm visit by an authorized ASCS employee unless the county ASC committee has determined that failure to report in a timely manner was beyond the producer's control.

(f) The farm operator may revise a report of acreage to change the acreage reported. Revised reports shall be filed in accordance with instructions issued by CCC and shall be accepted at any time if evidence exists for inspection and determination of:

(1) The existence of the crop;

(2) The use made of the crop;

(3) The lack of crop; or

(4) A disaster condition affecting the crop; and

(5) The farm has been selected for inspection and acreage has been determined or harvesting of sugarcane has begun on the farm.

§ 1435.527 Farm inspections.

(a) A representative number of farms selected in accordance with instructions issued by CCC shall be inspected by an authorized representative of ASCS to ascertain the acreage, or to determine that the acreage harvested for sugar or seed does not exceed the proportionate shares on the farm.

(b) The following farms will be inspected:

(1) Any farm producing sugarcane in which a member or employee of the State or county ASC committees, or such individual's spouse, has an interest in the farm.

(2) Any farm in which the sugarcane producer also has a controlling interest in a processing facility.

(3) A farm for which a review of a report submitted by the producer indicates that data is not valid.

(4) A farm for which the harvested acreage exceeds the farm's proportionate share, and the producer diverts the excess sugarcane to uses other than for processing or seed.

(5) Farms for which an ASCS–574 is filed for failed acreage credit.

(c) The county ASCS office will conduct random inspections. Farms will be randomly selected to determine accuracy of acreage reported and harvested for processing or seed.

§ 1435.528 Tolerance rules.

(a) Tolerance rules will not apply:

(1) To the acreage for which measurement service was furnished.

(2) To official fields when the entire field is devoted to sugarcane.

(b) Tolerance is the larger of 1.0 acre or 5 percent not to exceed 10.0 acres. Sugarcane acreage shall be considered to have met applicable tolerance requirements if the determined acreage does not differ from the reported acreage by more than the tolerance.

§ 1435.529 Penalties and assessments.

(a) Any processor who markets sugar in excess of the processor's allocation shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, for the year in which the violation was committed, of that quantity of sugar involved in the violation.

(b) Any manufacturer of crystalline fructose who markets crystalline fructose in excess of the applicable marketing allotment shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, for the year in which the violation was committed, of that quantity of crystalline fructose involved in the violation.

(c) Any producer of sugarcane whose farm has been assigned a proportionate share, and who knowingly harvests an acreage of the crop for sugar or seed in excess of the farm's proportionate share, shall pay to CCC a civil penalty in an amount equal to 3 times the U.S. market value, for the year in which the violation was committed, of that quantity of sugar involved in the violation based on the State's per-acre yield goal. However, civil penalties will not be assessed when the producer has harvested acreage for sugar or seed in excess of the farm's proportionate share, if the excess:

(1) Acreage was harvested prior to CCC's announcement that proportionate shares are in effect; or

(2) The excess harvest is diverted to a use other than sugar or seed if:

(i) The sugarcane producer requests and pays for a field inspection by CCC, and

(ii) A representative of CCC verifies the disposal of the excess harvest.

(d) Any person who files a false or inaccurate acreage report which exceeds tolerance will be subject to an assessment calculated by multiplying the difference between the reported and determined acreage of sugarcane, times the State yield-goal, times 25 percent of the National loan rate when the difference between the reported and determined acreage exceeds tolerance.

(e) Any person who knowingly violates any provision of this part is subject to the assessment of a civil penalty by CCC of not more than $5,000 for each violation.

§ 1435.530 Appeals.

(a) A manufacturer of crystalline fructose who has been determined to have marketed crystalline fructose in excess of the applicable allotment may request review of such determination pursuant to the ASCS appeal procedure set forth at part 780 of this title by filing an appeal with DAPPD, ASCS.

(b) A processor of either sugar cane or sugar beets who has been determined to have marketed sugar in excess of the assigned allocation may request review of such determination pursuant to the ASCS appeal procedures set forth at part 780 of this title by filing an appeal with DAPPD, ASCS.

(c) A processor of either sugar cane or sugar beets who disagrees with the amount of the allocation assigned by CCC may appeal the amount of the allocation to the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

(d) Producers who disagree with a determination of excess acreage harvested may appeal the determination to the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

(e) An arbitration decision and its review by the Executive Vice President, CCC will be subject to appeal to the Office of the Administrative Law Judge of the U.S. Department of Agriculture.

(f) All appeals must be filed within 20 days after the determination at issue is effective. The appeal must be in writing.

Signed the 25th day of November, 1991 in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-28819 Filed 11-26-91; 5:00 pm]

BILLING CODE 3410-05-M

Rural Telephone Bank

7 CFR Part 1610

Rural Electrification Administration

7 CFR Parts 1717 and 1744

Review and Revision of Rural Electrification Administration and Rural Telephone Bank Loan Documents and Lien Accommodation Procedures

AGENCY: Rural Electrification Administration, and Rural Telephone Bank, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Rural Electrification Administration (REA) and the Rural Telephone Bank (RTB) are working on projects to consider possible revisions that may be desirable in the forms and content of REA Telephone, REA Electric and RTB mortgages and related loan documents, including lien accommodation procedures. Suggestions are invited on the documents related to any or all of the three program areas.

DATES: Comments must be received by REA or carry a postmark or equivalent by January 2, 1992.

ADDRESSES: Written comments should be addressed to William F. Albrecht, Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234-S, 14th & Independence Avenue, SW., Washington, DC 20250-1500. REA requires a signed original and 3 copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for public inspection at room 2238-S (address as above) during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234-S, at the above address. Telephone: (202) 720-9950.

SUPPLEMENTARY INFORMATION: As part of its ongoing codification effort, REA is working on various post loan regulations that will include the lien accommodation procedures and the loan documents used by the loan programs administered by REA. The proposed rules covering loan documents would be codified at 7 CFR part 1610 for RTB loans, 7 CFR part 1717 for REA electric loans and 7 CFR part 1744 for REA telephone loans. As part of this project, REA is considering possible revisions in the forms and content of loan documents, particularly in the mortgages. It has been suggested that the mortgage documents themselves are too cumbersome and contain information which should be codified, or would more appropriately belong in loan contracts. Comments are invited, especially in the areas of, conditions and procedures for permitting additional loans under the mortgage, and the sharing of rights and remedies by secured creditors. Copies of sample REA electric and telephone mortgages and other loan documents are available from, F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2234-S, 14th & Independence Avenue, SW., Washington, DC 20250-1500.

Authority: 7 U.S.C. 901-950(b); Public Law 99-591; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

Date: November 22, 1991.

Gary C. Byrne,

Administrator.

[FR Doc. 91-28811 Filed 11-29-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 223, 223a, 248, 264, and 292

[INS No. 1324-91]

RIN 1115-AC20

Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify and streamline evidence rules and the processes by which persons may apply for and receive certain immigration documents and benefits. It would also revise how the Service notifies applicants and petitioners of

decisions, and would modify how the Service communicates with applicants and petitioners represented by an attorney or other representative. The rule is necessary to streamline operations and improve service to the public.

DATES: Written comments must be received on or before January 2, 1992.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Records Systems Division, Immigration and Naturalization Service, room 5304, 425 I Street, NW., Washington, DC 20536. To ensure proper handling, please reference INS Number 1324–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael L. Aytes, Director of Service Center Operations, Immigration and Naturalization Service, room 5250, 425 I Street NW., Washington, DC 20536, telephone (202) 514–3156.

SUPPLEMENTARY INFORMATION: Several years ago, the Service began to take a comprehensive look at how it processes applications and petitions for immigration benefits. This process, called Project 2000, has led to a number of steps which have begun to improve significantly both efficiency and the quality of service.

This proposed rule stems from this project, and from the need to make further procedural improvements to implement efficiently the Immigration Act of 1990, Public Law 101–649, and handle the additional work it creates. The rule is designed to simplify and streamline procedures for filing and processing various applications and petitions for immigration benefits in order to make it easier for applicants and petitioners to understand how to apply for immigration benefits. The rule would affect notification and evidence procedures, and would also make specific changes in how certain applications and petitions are processed.

Notification Procedures

This rule would change notification procedures where an applicant or petitioner has an attorney or other authorized representative. The Service currently sends a notice to the applicant and sends a separate notice to the representative. Sending two notices is costly, and sometimes causes confusion. Under this rule, the Service would fully recognize the authorization of representation and communicate with the applicant or petitioner through the attorney or representative. This would mean sending one notice.

This change means the Service must have more definitive evidence that the person has authorized the representation. Accordingly, this rule would require that applicants and petitioners sign the Notice of Entry or Appearance as Attorney or Representative (Form G–28) to authorize representation.

Since the Service now does not communicate with an applicant or petitioner through his or her authorized representative, we recognize a broad range of persons as representatives. However, in order to deal with the applicant or petitioner through his or her authorized representative, this rule would limit the types of representatives who may file notices of appearance in application and petition proceedings. This rule would limit recognition in application and petition proceedings to attorneys and accredited representatives of organizations accredited by the Board of Immigration Appeals.

The Service also proposes to revise § 103.5a to limit the mailing of adverse notices on applications and petitions by certified mail. In the interest of economy and streamlining operations, the proposed change would limit this practice to instances where the action would place the applicant out of status.

Submitting Copies of Evidence

In the past, the Service required that an applicant or petitioner submit original documents along with a photocopy, or submit copies that have already been certified by a Service officer, attorney, or accredited representative. To reduce the burden on the public and to streamline processing, the Service proposes to change this process to allow applications and petitions to be filed with photocopies of most documents.

This would include photocopies of alien registration cards, naturalization certificates, certificates of citizenship, and, in certain instances, Form I–94, Nonimmigrant Arrival-Departure Document, when used to establish the immigration status of a petitioner or applicant. The Service has developed database systems to verify naturalization and admission as an immigrant. Although the restrictions imposed by 18 U.S.C. 1426(h) and 8 U.S.C 1306 make it a punishable offense for a person to make a copy of these documents for an unlawful purpose, it is not considered an unlawful purpose to make a copy to file with an application or petition.

However, documents such as labor certifications, medical examination forms, and Form IAP–66, which are issued so they can be filed with an application or petition, would still have to be submitted in the original. Service-issued documents which have expired or which need to be annotated would also have to be filed in the original.

Further, under this rule, if an applicant or petitioner chose to submit original documents instead of copies, the Service could retain those originals in the record. To ensure that copies are accurate, the rule would also allow the Service, after reviewing the application or petition, to request original documents where deemed necessary. Such originals would be returned when no longer required. The rule would also allow the Service to deny an application or petition when requested originals are not submitted.

Initial Evidence

Most applicants and petitioners are eventually found eligible for the immigration benefits for which they apply, and want to file their applications and petitions with the evidence necessary to establish eligibility so their requests are processed promptly and correctly. However, many current rules and forms concentrate on discussions of eligibility standards, not the documents needed to establish that a person meets the standard. Thus, applicants and petitioners must often translate these standards for themselves.

The Service now accepts any application or petition that is signed and submitted with the correct fee. As a result, we receive a large number of applications and petitions without basic evidence to establish a basis for filing. In those cases we either hold the case and request that the applicant or petitioner submit the required items, or send the case back to him or her to be resubmitted with the items. These cases must go through the review process a second time after the evidence is submitted. This not only extends the processing time for these cases, but the sheer volume, combined with the additional resources this added process requires, delays overall processing for all cases, and increases overall processing costs. The current standard also results in an unfair advantage to those who file before obtaining basic necessary supporting evidence.

To provide additional information to applicants and petitioners, on our new and revised application and petition forms the Service will describe what initial evidence must be filed with an application or petition to establish a basis for eligibility. These descriptions will serve to translate broad eligibility standards into specific documents. This

will significantly clarify eligibility standards for the public.

The increased emphasis on applicants and petitioners gathering the basic documentation necessary before they file increases the need for a mechanism to ensure that others do not intentionally file without such documents to establish an earlier priority or processing date. This date establishes the order in which a case is processed, and, for immigrant petitions, establishes the order of immigrant visa issuance. In most cases the priority and processing dates are the date the application or petition is filed. However, this encourages certain applicants and petitioners to file before they have necessary documents in order to establish the earliest possible processing or priority date, since they know the existing process allows them to retain the earlier date while they gather the necessary documents. This creates an unfair advantage for those persons over those who wait to file until they have gathered the necessary documents. It often has implications with regard to an individual's status in the U.S. It also increases overall processing costs and workload, which acts to delay processing for all applicants and petitioners.

The Immigration Act of 1990 heightens the importance of improving filing procedures because it creates a significant amount of additional work, and because of the possible effect of the new statutory provisions which limit the number of certain types of nonimmigrants who may enter the United States. Unlike immigrant petitions, which may be used in later years, nonimmigrant petitions filed after the annual limits have been reached cannot simply be approved and held until the next year because the offered employment is temporary and for a specific period of time.

The prospect that the limit on the number of workers in these categories may be reached during a year may lead to more applications and petitions being filed without proper documents to "reserve" a place for later use. This, in turn, could lead to situations where "reserved" places are not used because the petition is not resubmitted or, if resubmitted, is not approved.

To address the current and potential problem, and to efficiently and effectively administer the Immigration and Nationality Act, as revised by the Immigration Act of 1990, this rule adds a mechanism to modify the filing process so it does not encourage certain applicants and petitioners to file without basic documentation. The rule would allow the Service to deny an application or petition filed without the eligibility information required by the form or without initial evidence of eligibility required by the form. Such a denial would not preclude the filing of a new application or petition with the required information and evidence.

This requirement would not limit eligibility, or deny the right to file an application or petition. It would simply ensure that applicants and petitioners obtain the basic documents necessary to establish eligibility before they file their application or petition. This will mean that a final decision can be reached after a single review on a much higher percentage of cases, which will significantly improve the processing of individual cases and the overall processing of all applications and petitions.

The Service is sensitive to the fact that a significant number of applicants and petitioners are unfamiliar with the English language and with government processes. The initial evidence requirements are designed to provide much clearer information about what documents must be filed with an application or petition, and, through those documentary requirements, to clarify eligibility standards. Brief documentation requirements will significantly reduce confusion and questions from current levels. In addition, any person uncertain about the requirements can contact the Service for clarification before filing.

Additional Evidence

The Service now sends back a very high percentage of cases to applicants and petitioners for more evidence. As discussed above, in part this reflects a lack of clarity about what evidence is required. It also stems from the fact the Service does not now impose any initial evidence requirements, but simply accepts any application or petition which is signed and has the correct fee. These problems would be addressed by the new initial evidence explanations on revised forms and regulations, and by the requirement that an application or petition must be filed with that initial evidence.

However, there will always be some instances where it is necessary to request more documentation, or other material, from an applicant or petitioner. For example, there are unusual circumstances, and cases where the initial evidence, or other evidence, leads to additional questions which must be answered before it can be determined if the applicant or petitioner has fully demonstrated eligibility for the requested benefit.

To obtain such added material, in some instances the Service holds the application or petition and requests the material. In many others it sends the application or petition back to the applicant.

The process of returning applications and petitions slows overall processing and increases costs since the application, and all attachments, are sent back. This process, and the subsequent resubmission by the applicant or petitioner, means the paper forms and documents are moved back and forth several times, which increases the possibility of loss. In addition, INS loses control of the application or petition when we send it back, which creates additional processing problems and limits our ability to answer an applicant's or petitioner's questions or requests for clarification. The current process also places the burden on applicants and petitioners to obtain whatever is requested before resubmitting their application or petition. This creates additional problems when combined with the fact that since the adjudication of many types of applications and petitions is complicated, with significant discretionary authority delegated to individual examiners to speed processing, different examiners may at times request different material.

Since the initial evidence explanations and requirements proposed in this rule would significantly reduce the number and percentage of applications and petitions which require additional evidence or explanation, the Service proposes to stop returning applications and petitions filed after the initial evidence process explained above is implemented. Where required initial evidence is submitted, the application or petition would be kept by the Service until approved or denied. If more evidence is necessary, the Service would request it and give the applicant or petitioner 60 days to respond. He or she would have several options, ranging from complying with the request to asking for a decision based on the material already submitted.

This change would not alter the fact that an applicant or petitioner must demonstrate eligibility for any requested immigration benefit. Therefore, if he or she chooses to not submit requested evidence, and this precludes a material line of inquiry, the refusal would be grounds for denying the application or petition. In addition, if an applicant or petitioner declines to reply to a request for more evidence, the application or petition would be considered abandoned, and denied.

Combined, the initial evidence and additional evidence changes would significantly streamline processing and reduce the percentage of cases in which more evidence is required before it can be determined if an applicant or petitioner is eligible for a requested benefit. The initial evidence explanations translate general eligibility standards into simple documentary requirements so applicants and petitioners know what documents they need to file with their petitions and applications. The requirement that each application and petition be filed with the required initial evidence ensures that certain applicants and petitioners do not obtain an unfair advantage by filing without the necessary documents while in good faith most others wait to gather the documents before filing. The elimination of returns will reduce the movement of paper back and forth, reducing loss.

In addition, the initial evidence process and the policy of no longer sending applications back would together have the important effect of acting as a mechanism to control unnecessary requests for additional documents. Thus, the change in the process would help ensure that requests for additional evidence are appropriate and limited to where the evidence is necessary.

To ensure that applicants and petitioners have the ability to seek an administrative review of denials due to lack of initial evidence or other documents, or because a request for more material was mailed to a wrong address, or because a refusal to submit additional material foreclosed a material line of inquiry, this rule would accordingly revise the provisions governing the filing and processing of appeals and motions to reopen in application and petition matters.

This rule would further revise these processes to preclude applicants and petitioners from circumventing the initial evidence process established in this rule. In the interests of clarity, and to ensure that an issue is raised promptly, this rule also requires that any motion to reconsider by an applicant or petitioner be filed within thirty days of the decision which the motion seeks to reconsider. This is equivalent to the time limits for filing most administrative appeals.

The rule would also apply this time limit to filing motions to reopen. However, given the circumstances that would warrant reopening, the rule would also allow later filings where the delay was beyond the control of the applicant and was reasonable.

Further, in the interests of equity, and since the requirements for a motion have been clarified, this rule would eliminate the provision for correction of a deficient motion without a new fee.

Changes in Processing Certain Applications and Petitions

One aspect of Project 2000 is a review of Service application forms and processes to streamline them to reduce the amount of information requested, and to clarify eligibility standards so people can better understand what they may be eligible for, and how to apply for it. These goals are interrelated. Streamlining and shortening forms requires clearer standards of eligibility.

Reentry Permits, Refugee Travel Documents and Advance Parole

The Service proposes to merge these applications onto a single form which is considerably shorter than the existing forms. The key to the reduction is the clarification of eligibility standards and the simplification of processes, such as the setting of initial evidence requirements, proposed in this rule. This rule also codifies the process for applying for an advance parole, previously published in the Service's Operating Instructions.

The rule also proposes that in order to be eligible for a refugee travel document, a person must hold status as a refugee under 8 CFR part 207, as an asylee under 8 CFR part 208, or have obtained permanent residence as a result of refugee or asylee status. The Service has separate procedures, with significant safeguards, to determine eligibility for refugee status or asylum. It is more appropriate for persons who claim to be eligible for refugee status or asylum to go through those separate processes. This will significantly streamline the processing of travel document applications.

Another significant change concerns reentry permits. The permit allows a permanent resident to remain abroad for a certain period without abandoning status merely due to the absence. It is not for the purpose of allowing a person who does not work or live in the United States to retain permanent residence merely by making a short trip here every 2 years in anticipation that some day he or she may actually wish to immigrate. The Service now looks at a person's intent, and at factors such as the location of domiciles, assets, and employment, to determine if a reentry permit should be issued.

The proposed rule would replace this current broad discretionary review with procedures which would only deny a permit "where, since becoming a permanent resident, or during the last 5 years, whichever is less, the applicant has been outside the United States for a total of more than 4 years." In these cases the rule would deny a permit, but would not deny travel of less than a year's duration and would not directly jeopardize permanent resident status.

This rule would also standardize the period of validity of the permit. The current rule allows the Service to issue the document for a period of up to two years. In the interests of consistency and to standardize processing, this rule would revise this provision so that all such permits would be issued for a validity of two years. To further streamline processing, this rule would also no longer require the submission of an expired reentry permit or refugee travel document.

Replacing Alien Registration Cards and Nonimmigrant Departure Documents

This rule would also clarify and streamline the processes by which permanent residents and conditional residents apply for replacement alien registration cards, and by which nonimmigrants apply for replacement documents. It also proposes eliminating the mandatory filing of an application for a new card when the applicant turns 14 if the card will expire before he or she reaches age 16. It would also require that persons who did not submit a Form I-94 Nonimmigrant Arrival-Departure Document when they were admitted, but who now wish to change to another status or to extend their stay, file an application for an I-94 when applying for the extension or change of status.

Extensions of Stay and Change of Status

The Service also proposes to revise section 214 to change the process for extensions of stay and change of status. Under this rule, employers would use one form to file for E, H, L, O, P, Q, R, and TC (Canadian Free-Trade Agreement) nonimmigrant classifications for their foreign workers, and to obtain any necessary extension of stay or change of status for those employees, instead of the three separate forms now used. This change recognizes that these classifications stem from the employer's offer of employment. The change would allow the Service to deal directly with the employer in such matters and would simplify and clarify processing for employers and for the Service.

To further simplify this process, the Service would no longer require that the original Form I-94, Nonimmigrant Arrival-Departure Record, be submitted with such petitions. Petitioners would

instead file a copy of this document, and the notice of approval issued by the Service would serve as evidence of status.

Similarly, the Service proposes to merge the change of status and extension of stay processes for dependents of nonimmigrant workers, and other nonimmigrants, into one other form. The proposed process would allow dependent family members to file one joint application.

This rule would also eliminate the current requirement that an extension of stay application be filed at least 15 days before a person's status expires. The filing of an extension application does not in itself authorize a person to remain in the U.S. or to continue activities otherwise authorized by the status he or she had been granted. However, the mere fact the application is filed less than fifteen days in advance does not warrant denial. On the application forms the Service will continue to recommend early filing so applicants have a decision on their application before their previously authorized stay expires.

The Service also proposes to revise procedures to reduce the instances where changes of status and extensions are fee exempt. Fee exemptions raise processing costs for other applicants. In the interest of fairness, this rule would reduce the number of instances where adjudicative services are provided to certain classes without a fee when all other persons applying for the same benefit must pay the fee.

Other Processes

In the clarification of general processes in § 103.2, the Service proposes to delete the reference allowing an adult with a "legitimate interest" in a person who is under age 14 to sign and file an application for that person. The term "legitimate interest" is exceedingly vague, and open to wide ranging interpretation. The revised rule would allow a parent or guardian to file on behalf of a child under 14, and the child could file on his or her own behalf.

In the revisions to § 103.2, the Service proposes to clarify when an applicant or petitioner may submit affidavits about a past event, such as a birth, instead of other evidence, such as birth certificates, church records, or school records. This rule would require that in order to submit affidavits, an applicant or petitioner must establish that the required evidence, and other forms of secondary evidence are both unavailable. For example, if the required initial evidence is an applicant's birth certificate, he or she would have to submit documentation from the relevant authority, such as a civil registrar, that the birth certificate is not available. If other normal secondary evidence, such as church or school records, were also unavailable, he or she would also have to submit documentation of such unavailability before submitting affidavits. Documents dating from the event in question are much more definitive than affidavits, and the lack of all such forms of evidence is a crucial factor in the review of affidavits.

In § 103.5b, the Service proposes to establish an application form to request actions on an application or petition after approval. The application would be a means to obtain a duplicate approval notice, to have a petition approval cabled to a consulate office other than that indicated in the original petition, and to reclassify certain approved petitions.

In order to clarify processing, this rule would also require persons who have been in the United States since 1972, and persons who apply for permanent residence as a result of birth in the U.S. to an accredited diplomat, to use the revised Form I-485, Application to Register Permanent Residence or Adjust Status.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section I(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been approved, or are under review, by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 223a

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305; 1351; 1443, 1454, 1455. 28 U.S.C. 1746; 31 U.S.C. 9701; Executive Order 12356, 3 CFR 1982, Comp., p. 166.

2. In section 103.2 paragraph (a) is revised to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) *Filing*—(1) *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations requiring its submission.

(2) *Filing by a parent or guardian.* The parent or guardian of a person who is less than 14 years old, or the guardian of a mentally incompetent person, may file an application or petition on that person's behalf.

(3) *Submission by others.* An application or petition presented by a person who is not the applicant or petitioner, and is not an attorney or representative representing the applicant or petitioner pursuant to 292.1 of this chapter, shall be treated as if received through the mail. The person submitting the application or petition shall be advised that the applicant or petitioner, or his or her representative, will be notified directly regarding the action taken.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of Name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.(1)(a)(4) of this chapter. A beneficiary of a petition filed by another individual or organization is not a recognized party in such a proceeding.

(7) *Where to file.* Except as otherwise provided in this chapter, an application or petition should be filed with the INS office or service center with jurisdiction over the application or petition and the place of residence of the applicant or petitioner.

(8) *Fees.* Application and petition filing fees are listed in § 103.7 of this chapter. Such fees are non-refundable, and, except as otherwise provided in this chapter, must be paid at the time the application or petition is filed.

(9) *Receipt date.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted.

* * * * *

3. Section 103.2(b) is amended by:

a. Redesignating paragraph (b)(2) as a new paragraph (b)(16), and revising the paragraph heading to read "Withholding adjudication."

b. Redesignating paragraph (b)(3) as a new paragraph (b)(14), and revising, in paragraph (b)(14)(i), the phrase "paragraph (b)(3)(iii) and (iv)" to read "paragraph (b)(14)(iii) and (iv)";

c. Revising paragraph (b)(1); and

d. Adding new paragraphs (b)(2) through (b)(13), (b)(15), and (b)(17), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) *Evidence and processing*—(1) *General.* An applicant or petitioner must establish eligibility for a requested immigration benefit. Any evidence submitted is considered part of the related application or petition.

(2) *Filing requirements.* An application or petition must be filed on the required form. The form must be completed and submitted with any initial evidence required by regulation or by the instructions on the form. An application or petition filed without required eligibility information, or without the initial evidence necessary to indicate preliminary eligibility and a basis for filing, may be denied for lack of initial evidence. An application for asylum shall otherwise be processed as provided in separate regulations.

(3) *Secondary evidence and affidavits.* If required initial evidence is unavailable, the application or petition must be filed with documentation from the relevant authority to establish that the required initial evidence is unavailable, and with secondary evidence, such as church or school records, pertinent to the facts at issue. If all forms of primary and secondary evidence are unavailable, the application or petition must be filed with documentation to establish such unavailability, and with 2 or more affidavits, sworn to or affirmed by persons who have direct personal knowledge of the event and circumstances.

(4) *Translations.* Any foreign language document submitted shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(5) *Submitting copies of documents.* Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP–66, medical examinations, affidavits, formal consultations and other statements, must be submitted in the original. Expired Service documents must be submitted in the original, as must Service documents required to be annotated to indicate the decision. In all other instances, unless the relevant regulations or instructions specifically require that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record.

(6) *Requests for original documents.* Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. If the requested original of any document, other than one issued by the Service, is not submitted within 30 days, the petition or application shall be denied or revoked. There shall be no appeal from denial or revocation based on the failure to submit an original document to substantiate a previously submitted copy, nor may an applicant or petitioner move to reopen or reconsider the proceeding based on the subsequent availability of the document. An original document submitted pursuant to a Service request shall be returned to the petitioner or applicant when no longer required.

(7) *Withdrawal.* An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by the Service. However, a withdrawal may not itself be withdrawn.

(8) *Testimony.* The Service may require the taking of testimony, and may direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition or document, and acknowledged under oath thereon.

(9) *Request for additional evidence.* Where evidence submitted meets initial evidence requirements but the Service finds that it either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service may request additional evidence, including blood tests. The applicant or petitioner shall be given sixty (60) days to respond. Additional time shall not be granted. Within this period the applicant or petitioner may:

(i) Submit the requested evidence;

(ii) Submit some or no additional evidence and request a decision; or

(iii) Withdraw the application or petition.

(10) *Request for appearance.* An applicant, petitioner, and/or person a petition is for, may be required to appear for an interview. A petitioner shall also be notified when an interview notice is mailed or issued to a person the petition is for. The person may appear as requested by the Service, or, prior to the date and time of the interview:

(i) The person to be interviewed may, for good cause, request that the interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(11) *Effect of failure to respond to a request for additional evidence or appearance.* If requested evidence is not

submitted by the required date and the applicant or petitioner has neither requested a decision based on the evidence submitted nor withdrawn the application or petition, it shall be considered abandoned, and accordingly denied. If a person requested to appear for an interview does not appear, and does not request a rescheduling by the date of the interview, and the applicant or petitioner has not withdrawn the application or petition, it will be considered abandoned, and accordingly denied.

(12) *Effect of request for decision.* Where an applicant or petitioner does not submit all requested evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the evidence of record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for a required interview, or to give required testimony, shall result in the denial of any related application or petition.

(13) *Effect of withdrawal or denial due to lack of initial evidence or abandonment.* The Service's acknowledgement of a withdrawal may not be appealed. A denial due to the lack of initial evidence or abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5. Withdrawal, or denial due to a lack of initial evidence or abandonment, does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a denied, withdrawn, or abandoned application or petition may not be applied to a later application or petition.

* * * * *

(15) *Verifying a claim to permanent resident status.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States will be verified from official records of the Service. Under the conditions hereinafter prescribed, the term "official records" as used herein, includes Service files, arrival manifests, arrival records, Service index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1929, Alien Registration Receipts Cards (Form AR–3, AR–103, I–151 or I–551), passports, and reentry permits. To constitute an "official record" the Service index card must bear a designated immigrant visa symbol and must have been prepared in processing immigrant admissions or adjustments to permanent resident status. The other cards, certificates, declarations, permits, and passports must have been issued or have been endorsed by the Service to show admission for permanent residence. Except as otherwise provided in part 101 of this chapter, and in the absence of countervailing evidence, such official records shall be regarded as establishing lawful admission for permanent residence.

* * * * *

(17) *Notification.* An applicant or petitioner shall be sent a written decision on his or her application or petition. However, where he or she has authorized representation pursuant to 103.2(a), all notices shall instead be sent to that representative. Documents issued based on the approval may be included with the notice. Documents that are produced after an approval notice is sent, such as an alien registration card, shall be mailed to the applicant, and no confirmation to the representative of such subsequent mailing is required.

4. Section 103.3 is amended by revising paragraph (a)(2)(x), to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

(a) * * *

(2) * * *

(x) *Decision on appeal.* An applicant or petitioner shall be sent a written decision on his or her appeal. However, where he or she has authorized representation pursuant to § 103.2(a), all notices shall instead be sent to that representative.

* * * * *

5. Section 103.5 is amended by:

a. Revising, in paragraph (a)(1)(i), the reference "part 242", to read "parts 210, 242 or 245a";

b. Adding, to the end of paragraph (a)(1)(i), a new sentence;

c. Revising the first sentence in paragraph (a)(1)(iii) introductory text;

d. Revising paragraph (a)(1)(iii)(C);

e. Revising paragraphs (a)(2), (a)(3) and (a)(4); and

f. Adding a new paragraph (a)(8), to read as follows:

§ 103.5 Reopening or reconsideration.

(a) * * *

(1) * * *

(i) * * * Any motion to reconsider filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was beyond the control of the applicant and was reasonable. * * *

* * * * *

(iii) * * * A motion shall be submitted on Form I–290A, and may be accompanied by a brief. * * *

* * * * *

(C) Accompanied by the fee required by § 103.7, which fee is non-refundable;

* * * * *

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to lack of initial evidence or due to abandonment must be filed with evidence that conclusively demonstrates the decision was in error because:

(i) The required initial evidence was submitted with the application or petition;

(ii) The requested evidence was not material to the issue of eligibility;

(iii) The request for additional information or appearance was complied with during the allotted period; or

(iv) The request for additional information or appearance was sent to an address other than that on the application or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) *Requirements for motion to reconsider.* A motion to reconsider state the reasons for reconsideration, and be supported by any pertinent precedent decisions, to establish that the decision was an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the decision.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. The applicant, petitioner, or his or her authorized representative, shall be sent a written decision on the motion. Where a motion to reopen is granted, the proceeding shall be reopened. The notice and any favorable decision may be combined.

* * * * *

(8) *Treating an appeal as a motion.* The official who denied an application or petition may treat the appeal from

that decision as a motion for the purpose of granting the motion.

* * * * *

6. In section 103.5a, paragraph (c)(1) is revised to read as follows:

§ 103.5a Service of notification, decisions, and other papers by the Service.

* * * * *

(c) * * *

(1) *Generally.* In any proceeding initiated by the Service with proposed adverse effect, service of the initiating notice and of the notice of decision by any Service officer shall be accomplished by personal service, except as provided in § 242.1(c) of this chapter. In application and petition proceedings, a decision by a Service officer which in itself would place the alien out of status shall be accomplished by personal service.

7. A new section 103.5b is added to read as follows:

§ 103.5b Application for Further Action on an Approved Application or Petition.

(a) *General.* An application for further action on an approved application or petition must be filed on Form I–824 by the applicant or petitioner who filed the original application or petition. It must be filed with the fee required in § 103.7 and the initial evidence required on the application form.

(b) *Requested actions.* An applicant whose application was approved may, during the validity of the application, apply for a duplicate approval notice. A petitioner whose petition was approved may, during the validity of the petition, apply:

(1) For a duplicate approval notice;

(2) To notify another consulate of the approved petition; or

(3) To notify a United States Consulate of the person's adjustment of status for the purpose of visa issuance to dependents.

(c) *Processing.* The application shall be approved if the Service determines the applicant has fully demonstrated eligibility for the requested action. There is no appeal from the denial of an application filed on Form I–824.

PART 214—NONIMMIGRANT CLASSES

8. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187; 8 CFR part 2. .

9. Section 214.1 is amended by:

a. Redesignating paragraph (a) as paragraph (a)(3) and revising the paragraph heading;

b. Adding paragraphs (a)(1) and (a)(2);

c. Revising paragraph (c); and

d. Revising paragraph (d), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) *General*—(1) *Nonimmigrant Classes.* For the purpose of administering the nonimmigrant provisions of the Act, the following administrative subclassifications of nonimmigrant classifications as defined in section 101(a)(15) of the Act are established:

(i) Section 101(a)(15)(B) is divided into (B)(i) for visitors for business and (B)(ii) for visitors for pleasure;

(ii) Section 101(a)(15)(C) is divided into (C)(i) for aliens who are not diplomats and are in transit through the United States; (C)(ii) for aliens in transit to and from the United Nations Headquarters District; and (C)(iii) for alien diplomats in transit through the United States;

(iii) Section 101(a)(15)(H) is divided to create an (H)(iv) subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15)(H) (i), (ii), or (iii);

(iv) Section 101(a)(15)(J) is divided into (J)(i) for principal aliens and (J)(ii) for such alien's spouse and children;

(v) Section 101(a)(15)(K) is divided into (K)(i) for the fiance(e) and (K)(ii) for the fiance(e)'s children; and

(vi) Section 101(a)(15)(L) is divided into (L)(i) for principal aliens and (L)(ii) for such alien's spouse and children.

(2) *Classification Designations.* For the purpose of this chapter the following nonimmigrant designations are established. The designation in the second column may be used to refer to the appropriate nonimmigrant classification.

Section	Designation
101(a)(15)(A)(i)	A–1
101(a)(15)(A)(ii)	A–2
101(a)(15)(A)(iii)	A–3
101(a)(15)(B)(i)	B–1
101(a)(15)(B)(ii)	B–2
101(a)(15)(C)(i)	C–1
101(a)(15)(C)(ii)	C–2
101(a)(15)(C)(iii)	C–3
101(a)(15)(D)(i)	D–1
101(a)(15)(D)(ii)	D–2
101(a)(15)(E)(i)	E–1
101(a)(15)(E)(ii)	E–2
101(a)(15)(F)(i)	F–1
101(a)(15)(F)(ii)	F–2
101(a)(15)(G)(i)	G–1
101(a)(15)(G)(ii)	G–2
101(a)(15)(G)(iii)	G–3
101(a)(15)(G)(iv)	G–4
101(a)(15)(G)(v)	G–5
101(a)(15)(H)(i)(A)	H–1A
101(a)(15)(H)(i)(B)	H–1B
101(a)(15)(H)(ii)(A)	H–2A
101(a)(15)(H)(ii)(B)	H–2B
101(a)(15)(H)(iii)	H–3
101(a)(15)(H)(iv)	H–4
101(a)(15)(I)	I
101(a)(15)(J)(i)	J–1
101(a)(15)(J)(ii)	J–2
101(a)(15)(K)(i)	K–1
101(a)(15)(K)(ii)	K–2
101(a)(15)(L)(i)	L–1
101(a)(15)(L)(ii)	L–2
101(a)(15)(M)(i)	M–1
101(a)(15)(M)(ii)	M–2
101(a)(15)(N)(i)	N–1
101(a)(15)(N)(ii)	N–2
101(a)(i5)(O)(i)	O–1
101(a)(15)(O)(ii)	O–2
101(a)(15)(O)(iii)	O–3
101(a)(15)(P)(i)	P–1
101(a)(15)(P)(ii)	P–2
101(a)(15)(P)(iii)	P–3
101(a)(15)(P)(iv)	P–4
101(a)(15)(Q)	Q
101(a)(15)(R)(i)	R–1
101(a)(15)(R)(ii)	R–2
Canadian free trade agreement	TC

(3) *General Requirements.*

* * * * *

(c) *Extensions of stay*—(1) *Filing on Form I–129.* An employer seeking to retain the services of an E–1, E–2, H–1A, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q, R–1, or TC nonimmigrant beyond the period previously granted, must petition for an extension of stay on Form I–129. The petition must be filed with the fee required in § 103.7 and the initial evidence specified in the applicable provisions of § 214.2 and on the petition form.

(2) *Filing on Form I–539.* Any other nonimmigrant, including an E–1 or E–2 spouse or child of a principal E–1 or E–2, who desires to remain longer in his or her present status than previously authorized, must apply for an extension of stay on Form I–539. The application must be filed with the fee required in § 103.7 of this chapter, and any initial evidence specified in the applicable provisions of § 214.2 and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family shall be granted to all members of the family.

(3) *Ineligible for extension of stay.* A nonimmigrant in any of the following classes is ineligible for an extension of stay:

(i) B–1 or B–2 where admission was pursuant to the Visa Waiver Pilot Program;

(ii) C–1, C–2, C–3;

(iii) D–1, D–2;

(iv) K–1, K–2; or

(v) A–1, A–2, F–1, F–2, G–1, G–2, G–3, or G–4, since such a nonimmigrant is admitted for duration of status.

(4) *Timely filing and maintenance of status.* An extension of stay may not be approved for an alien who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

(i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds that the resulting delay was reasonable;

(ii) The alien has not otherwise violated his or her nonimmigrant status;

(iii) The alien remains a bona fide nonimmigrant; and

(iv) The alien is not the subject of deportation proceedings under part 242 of this chapter.

(5) *Decision in Form I–129 or I–539 extension proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested extension of stay, it may be granted at the discretion of the Service. There is no appeal from a decision denying an extension filed for on either Form I–129 or I–539.

(d) *Termination of status.* Within the period of initial admission or extension of stay, the nonimmigrant status of an alien shall be terminated by the revocation of a waiver authorized on his or her behalf under section 212(d) (3) or (4) of the Act; by the introduction of a private bill to confer permanent resident status on such alien; or pursuant to notification in the **Federal Register** on the basis of national security, diplomatic, or public safety reasons.

* * * * *

10.–11. Part 223 is revised to read as follows:

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

Sec.

223.1 Purpose of documents.
223.2 Filing.
223.3 Validity and effect on admissibility.

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; and Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS 6577).

§ 223.1 Purpose of documents.

(a) *Reentry permit.* A reentry permit allows a permanent resident to apply for admission to the U.S. upon return from abroad during the permit's validity without the necessity of obtaining a returning resident visa.

(b) *Refugee Travel Document.* A refugee travel document is issued pursuant to this part and article 28 of the U.N. Convention of July 28, 1951, for the purpose of travel. A person who holds refugee status pursuant to section 207 of the Act, or asylee status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

(c) *Advance Parole Document.* An advance parole document is issued solely to authorize the temporary parole of an otherwise inadmissible alien into the United States for a temporary period of time due to a compelling emergency. It may be accepted by a transportation company in lieu of a visa as authorization for the person who will travel to the United States without a visa. It is not issued to serve in lieu of any required passport.

§ 223.2 Filing.

(a) *General.* An application for a reentry permit, refugee travel document, or advance parole document must be filed on Form I–131, with the fee required in § 103.7 of this chapter and with the initial evidence required on the application form.

(b) *Who may file*—(1) *Reentry Permit.* An application may be filed by a person who is in the United States at time of application and is a lawful permanent resident or conditional permanent resident.

(2) *Refugee Travel Document.* An application may be filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylee status under section 208 of the Act, or is a permanent resident and received such status through adjustment as a direct result of his or her asylee or refugee status.

(3) *Advance Parole Document.* An application may be filed by an alien who is outside the United States who seeks to travel to the United States temporarily for emergent reasons or for reasons deemed strictly in the public interest. An application may be filed by a person who is in the United States at time of application if he or she:

(i) Has an application for adjustment of status pending and seeks to travel abroad for emergent personal or bona fide business reasons;

(ii) Has an application for adjustment of status pending solely because a visa number is not immediately available, and seeks to travel abroad for bona fide business or emergent personal reasons;

(iii) Holds refugee or asylum status and seeks to depart temporarily to apply for a U.S. immigrant visa in Canada; or

(iv) Seeks to travel abroad for emergent personal or business reasons, provided he or she is not an applicant for adjustment of status, does not hold refugee or asylum status, is not in exclusion or deportation proceedings, is not the beneficiary of a private bill and is not subject to the two-year foreign residence requirement of section 212(e) of the Act.

(c) *Ineligibility*—(1) *Prior document still valid.* An application for a reentry permit or refugee travel document shall be denied if the applicant was previously issued a reentry permit or refugee travel document which is still valid, unless it was returned to the Service or it is demonstrated that it was lost.

(2) *Extended absences.* A reentry permit may not be issued to a person who, since becoming a permanent resident, or during the last 5 years, whichever is less, has been outside the United States for more than 4 years in the aggregate, except that a permit may be issued to:

(i) A permanent resident regularly serving as a crewman aboard an aircraft or vessel of American registry for temporary travel in connection with his or her crewman duties; or

(ii) A person whose proposed travel is on the orders of the United States Government, other than orders excluding or deporting the person.

(3) *National Security, Diplomatic, or Public Safety Reasons.* An application for a reentry permit, refugee travel document, or advance parole shall be denied if the Service has published a notice in the **Federal Register** precluding issuance of the document for the purpose of travel to the area of proposed travel due to national security, diplomatic, or public safety reasons.

(d) *Effect of travel before a decision is made.* Departure from the United States before a decision is made on an application for a reentry permit or refugee travel document shall not affect the application. Departure from the United States, or an application for admission to the United States, before a decision is made on an application for an advance parole document shall be

deemed as abandonment of the application.

(e) *Processing.* Approval of an application is solely at the discretion of the Service. If the application is approved, the requested document shall be issued as provided in this part.

(f) *Issuance.* A reentry permit or refugee travel document may be sent in care of a United States Consulate or an overseas office of the Service if the applicant requests it at the time of filing. Issuance of a reentry permit or refugee travel document to a person in exclusion or deportation proceedings shall not affect those proceedings.

(g) *Appeal.* Denial of an application for a reentry permit or refugee travel document may be appealed to the Service's Administrative Appeals Unit. Denial of an application for advance parole may not be appealed.

§ 223.3 Validity and effect on admissibility.

(a) *Validity*—(1) *Reentry Permit.* A reentry permit issued to a permanent resident shall be valid for 2 years from the date of issuance. A reentry permit issued to a conditional permanent resident shall be valid for 2 years from the date of issuance, or to the date the conditional permanent resident must apply for removal of the conditions on his or her status, whichever comes first.

(2) *Refugee Travel Document.* A refugee travel document shall be valid for 1 year.

(3) *Advance Parole Document.* An advance parole document shall be valid for a period as determined by the Service. It shall specify the time to which the holder may be paroled, not to exceed any previously authorized parole or voluntary departure date. In the discretion of the Service, it may be valid for multiple entries.

(b) *Invalidation.* A document issued under this part is invalid if obtained through material false representation or concealment, or if the person is ordered excluded or deported. A refugee travel document is also invalid if the U.N. Convention of July 28, 1951, ceases to apply or does not apply to the person as provided in Article 1C, D, E, or F of the convention.

(c) *Extension.* A reentry permit, refugee travel document, or advance parole document may not be extended.

(d) *Effect on admissibility*—(1) *Reentry Permit.* A permanent resident or conditional permanent resident in possession of a valid reentry permit who is otherwise admissible shall not be deemed to have abandoned status based solely on the duration of an absence or absences during the permits, validity period.

(2) *Refugee Travel Document*—(i) *General.* Every alien returning to the United States who presents a valid unexpired refugee travel document shall be permitted to come physically within the territory of the United States to receive consideration of his or her application for admission in conformity with paragraphs (d)(2)(ii) and (d)(2)(iii) of this section.

(ii) *Inspection and immigration status.* Upon arrival, an alien who presents a valid unexpired refugee travel document shall be examined as to his admissibility under the Act. An alien shall be accorded the immigration status endorsed in his or her refugee travel document unless he or she is no longer eligible therefor or he or she applies for and is found eligible for some other immigration status.

(iii) *Exclusion.* If an alien who presents a valid unexpired refugee travel document appears to the examining immigration officer to be excludable as provided in § 236.3(e) of this chapter, he or she shall be referred for proceedings under sections 236 and 237 of the Act. Section 235(c) of the Act shall not be applicable.

(3) *Advance Parole Document.* An alien in possession of a valid advance parole document who is otherwise admissible shall be paroled in the status indicated in the parole document, or, if granted the document based on status as a refugee or asylee, readmitted in that status if the immigrant visa was not issued.

PART 223a—REFUGEE TRAVEL DOCUMENTS [REMOVED]

12. Part 223a is removed.

PART 248.—CHANGE OF NONIMMIGRANT CLASSIFICATION

13. The authority citation for part 248 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

14. In section 248.1 paragraph (a) is amended by removing the final "." of the paragraph and inserting in lieu thereof ", or as an alien in transit under section 101(a)(15)(C) of the Act."

15. In § 248.1, paragraph (b) is revised to read as follows:

§ 248.1 Eligibility.

* * * * *

(b) *Timely filing and maintenance of status.* A change of status may not be approved for an alien who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service, and without separate application, where it is demonstrated at the time of filing that:

(1) The failure to file a timely application was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds that the resulting delay was reasonable;

(2) The alien has not otherwise violated his or her nonimmigrant status;

(3) The alien remains a bona fide nonimmigrant; and

(4) The alien is not the subject of deportation proceedings under part 242 of this chapter.

* * * * *

16. Section 248.3 is amended by:

a. Removing paragraph (d), and reserving the paragraph;

b. Revising paragraphs (a), (b), and (c), to read as follows:

§ 248.3 Application.

(a) *Change of status on Form I–129.* An employer seeking the services of an alien as an E–1, E–2, H–1A, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q, R–1, or TC nonimmigrant, must, where the alien already in the U.S. does not currently hold such status, petition for a change of status on Form I–129. The petition must be filed with the fee required in § 103.7 of this chapter and the initial evidence specified in the applicable provisions of § 214.2 of this chapter and on the petition form.

(b) *Change of status on Form I–539.* Any nonimmigrant who desires a change of status to any other nonimmigrant classification, or to E–1 or E–2 classification as the spouse or child of a principal E–1 or E–2, must apply for a change of status on Form I–539. The application must be filed with the fee required in § 103.7 of this chapter and any initial evidence specified in the applicable provisions of § 214.2 of this chapter and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on the principal nonimmigrant alien's status.

(c) *Special provisions for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15) (A) or (G) of the Act.* Each application for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15) (A) or

(G) must be accompanied by a Form I–566, completed and endorsed in accordance with the instructions on that form. If the Department of State recommends against the change, the application shall be denied. An application for a change of classification by a principal alien in a position classified A–1, A–2, G–1, G–2, G–3 or G–4 shall be processed without fee Members of the principal's immediate family who are included on the principal alien's application shall also be processed without fee.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

17. The authority citation for part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305.

§ 264.1 [Amended]

18. Section 264.1, paragraph (b), is amended by removing the Form No. and Class references for forms "I–90", "I–102", "I–174", and "I–695".

§ 264.1 [Amended]

19. Section 264.1 is amended by:

a. Removing paragraph (c)(1);

b. Removing paragraph (c)(2) and reserving the paragraph; and

c. Redesignating paragraph (c)(3) as paragraph (c)(1).

§ 264.2 [Amended]

20. Section 264.2 is amended by:

a. Revising the section heading to read "Application for creation of record of permanent residence.";

b. Removing in paragraphs (c)(1)(i) and (c)(2)(i) the phrase, "Form I–90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I–551, without fee." and inserting in lieu thereof "Form I–485, with the fee required in § 103.7 of this chapter and any initial evidence required on the application form and in this section."; and

c. Removing in the first sentence of paragraphs (c)(1)(vii) and (c)(2)(ix) the phrase, "to Form I–90" and inserting in lieu thereof "on the application form".

21. Part 264 is further amended by adding sections 264.4, 264.5 and 264.6, to read as follows:

§ 264.4 Application to replace a nonimmigrant Non-resident Border Crossing Card.

(a) *General.* An application for a replacement Non-Resident Border Crossing Card must be filed pursuant to § 212.6(e) of this chapter. An application for a replacement Non-resident Alien Canadian Border Crossing Card must be filed on Form I–175. An application for a replacement Non-resident Mexican Border Crossing Card must be filed on Form I–190.

§ 264.5 Application for a replacement Alien Registration Card.

(a) *General.* An application for a replacement alien registration card must be filed on Form I–90 with the initial evidence required on the application form and with the fee specified in § 103.7, except that there is no fee if the application is filed pursuant to paragraphs (b)(2), (b)(4), or (b)(6) of this section, or pursuant to paragraphs (d)(2) or (d)(4) of this section.

(b) *Permanent Residents required to file.* A permanent resident shall apply for a replacement alien registration card:

(1) To replace a card that was lost, stolen, or destroyed;

(2) To replace a card that was issued but never received;

(3) Within the six months prior to the expiration of the card;

(4) When he or she reaches age 14, unless the prior card will expire before he or she reaches age 16.

(5) Where the prior card has been mutilated;

(6) Where the prior card is incorrect;

(7) Where his or her name or other biographic data has changed since the card was issued;

(8) Where he or she has been a commuter and is now taking up actual residence in the United States; or

(9) Upon automatic conversion to permanent resident status.

(c) *Other filing by a permanent resident.* A permanent resident shall apply on Form I–90 to replace a prior edition of the alien registration card issued on Form AR–3 or AR–103. A permanent resident may apply on Form I–90 to replace any other prior edition of the alien registration card.

(d) *Conditional permanent residents required to file.* A conditional permanent resident whose card is expiring shall apply to remove the conditions on residence on Form I–751 or Form I–752. A conditional permanent resident shall apply on Form I–90:

(1) To replace a card that was lost, stolen, or destroyed;

(2) To replace a card that was issued but never received;

(3) Where the prior card has been mutilated;

(4) Where the prior card is incorrect; or

(5) Where his or her name or other biographic data has changed since the card was issued.

(e) *Process when outside the United States.* A permanent resident or conditional permanent resident who is outside the United States and must replace a lost, stolen, or destroyed alien registration card shall file his or her application when applying for re-admission to the United States. If temporary evidence of permanent resident status is required to board an aircraft or vessel to return to the United States, he or she should contact a United States Consulate or Service office abroad.

(f) *Processing.* A pending application filed under this section shall be considered temporary evidence of registration. If the application is approved, the document shall be issued. There is no appeal from the denial of an application filed on Form I–90.

§ 264.6 Application for an initial or replacement Form I–94 or Form I–95 Nonimmigrant Arrival-Departure Document.

(a) *General.* An application for a new or replacement Form I–94 or replacement Form I–95 must be made on Form I–102. The application must be filed with the fee required in § 103.7 and the initial evidence required on the application form.

(b) *Who may file.* An application may be filed by a person in the United States who:

(1) Applies to replace a lost or stolen Form I–94 or Form I–95 that had been issued to him or her;

(2) Applies to replace a mutilated Form I–94 or Form I–95 that had been issued to him or her; or

(3) Was not issued a Form I–94 pursuant to § 235.1(f)(1)(i), (iii), (iv), (v), or (vi) of this chapter, when last admitted as a nonimmigrant, has not since been issued a Form I–94, and now requires a Form I–94.

(c) *Processing.* A pending application filed under paragraph (a) of this section shall be considered temporary evidence of registration. If the application is approved, the document shall be issued. There is no appeal from the denial of an application filed on Form I–102.

PART 292—REPRESENTATION AND APPEARANCES

22. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362.

23. Section 292.4, paragraph (a), is amended by adding a new sentence at the end of the paragraph, to read:

§ 292.4 Appearances.

* * * * *

(a) * * * A notice of appearance entered in application or petition proceedings must be signed by the

applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.

* * * * *

Dated: November 21, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-28712 Filed 11-29-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-201-AD]

Airworthiness Directives; Airbus Industrie Model A310 and A300-600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the adoption of a new airworthiness directive (AD), that is applicable to certain Airbus Industrie Model A310 and A300-600 series airplanes. This proposal would require an inspection of the aft electrical stop switch on the horizontal actuator of the pilot's and copilot's seats, and replacement, if necessary; and an inspection of the clearance between the electrical and mechanical stops, and adjustment of the clearance or replacement of the horizontal actuator, if necessary. This proposal is prompted by a report indicating that insufficient clearance between the mechanical and electrical stops in the horizontal actuator on the pilot's and copilot's seats can lock the mechanism permanently or loosen the seat base, thereby making it impossible to lock. This condition, if not corrected, could result in reduced ability of the flight crew to control the airplane.

DATES: Comments must be received by January 21, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-201-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 227-2140; fax (206) 227-1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

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 91-NM-201-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. 91-NM-201-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A310 and A300-600 series airplanes. There has been a recent report indicating that, if the clearance between the mechanical and electrical stops of the horizontal actuator on the pilot's and copilot's seats is insufficient, the mechanism could become permanently locked or the seat base could become loose and impossible to lock. This condition, if not corrected, could result in reduced ability of the flight crew to control the airplane.

Sogerma-Socea, which is the manufacturer of the seats, has issued Service Bulletin 25-188, Revision 1, dated July 2, 1991, which describes procedures to perform a one-time visual inspection of the aft electrical stop switch, and replacement of damaged switches; and a one-time visual inspection for correct clearance between the electrical stop and the mechanical stop, and adjustment of incorrect clearance or replacement of the horizontal actuator. The French DGAC has classified this service bulletin as mandatory and has issued French airworthiness directive 91-155-125(B) relating to this subject.

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

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection of the aft electrical stop switch, and replacement of damaged switches; and a one-time visual inspection for correct clearance between the electrical stop and the mechanical stop, and adjustment of incorrect clearance or replacement of the horizontal actuator. The actions would be required to be accomplished in accordance with the service bulletin previously described.

It is estimated that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,375.

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—[AMENDED]

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

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

Section 39.13 [Amended]

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

Airbus Industrie: Docket No. 91-NM-201-AD.

Applicability: Model A310 and A300-600 series airplanes; equipped with pilot and copilot seats manufactured by Sogerma-Socea, as listed in Sogerma-Socea Service Bulletin 25-188, Revision 1, dated July 2, 1991; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent reduced ability of the flight crew to control the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) in accordance with Sogerma-Socea Service Bulletin 25-188, Revision 1, dated July 2, 1991:

(1) Perform a visual inspection to detect damage to the aft electrical stop switch (switch reference 3 in Figure 1 of the service bulletin). Prior to further flight, replace any damaged switches found, in accordance with the service bulletin.

(2) Determine the manufacturer's serial number on the pilot's and copilot's seats. If the seats have serial numbers that are less than number 261, or if the horizontal actuator has been replaced, accomplish the following:

(i) Measure the amount of clearance between the electrical stop and the mechanical stop of the horizontal actuator.

(ii) If the clearance is less than 4mm, prior to further flight, adjust the clearance to more than 4mm in accordance with the service bulletin.

(iii) If there is no clearance, prior to further flight, replace the horizontal actuator and adjust the clearance to the proper dimension when fitting the new horizontal actuator, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on November 19, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-28743 Filed 11-29-91; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 91-NM-208-AD]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125-800A series airplanes. This proposal would require installation of an improved wash basin water tank shroud drain outlet. This proposal is prompted by reports of wash basin water tank leakage, which could result in ice forming on the aileron control cables. This condition, if not corrected, could result in reduced controllability of the airplane.

DATES: Comments must be received no later than January 23, 1992.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-208-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148; fax (206) 227-1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-208-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. 91-NM-208-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (UK-CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 125-800A series airplanes. There have been recent reports of leakage from the wash basin water tank, which can result in ice forming on aileron control cables and, consequently, lead to reduced controllability of the airplane. The reports pertain to a particular aft lavatory water system that was approved for use on British Aerospace Model BH.125-600A and -700A series airplanes under a Supplemental Type Certificate (STC). The water leaks in the STC-approved system were caused by clamps on the water system's flexible tubing that had become loose over a period of time. [The FAA previously issued AD 90-08-07, Amendment 39-6600 (55 FR 19059, May 8, 1990) to correct the problems association with the STC-approved aft lavatory water supply system.] British Aerospace and the UK-CAA have determined that there are ample similarities between the STC-approved system and the system installed on Model BAe 125-800A series airplanes such that the water leakage problems could occur on these airplanes as well. Such leakage could result in ice forming on aileron control cables and lead to reduced controllability of the airplane.

British Aerospace has issued Service Bulletin 25-67-25AO13A, Revision 1, dated August 9, 1991, which describes procedures to install a new collector/outlet and drain pipe below the wash basin water tank outlet. The UK-CAA has classified this service bulletin as mandatory.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of an improved wash basin water tank shroud drain outlet in accordance with the service bulletin previously described.

It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor cost would be $55 per work hour. The estimated cost for required parts is $2,159 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,396.

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 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 evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

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—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Docket No. 91-NM-208-AD.

Applicability: Model BAe 125-800A series airplanes, as listed in British Aerospace Service Bulletin 25-67-25A013A, Revision 1, dated August 9, 1991; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

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

(a) Within 30 days after the effective date of this AD, drain the water from the wash basin water tank; and fabricate and install a placard to indicate that the wash basin is "inoperative."

(b) Within 3 months after the effective date of this AD, install a new collector/outlet and drain pipe below the wash basin water tank outlet in accordance with British Aerospace Service Bulletin 25-67-25A013A, Revision 1, dated August 9, 1991. After installing the new collector/outlet and drain pipe, remove the placard required by paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Renton, Washington, on November 21, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-28745 Filed 11-29-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 102, 134, and 177

Proposed Customs Regulations Amendments Regarding Rules of Origin Applicable To Imported Merchandise

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the

period of time within which interested members of the public may submit comments on proposed amendments to the Customs Regulations regarding rules of origin applicable to imported merchandise. Customs has received several requests to extend the comment period to allow additional time to prepare responsive comments. The comment period is extended 45 days.

DATES: Comments are requested on or before January 9, 1992.

ADDRESSES: Comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: John Valentine, Office of Regulations and Rulings (202–566–8530).

SUPPLEMENTARY INFORMATION:

Background

A document was published in the **Federal Register** (56 FR 48448) on September 25, 1991, proposing to amend the Customs Regulations to set forth a uniform rule governing the determination of the country of origin of imported merchandise which is wholly obtained or produced in a single country. The document also proposed to amend the Customs Regulations to establish rules, applicable for most Customs and related purposes, for determining the country of origin of imported base metals and articles of base metals which are not wholly obtained or produced in a single country and which are classifiable in chapters 72 through 83 of the Harmonized Tariff Schedule of the United States. The proposal solicited public comments that were to be received on or before November 25, 1991.

Customs has received several requests to extend the period of time for comments. The requesters stated that additional time is required for study and analysis in order to prepare responsive comments both in regard to the general impact of the proposal and in regard to the specific proposals concerning base metal products. Customs believes that the requests have merit. Accordingly, the period of time for the submission of comments is being extended 45 days.

Dated: November 26, 1991.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 91–28800 Filed 11–29–91; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Louisiana Permanent Regulatory Program

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

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Louisiana permanent regulatory program (hereinafter, the "Louisiana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Louisiana Surface Mining Regulations (LSMR) pertaining to hydrology, standards for revegetation success, termination of jurisdiction, and inspections of abandoned sites. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Louisiana program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. January 2, 1992. If requested, a public hearing on the proposed amendment will be held on December 27, 1991. Requests to present oral testimony at the hearing must be: received by 4 p.m., c.s.t. on December 17, 1991.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Louisiana program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430

Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, Baton Rouge, LA 70804, Telephone: (504) 342–5515

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior conditionally approved the Louisiana program. General background information on the Louisiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Louisiana program can be found in the October 10, 1980 **Federal Register** (45 FR 67340). Subsequent actions concerning Louisiana's program and program amendments can be found at 30 CFR 918.15 and 918.16.

II. Proposed Amendment

By letter dated November 12, 1991 (Administrative Record No. LA–321), Louisiana submitted a proposed amendment to its program pursuant to SMCRA. Louisiana submitted the proposed amendment in response to the required program amendments at 30 CFR 918.16(a) through (i), and with the intent of revising the State program to be consistent with the corresponding Federal standards. Louisiana proposes to amend the following regulations: Policy Statement No. PS–4, Probable Hydrologic Consequences Determinations, interpreting LSMR 2523; LSMR 53123.A.1, 2, and 3, statistically valid sampling techniques for estimating vegetation ground cover, productivity, and live stems per acre; LSMR 53123.A.4, sample adequacy for revegetation success measurements; LSMR 53123.B.1.d, technical criteria to be used for selecting and approving historical record documents for the revegetation success standards; LSMR 53123.B.2.a, reference areas; LSMR 53123.B.4, vegetative ground cover success standards for forest lands; and LSMR 53123.B.9, revegetation success standards for undeveloped lands. In addition, Louisiana proposes to delete the following regulations: LSMR 107(b), termination of jurisdiction; LSMR 53125, revegetation success standards: regarding tree and shrub stocking for forest land; and LSMR 6301.E, inspections of abandoned sites.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed

amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Louisiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person, listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m., c.s.t. on December 17,1991. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 22, 1991.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 91-28741 Filed 11-29-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 130, 131, 132, and 137

[CGD 91-005]

RIN 2115-AD76

Financial Responsibility for Water Pollution (Vessels)

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 26, 1991, the Coast Guard published a notice of proposed rulemaking on financial responsibility for vessels (56 FR 49006). The original comment period provided in that notice is extended an additional 60 days.

DATES: The comment period on the notice of proposed rulemaking is extended to January 24, 1992.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, (G-LRA-2/3406) (CGD 91-005), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments will become part of the public docket for this rulemaking and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Skall, National Pollution Funds Center, (703) 235-4704.

SUPPLEMENTARY INFORMATION: The Coast Guard is extending the comment period for the notice of proposed rulemaking (NPRM) concerning financial responsibility for vessels under the Oil Pollution Act of 1990 (OPA 90) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Over 30 requests for an extension of 60 or more days were received. Most indicated that additional time was necessary due to the potentially significant impact of the rulemaking and the extensive amount of information that needs to be collected and analyzed in order to provide meaningful responses. Many of the requests particularly concerned the time required to formulate responses to the questions asked in the NPRM concerning the Regulatory Impact Analysis. Therefore, in recognition of the need for meaningful data and information to assist in completing the rulemaking and the Regulatory Impact Analysis, the Coast Guard is extending the comment period for 60 days.

To date, few substantive comments have been received. The Coast Guard strongly encourages comments on all aspects of this rulemaking. Any suggestions on how the proposed methods of evidencing financial responsibility might be adjusted or expanded should be detailed and should include an analysis of how any such method would be consistent with provisions of OPA 90 and CERCLA. The Coast Guard strongly encourages all who may potentially be affected by the availability of adequate vessel financial responsibility for oil pollution damages to comment on the proposed regulation. The spectrum of interests is potentially very broad and would include in addition to maritime shipping interests and their insurers, individuals, States, and environmental organizations, among others.

Dated: November 20, 1991.

J.W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 91-28781 Filed 11-29-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900-AE11

Schedule for Rating Disabilities; Genitourinary System Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is proposing to amend its rating schedule for the genitourinary system. This amendment is based on a General Accounting Office (GAO) study and recommendation that medical criteria in the rating schedule be reviewed and updated. The intended effect is to update the Schedule for Rating Disabilities of the genitourinary system to ensure that it uses current medical terminology and criteria for evaluating disabilities of that system.

DATES: Comments must be received on or before January 2, 1992. Comments

will be available for public inspection until January 13, 1992. This amendment is proposed to be effective 30 days after the date of publication of the final rules.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until January 13, 1992.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists, GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. VA agreed to these recommendations.

In the Federal Register of August 21, 1989, VA published an advance notice of proposed rulemaking advising the public that VA was going to revise and update the rating schedule for genitourinary disabilities. A number of comments and suggestions were received from various interest groups, VA employees, and government agencies, and VA also contracted an outside consultant to suggest revisions to the genitourinary portion of the rating schedule. The primary objective of this review is to update the medical terminology and criteria used to evaluate disabilities rather than to amend the percentage evaluations assigned to each level of severity, albeit some changes in evaluation are proposed.

Some commenters suggested schedular compensation for reproductive or sexual dysfunction. The rating schedule currently provides for compensation for loss of procreative function if accompanied by anatomical deformity. In addition, special monthly compensation is payable for loss or loss of use of a creative organ. We believe there is no compelling reason, for the purposes of this review, to provide for additional schedular compensation for sexual or reproductive dysfunction.

The evaluation of tuberculosis as it affects various genitourinary organs was remarked upon by several commenters. These conditions are becoming increasingly rare, and are, in any event, governed by the provisions of §§ 4.88b and 4.89 which are outside the scope of the present review.

We propose that the opening paragraph, § 4.115, which currently prefaces the genitourinary portion of the rating schedule, be amended to include two additional sentences regarding separate evaluation of coexisting heart disease in the event of an absent kidney, or when chronic renal disease has progressed to the point where regular dialysis is required. This procedure is included in the Department of Veterans Benefits Manual of Adjudication Procedure, M21–1, and will now make regulatory a long-established policy.

In order to allow a broader range of possible evaluations for many disabilities and a more accurate level of compensation for each, we are proposing to evaluate each disability as one of three general dysfunctions of the genitourinary system: Renal dysfunction, voiding dysfunction, and urinary tract infection. A general rating formula for each dysfunction is included, and diagnostic codes throughout the section refer to these criteria for evaluation of predominant dysfunction. The evaluations prescribed for each category of dysfunction are generally consistent with percentages and criteria currently specified under the following diagnostic codes: 7502, nephritis, corresponding to renal dysfunction; 7512, cystitis with criteria relating to frequency of urination, corresponding to voiding dysfunction; 7518, stricture of urethra with criteria relating to dilatation treatments, corresponding to urinary tract infection, and also relating to obstructed voiding as a category of voiding dysfunction; and 7519, fistula of urethra with criteria relating to frequency of drainage, corresponding to continual urinary leakage as a category of voiding dysfunction.

Under renal dysfunction and diagnostic code 7530, the word "dialysis" has been used instead of "hemodialysis" in order to include consideration of continuous ambulatory peritoneal dialysis as well as hemodialysis in the assignment of a total evaluation. Specific measurements of creatinine and blood urea nitrogen (BUN) are provided for the 100 and 80 percent evaluations under renal dysfunction. The term "nonprotein nitrogen," currently shown under diagnostic code 7502, is obsolete and will therefore be removed as a measure of kidney dysfunction. Mild renal dysfunction, to include loss of one kidney, is evaluated as zero percent disabling, since no significant functional impairment or symptomatology is contemplated at this level.

For malignancies of the genitourinary system, diagnostic code 7528 currently provides a 100 percent evaluation for one year following surgery or the cessation of antineoplastic therapy. This provision is applied at the time of rating by assignment of a one year total evaluation with a prospective reduction consistent with the protected, known or minimum evaluation. Due to improvements in the administration of chemotherapy and radiation treatments, we believe that a one year convalescent evaluation is no longer warranted, but that it is reasonable to assess residual disability six months after treatment terminates. Not ever patient will recover in a set period of time, however, so a decision to reduce an evaluation after six months should be based on medical findings rather than a regulatory assumption that there has been an improvement.

We propose to change the period of convalescence under diagnostic code 7528 for malignancies from one year to six months. The total evaluation will continue until the veteran is examined and the results of this examination have been reviewed by a rating board. At that time, if a reduction in evaluation is warranted, it would be implemented under the provisions of 38 CFR 3.105(e). This instruction has been included in the NOTE following diagnostic code 7528.

Similarly, we believe the two year convalescent period under diagnostic code 7531, Kidney transplant, is no longer warranted. Kidney transplants have become far more common since 1975 when a total evaluation, for two years was first specified in the rating schedule, and improved surgical techniques and experience with immunosuppresive management make it possible to assess residual impairment six months after surgery instead of two years. As with cancer treatment, however, patients vary in the actual length of time needed to recover. We propose to change the period of convalescence from two years to six months. After six months, the veteran will be examined and the results of this

examination will be reviewed by a rating board before any change in evaluation is considered. As with malignancies, a reduction would be effected under § 3.105(e) if warranted. These changes in the length of total convalescent evaluations and their application will permit a more accurate and timely determination of the veteran's remaining chronic impairment, and ensure that any changes in evaluation which follow are made in accordance with the individual facts of each case.

Diseases of the genitourinary system are currently classified under 31 diagnostic codes. We propose to eliminate four of these diagnostic categories:

—7503, Pyelitis, chronic. This term is not currently used in medical practice and is generally understood to be included under pyelonephritis, which remains as diagnostic code 7504;

—7513, Cystitis, interstitial. This is included under chronic cystitis, diagnostic code 7512;

—7514, Bladder, tuberculosis of. This is now such an uncommon condition that it no longer warrants a separate category in the genitourinary section of the schedule. Ratings for nonpulmonary tuberculosis are as prescribed by §§ 4.88b and 4.89;

—7526, Prostate gland, resection or removal. This disability is included under diagnostic code 7527, Prostate gland injuries, infections, hypertrophy, postoperative residuals. Residuals of a total prostatetomy will be evaluated according to the severity of the individual disability instead of assigning a minimum rating of 20 percent. A separate diagnostic code is therefore redundant.

Of the remaining diagnostic codes, the majority are proposed to be amended according to the three areas of dysfunction previously described. Additional changes which are significant are as follows:

—7500, Kidney, removal of one, with nephritis, infection, or pathology of the other. We propose to amend criteria for evaluation of an absent kidney to allow for consideration of entire renal dysfunction. This represents the most consistent means of rating kidney disorders. The Note following diagnostic code 7500 has been deleted since it is not relevant to the proposed rating criteria;

—7508, Nephrolithiasis. A 30 percent evaluation will be assigned for recurrent stone formation requiring diet therapy, drug therapy, or frequency surgical therapy. If stone formation is not recurrent to this extent, the condition will be rated according to the criteria for Hydronephrosis under diagnostic code 7509. Diagnostic codes 7510 and 7511, Ureterolithiasis and Ureter, stricture of, will be rated in the same manner as diagnostic code 7508;

—7524, Testis, removal. We propose that the removal of one testicle be non-compensable in evaluation, because no significant disabling impairment is anticipated for this condition. In the event of an absent or nonfunctioning testicle prior to military service, with loss of the remaining testicle as a result of military service, a 30 percent evaluation will be assigned without deduction of preservice disability;

—7525, Epididymo-orchitis, chronic only. This diagnostic code may be assigned for any epididymal infection;

—7527, Prostate gland injuries, infections, hypertrophy, postoperative residuals. As previously noted, this diagnostic code is considered to embrace resection or removal of the prostate gland previously rated under diagnostic code 7526;

—7528, Malignant neoplasms. The word "neoplasm" better connotes a pathological abnormality than the term "new growth," and is therefore used under this diagnostic code, and also under diagnostic code 7529. No minimum rating is proposed following expiration of the 100 percent convalescent evaluation. Following an examination, the rating will be made on voiding dysfunction or renal dysfunction, whichever is predominant;

—7531, Kidney transplant. No minimum rating is proposed following expiration of the 100 percent convalescent evaluation. As long as the veteran remains on immunosuppression medication, however, a minimum 30 percent evaluation would be assigned.

A diagnostic code designated as 7532 has been added for the category of Renal tubular dysfunctions and similar conditions. Metabolic disorders which result can usually be successfully treated, and a 20 percent evaluation has been assigned in the event they are symptomatic.

We propose to add the following diagnostic codes which are to be rated according to the previously defined criteria of renal dysfunction: 7533, Cystic diseases of the kidneys; 7534, Atherosclerotic renal disease; 7535, Toxic nephropathy; 7536, Glomerulonephritis; 7537, Interstitial nephritis; 7538, Papillary necrosis; 7539, Renal amyloid disease; 7540, Disseminated intravascular coagulation with renal cortical necrosis; and 7541, Renal involvement in diabetes mellitus, sickle cell anemia, systemic lupus erythematosus, vasculitis, or other systemic disease processes. These additional codes will reduce reliance on the uncertain practice of rating many kidney disorders by analogy.

Diagnostic codes 7522 and 7523 are unchanged in the use of terminology and designated evaluations.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. § § 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexility analysis requirements of section 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 29, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below;

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

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

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. Section 4.115 is amended by adding two sentences at the end of the section to read as follows:

§ 4.115 Nephritis.

* * * If, however, absence of a kidney is the sole renal disability, even if removal was required because of nephritis, the absent kidney and any heart disease will be separately rated. Also, in the vent that chronic renal disease has progressed to the point where regular dialysis is required, any coexisting heart disease will be separately rated.

3. Section 4.115a is redesignated and revised as § 4.115b and a new § 4.115a is added to read as follows:

§ 4.115a Ratings of the genitourinary system—dysfunctions.

Diseases of the gentiourinary system generally result in disabilities related to renal or voiding dysfunctions, infections, or a combination of these. The following section provides descriptions of various levels of disability in each of these symptom areas. Where diagnostic codes refer the decision maker to these specific areas of dysfunction, only the predominant area of dysfunction shall be considered for rating purposes. Since the areas of dysfunction described below do not cover all symptoms resulting from genitourinary diseases, specific diagnoses may included a description of symptoms assigned to that diagnosis.

	Rating
Renal dysfunction:	
Pronounced; persistent edema and albuminuria or markedly elevated BUN (over 100mg%) or creatinine (10mg%) or markedly decreased kidney function and/or severe dysfunction of other organ systems, especially cardiovascular system resulting in severe chronic invalidism; or requiring regular dialysis	100
Severe; persistent edema and albuminuria with moderately impaired kidney function (BUN 40-100mg%) or creatinine 4-10mg%; or some degree of chronic invalidism such as lethargy, weakness, anorexia, weight loss, or limitation of exertion	80
Moderately severe; constant albuminuria with some edema; or definite decrease in kidney function; or associated moderate hypertension	60
Moderate; albumin constant or recurring with hyaline and granular casts or red blood cells; transient or slight edema or hypertension minimally compensable under diagnostic code 7101	30
Mild; albumin and casts with history of acute nephritis or associated mild hypertension; loss of one kidney with no sequelae	0
Voiding dysfunction:	
Rate for particular condition.	
Continual Urine Leakage, Post Surgical Urinary Diversion, Urinary Incontinence, or Stress Incontinence:	
Severe; requiring the wearing of an appliance or absorbent materials which are changed greater than 4 times per day	60
Moderate; requiring the wearing of absorbent materials which are changed 2 to 4 times per day	40
Mild; requiring the wearing of absorbent materials which are changed less than 2 times per day	20
Urinary Frequency.	
Daytime and nighttime ratings shall not be combined. Choose whichever symptom predominates.	
Daytime Frequency—Frequent urination with documentation of either a functionally decreased bladder capacity by cystometry or an elevated post void residual, or an anatomically small bladder by cystography:	
Severe; voiding interval less than one hour	40
Moderate; voiding interval between one and two hours	20
Mild; voiding interval between two and three hours	10
Nighttime Frequency (Nocturia)—Frequent urination at night with documentation of either a functionally decreased bladder capacity by cystometry or an elevated post void residual, or an anatomically small bladder by cystography:	
Severe; awaken from sleep to void five or more times per night	20
Moderate; awaken from sleep to void three to four times per night	10
Mild; awaken from sleep to void one to two times per night	0
Obstructed Voiding:	
Severe; urinary retention requiring intermittent or continuous catheterization	30
Moderate; marked obstructive symptomatology (hesitancy, slow or weak stream, decreased force of stream) with any one or combination of the following:	
1. Post void residuals greater than 150 cc.	
2. Uroflowmetry; markedly diminished peak flow rate (less than 10 cc/sec)	
3. Recurrent urinary tract infections secondary to obstruction	
4. Stricture disease requiring periodic dilatation every 2 to 3 months	10
Mild; obstructive symptomatology with or without stricture disease requiring dilatation 1 to 2 times per year	0
Urinary tract infection:	
Severe; Poor renal function Rate as renal dysfunction.	
Moderate; recurrent symptomatic infection requiring drainage/frequent hospitalization (greater than two times/year), and/or requiring continuous intensive management	30
Mild; long-term drug therapy, 1-2 hospitalizations per year and/or requiring intermittent intensive management	10

§ 4.115b Ratings of the genitourinary system—diagnoses.

7500 Kidney, removal of one, with nephritis, infection, or pathology of the other.	
Rate as renal dysfunction.	
7501 Kidney, abscess of.	
Rate as urinary tract infection.	
7502 Nephritis, chronic.	
Rate as renal dysfunction.	
7504 Pyelonephritis, chronic.	
Rate as renal dysfunction or urinary tract infection, whichever is predominant.	
7505 Kidney, tuberculosis of.	
Rate in accordance with § 4.88b or § 4.89, whichever is appropriate.	
7507 Nephrosclerosis, arteriolar.	
Rate as renal dysfunction or hypertensive cardiovascular or vascular disease, according to predominant symptoms. With nephrosclerosis, the rating for cardiac disease or hypertension will be increased to the next higher.	
7508 Nephrolithiasis.	
Rate as hydronephrosis, *except for* recurrent stone formation requiring one or more of the following:	
1. Diet therapy	
2. Drug therapy	
3. Frequent surgical therapy	30
7509 Hydronephrosis:	
Severe; Rate as renal dysfunction.	
Moderately severe; frequent attacks of colic with infection (pyonephrosis), kidney function impaired	30
Moderate; frequent attacks of colic, requiring catheter drainage	20
Mild; only an occasional attack of colic, not infected and not requiring catheter drainage	10
7510 Ureterolithiasis.	
Rate as hydronephrosis, *except for* recurrent stone formation requiring one or more of the following:	
1. Diet therapy	
2. Drug therapy	
3. Frequent surgical therapy	30
7511 Ureter, stricture of.	
Rate as hydronephrosis, *except for* recurrent stone formation requiring one or more of the following:	
1. Diet therapy	
2. Drug therapy	
3. Frequent surgical therapy	30
7512 Cystitis, chronic, includes interstitial and all etiologies, infectious and non-infectious.	
Rate as voiding dysfunction.	
7515 Bladder, calculus in, with symptoms interfering with function.	
Rate as voiding dysfunction.	
7516 Bladder, fistula of:	
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.	
Postoperative, suprapubic cystotomy	100

7517 Bladder, injury of.
Rate as voiding dysfunction.
7518 Urethra, stricture of.
Rate as voiding dysfunction.
7519 Urethra, fistula of:
Rate as voiding dysfunction.
Multiple urethroperineal 100
7520 Penis, removal of half or more 30
Or rate as voiding dysfunction.
7521 Penis, removal of glans 20
Or rate as voiding dysfunction.
7522 Penis, deformity, with loss of erectile power 20
7523 Testis, atrophy complete:
Both 20
One 0
7524 Testis, removal:
Both 30
One, other than undescended or congenitally undeveloped 0
Note:—In cases of the removal of one testis as the result of a service-incurred injury or disease, other than an undescended or congenitally undeveloped testicle, with the absence or nonfunctioning of the other testis unrelated to service, a rating of 30 percent will be assigned for the service-connected testicular loss. Testis, undescended, or congenitally undeveloped is not a ratable disability.
7525 Epididymo-orchitis, chronic only:
Rate as urinary tract infection.
For tubercular infections: Rate in accordance with § 4.88b or § 4.89, whichever is appropriate.
7527 Prostate gland injuries, infections, hypertrophy, postoperative residuals.
Rate as voiding dysfunction or urinary tract infection, whichever is predominant.
7528 Malignant neoplasms of the genitourinary system 100
Note: Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue for 6 months. A VA examination is mandatory at the expiration of the 6-month period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastases, rate on residuals as voiding dysfunction or renal dysfunction, whichever is predominant.
7529 Benign neoplasms of the genitourinary system.
Rate as voiding dysfunction or renal dysfunction, whichever is predominant.
7530 Chronic renal disease requiring regular dialysis.
Rate as renal dysfunction.
7531 Kidney transplant:
For 6 months following transplant surgery 100
Thereafter: Rate on residuals as renal dysfunction, *except* as long as patient is on immunosuppression medication, minimum rating 30
Note: The 100 percent rating for 6 months subsequent to transplant surgery shall be assigned as of the date of hospital admission, and shall continue for 6 months. A VA examination is mandatory at the expiration of the 6-month period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter.
7532 Renal tubular dysfunctions (to include rating of renal tubular acidosis, syndrome of inappropriate antidiuretic hormone, diabetes insipidus, fanconi syndrome, renal glycosuria, aminoacidurias, and related conditions).
Minimum rating for symptomatic condition 20
7533 Cystic diseases of the kidneys (polycystic disease, uremic medullary cystic disease, Medullary sponge kidney, and similar conditions).
Rate as renal dysfunction.
7534 Atherosclerotic renal disease (renal artery stenosis or atheroembolic renal disease).
Rate as renal dysfunction.
7535 Toxic nephropathy (antibiotics, radiocontrast agents, nonsteroidal anti-inflammatory agents, heavy metals, and similar agents).
Rate as renal dysfunction.
7536 Glomerulonephritis.
Rate as renal dysfunction.
7537 Interstitial nephritis.
Rate as renal dysfunction.
7538 Papillary necrosis.
Rate as renal dysfunction.
7539 Renal amyloid disease.
Rate as renal dysfunction.
7540 Disseminated intravascular coagulation with renal cortical necrosis.
Rate as renal dysfunction.
7541 Renal involvement in diabetes mellitus, sickle cell anemia, systemic lupus erythematosus, vasculitis, or other systemic disease processes.
Rate as renal dysfunction.

(Authority: 38 U.S.C. 355)

[FR Doc. 91-28651 Filed 11-29-91; 8:45 am]
BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-341, RM-7836]

Radio Broadcasting Services; Altamont, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Western States Broadcasting seeking the substitution of Channel 243C1 for Channel 267C at Altamont, Oregon, and the modification of its license for Station KCHQ to specify operation on the lower class channel. Channel 243C1 can be allotted to Altamont in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.8 kilometers (15.5 miles) southwest to accommodate petitioner's desired transmitter site, at coordinates North Latitude 42-05-36 and West Longitude 121-59-35.

DATES: Comments must be filed on or before January 17, 1992, and reply comments on or before February 3, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jay Stevens, Western States Broadcasting, 1415 Laverne Street, Klamath Falls, Oregon 97603 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-341, adopted November 7, 1991, and released November 26, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-28846 Filed 11-29-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 56, No. 231
Monday, December 2, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-164]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, United States Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of these documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Specialist, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain gentically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
91-294-02	Frito-Lay, Inc. (renewal of #90-311-01, issued on 03/12/91).	10-21-91	Potato plants genetically engineered to over-express a metabolic enzyme, in order to reduce cold-sensitive sweetening in potato tubers.	Oneida County, Wisconsin.
91-295-01	Holden's Foundation Seeds Incorporated	10-22-91	Corn plants genetically engineered to express the phosphinothricin-N-transferase (PAT) gene to confer tolerance to the herbicide glufosinate.	Molaki, Hawaii.

Done in Washington, DC, this 22d day of November 1991.

Robert Melland,

Administrator, Animal & Plant Health Inspection Service.

[FR Doc. 91-28756 Filed 11-29-91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

National Conservation Review Group; Meeting

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The National Conservation Review Group will meet to consider recommendations from State and County Conservation Review Groups with respect to the operational features of the Agricultural Conservation Program (ACP), the Emergency Conservation Program (ECP), and the Forestry Incentives Program (FIP). Comments and suggestions will be received from the public concerning these conservation and environmental programs administered by the Agricultural Stabilization and Conservation Service (ASCS).

DATES: Meeting Date: January 16, 1992.

ADDRESSES: Meeting Location: Room 5219 South Building, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, room 4723, South Building, Washington, DC 20013, 202-720-7333.

SUPPLEMENTARY INFORMATION: The National Conservation Review Group meeting is scheduled to be held from 9 a.m. to 12 m. (noon) on January 16, 1992, in Room 5219 South Building, U.S. Department of Agriculture, Washington, DC. Meeting sessions will be open to the public. The agenda will include consideration of State and County Review Group recommendations for changes in the administrative procedures and policy guidelines of the ACP, ECP and FIP. An opportunity will be provided for the public to present comments at the meeting on these conservation and environmental programs administered by ASCS.

Because of time constraints and anticipated participation from interested individuals and groups, comments will be limited to not more than 5 minutes. Individuals or groups interested in making recommendations may also make them in writing and submit them to the Chief, Conservation Programs and Automation Branch, Conservation and Environmental Protection Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, room 4723–S, Washington, DC 20013. The meeting may also include discussion of current procedures, criteria, and guidelines relevant to the implementation of these programs.

Because of limited space available, persons desiring to attend the meeting should call Mr. Grady Bilberry 202–720–7333 to make reservations.

Signed at Washington, DC, on November 25, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91–28828 Filed 11–29–91; 8:45 am]

BILLING CODE 3410–05–M

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Area Currently Assigned to the Quincy (IL) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Anthony L. Marquardt dba Quincy Grain Inspection & Weighing Service (Quincy).

DATES: Comments must be postmarked on or before January 16, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [HDUNN/FGIS/USDA]. Telecopier users may send responses to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1991, **Federal Register** (56 FR 49740), FGIS asked persons interested in providing official grain inspection in the Quincy geographic area to submit an application for designation. Applications were to be postmarked by October 31, 1991. Quincy Grain Inspection & Weighing Service, Inc. (Quincy, Inc.), the only applicant, applied for the entire available area.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of this applicant. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 20, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91–28414 Filed 11–29–91; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications From Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the Champaign (IL) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall terminate not later than triennially and may be renewed. FGIS announces that the designation of Champaign-Danville Grain Inspection Departments, Inc. (Champaign), will terminate, according to the Act, and is asking persons interested in providing official grain inspection in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked on or before January 2, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of FGIS to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Champaign located at 527 E. Main Street, Danville, IL 61832, to officially inspect grain under the Act on June 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. Champaign's designation terminates on May 31, 1992.

The geographic area presently assigned to Champaign, in the States of Illinois and Indiana, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Iroquois County line east to the Illinois-Indiana State line; the Illinois-Indiana State line south to U.S. Route 24; U.S. Route 24 east to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the southern Fountain County line; the Fountain County line west to Vermillion County (in Indiana); the eastern Vermillion County line south to U.S. Route 36;

Bounded on the South by U.S. Route 36 west into Illinois, to the Douglas County line; the eastern Douglas and Coles County lines; the southern Coles County line; and

Bounded on the West by the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles

west of the western Champaign County line; a straight line running north to U.S. Route 136; U.S. Route 136 east to Interstate 57; Interstate 57 north to the Champaign County line; the northern Champaign County line; the western Vermilion (in Illinois) and Iroquois County lines.

The following locations, all in Illinois, outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, all in Farmer City, Dewitt County; Moultrie Grain Association, Lovington, Moultrie County; and Monticello Grain Company, Monticello, Piatt County (located inside Decatur Grain Inspection, Inc.'s, area).

Exceptions to Champaign's assigned geographic area are the following locations inside Champaign's area which have been and will continue to be serviced by the following official agencies:

1. Southern Illinois Grain Inspection Service, Inc.: Tabor Grain Co., Newman, Douglas County, Illinois; Tabor Grain Co., Oakland, Coles County, Illinois; and Cargill, Inc., Dana, Vermillion County, Indiana; and

2. Titus Grain Inspection, Inc.: Boswell Grain Company, Boswell, Benton County, Indiana; Dunn Grain, Dunn, Benton County, Indiana; York Richland Grain Elevator, Inc., Earl Park, Benton County, Indiana; and Raub Grain Company, Raub, Benton County, Indiana.

Interested persons, including Champaign, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning June 1, 1992, and ending May 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 20, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-28415 Filed 11-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Designation of the States of Minnesota (MN) and Mississippi (MS)

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of the Minnesota Department of Agriculture (Minnesota), and the Mississippi Department of Agriculture and Commerce (Mississippi), to provide official grain inspection and Class X or Class Y weighing under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the July 1 1991, Federal Register (56 FR 29936), FGIS announced that the designations of Minnesota and Mississippi terminate on December 31, 1991, and asked persons interested in providing official services within the geographic areas currently assigned to Minnesota and Mississippi to submit an application for designation. Applications were to be postmarked by July 31, 1991.

Minnesota and Mississippi, the only applicants, each applied for the entire geographic area currently assigned to them.

FGIS named and requested comments on the applicants for designation in the September 3, 1991, Federal Register (56 FR 43581). Comments were to be postmarked by October 18, 1991. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Minnesota and Mississippi are able to provide official grain inspection and Class X or Class Y weighing in the geographic areas for which they applied.

Effective January 1, 1991, and terminating December 31, 1994, Minnesota and Mississippi are designated to provide official grain inspection and Class X or Class Y weighing in the geographic areas specified in the July 1 Federal Register.

Interested persons may obtain official grain inspection by contacting Minnesota at 612-341-7190 and Mississippi at 601-762-8141.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 20, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-28411 Filed 11-29-91; 8:45 am]

BILLING CODE 3410-EN-F

Farmers Home Administration

Housing Preservation Grant

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide public agencies, private nonprofit organizations, and other eligible entities notice of these dates.

DATES: FmHA hereby announces that it will receive preapplications on December 18, 1991. The closing date for acceptance by FmHA of preapplications is March 16, 1992. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before this date.

ADDRESSES: Submit preapplications to FmHA field offices; applicants must contact their State FmHA Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris, Senior Loan Officer, Multi-family Housing Processing Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1660 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations,

Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.443—Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V; 49 FR 29112, June 24, 1983). Applicants are also referred to 7 CFR part 1944, §§ 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the Housing Preservation Grant program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although based on FY 1990 and FY 1991 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for 1 year proposal. For FY 1992, $23,000,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, Methodology and Formulas for Allocation of Loan and Grant Funds.

Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: November 22, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-28809 Filed 11-29-91; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

New York-New Jersey Highlands Regional Study Draft Report

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for comment.

SUMMARY: The Forestry Title of the 1990 Farm Bill, title XII, State and Private Forestry, subtitle B, chapter 2, section 1244, item (b), authorized the Secretary of Agriculture to conduct a study of the region known as the New York-New Jersey Highlands, the purpose of which is to identify and assess: (A) The physiographic boundaries of the region; (B) forest resources of the region; (C) historical land ownership patterns in the region and projected future land ownership, management, and use; (D) likely impacts of changes in land and resource ownership, management, and use on traditional land use patterns in the region; and (E) alternative conservation strategies to protect the long-term integrity and traditional uses of lands within the region.

The Forest Service hereby gives notice that a New York-New Jersey Highlands Regional Study Draft Report is now available for public review and comment.

DATES: Comments must be received in writing by January 16, 1992.

ADDRESSES: Single copies of the Draft Report may be obtained by writing or calling the person listed in the **FOR FURTHER INFORMATION CONTACT.** Send written comments to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Michaels, Highlands Study Team Leader, Highlands Study Headquarters, Ringwood State Park, Box 1304, Ringwood, New Jersey, 07456; (603) 868-5936 or Leslie DiCola, Resource Assistant, (202) 962-0861.

SUPPLEMENTARY INFORMATION: Section 1244 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (104 Stat. 3528), known as the 1990 Farm Bill, authorized the Secretary of Agriculture to conduct a study of the region known as the New York-New Jersey Highlands, located in the states of New York and New Jersey, including the Sterling Forest in Orange County, New York. The study must include an identification and assessment of: (A) The physiographic boundaries of the region, (B) forest resources of the region including (but not limited to) timber, and other forest products, fish and wildlife, lakes and river, and recreation; (C) historical land ownership patterns in the region and projected future land ownership, management, and use, including future recreational demands and deficits and the potential economic benefits of recreation to the region; (D) likely impacts of changes in land and resource ownership, management, and use on traditional land use patterns in the region, including economic stability and employment, public use of private lands, natural integrity, and local culture and quality of life; and (E) alternative conservation strategies to protect long-term integrity and traditional uses of lands with the region.

The alternative conservation strategies include a consideration of: (A) Sustained flow of renewable resources in a combination that will meet the present and future needs of society; (B) public access for recreation; (C) protection of fish and wildlife habitat; (D) preservation of biological diversity and critical natural areas; and (E) new local, State, or Federal designations.

Extensive public involvement has occurred during all phases of the preparation of the Draft Study Report to include formation of an On-Site Study Team comprised of State and Federal resource specialists, a Study Team Work Group comprised of local, State and Federal officials, and a representative cross-section of interest groups; press releases and a published newsletter, "The Highlands Today and Tomorrow"; and numerous public sessions.

The final Study Report will be used by the States and others to assist decision makers with allocation of the land and resources of the region.

Copies of the Draft Study Report have been submitted to the following for review and comment: the Governors of New York and New Jersey, conservation organizations, forest industry groups, landowners, and other organizations interested in the conservation of the region's land and resources. The public is also invited to comment on the draft.

Michael T. Rains,

Area Director, Northeastern Area, State and Private Forestry, USDA Forest Service.

[FR Doc. 91-28879 Filed 11-29-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Coastal Zone Management: Federal Consistency Appeal by Sucesión Alberto Bachman From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Decision.

SUMMARY: On October 10, 1991, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Sucesión Alberto Bachman (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to replace a swimmers' protection barrier in the waters adjacent to the only beach on Palominos Island. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review of the Puerto Rico Planning Board (PRPB), the Commonwealth of Puerto Rico's coastal management agency, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), a certification that the proposed activity is consistent with the Commonwealth's Federally-approved Coastal Management Program.

On February 16, 1989, the PRPB objected to the Appellant's consistency certification for the proposed project on the ground that the proposed protected swimming area is not in accordance with the Commonwealth's coastal management public policies and objectives of encouraging public access to beaches. Although the PRPB did not indicate in its objection the availability of a reasonable alternative, during the pendency of the appeal the Puerto Rico Department of Natural Resources (DNR) installed a swimmers' protection barrier. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131 (1988), the PRPB's consistent objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistency with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II).

Upon consideration of the information submitted by the Appellant, the Commonwealth and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121: The alternative implemented by the Puerto Rico DNR is a reasonable, available alternative that is consistent with the Commonwealth's Coastal Management Program. Accordingly, the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy the requirements of Ground I, and the Appellant did not plead Ground II, the Secretary did not override the Commonwealth's objection to the Appellant's consistency certification, and consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Roger B. Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: November 25, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91–28717 Filed 11–29–91; 8:45 am]

BILLING CODE 3510-08-M

Bureau of Export Administration

[Docket No. 911067–1267]

Foreign Availability Determination: Neodymium Yttrium Aluminum Garnet (Nd:YAG) Laser Rods

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of negative determination.

SUMMARY: On September 27, 1990, under the authority of the Export Administration Act of 1979, as amended (EAA), the Deputy Assistant Secretary for Export Administration determined that foreign availability of neodymium yttrium aluminum garnet (Nd:YAG) laser rods, controlled under 6A05A of the new Commerce Control List (formerly ECCN 1522A of the Commodity Control List) (15 CFR 799.1, Supp. 1), does not exist to controlled countries.

FOR FURTHER INFORMATION CONTACT: Steven C. Goldman, Director, Office of Foreign Availability, room SB–097, Department of Commerce, Washington, DC 20230; Telephone: (202) 377–8074.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on September 30, 1990, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the Export Administration Regulations (EAR) in Executive Order 12730 of September 30, 1990.

Part 791 of the Export Administration Regulations (EAR) (15 CFR 730 *et seq.*) sets forth the procedures and criteria for determining the foreign availability of goods and technology whose export is controlled for national security purposes. The Secretary of Commerce or his designee determines whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to affected countries if the Secretary or his designee determines that items of comparable quality are available in fact to such countries from a foreign source in quantities sufficient to render the controls ineffective in achieving their purpose.

The Department of Commerce undertook a foreign availability assessment of neodymium yttrium aluminum garnet (Nd:YAG) laser rods as a result of an industrial claim of foreign availability. These items are controlled under 6A05A of the new Commerce Control List (CCL). OFA provided its assessment and recommendation to the Deputy Assistant Secretary for Export Administration. The Deputy Assistant Secretary considered the assessment and other relevant information and determined that foreign availability to controlled countries does not exist within the meaning of section 5 of the EAA for neodymium yttrium aluminum garnet (Nd:YAG) laser rods. The Department provided all interested government agencies, including the Departments of State and Defense, the opportunity to review and comment on the assessment and determination. As a result of this negative determination, the Department of Commerce will not amend the existing export control on these items.

Nevertheless, OFA notes that with the implementation of the new CCL, which became effective September 1, 1991, controls were removed from Nd:YAG laser rods unless the rods are specially designed for embargoed lasers.

If OFA receives new evidence concerning this foreign availability determination, OFA may reevaluate its assessment. Inquiries concerning the scope of this assessment should be sent to the Director of the Office of Foreign Availability at the above address.

Dated: November 22, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91–28744 Filed 11–29–91; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 24–89]

Foreign-Trade Zone 70—Detroit, Michigan Withdrawal of Application for Subzone Status for Alps Electric (USA), Inc.

Notice is hereby given of the withdrawal of the application submitted by the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, requesting authority for subzone status for the automotive parts testing and distribution facility of Alps Electric (USA), Inc., in Auburn Hills, Michigan. The application was filed on October 27, 1989 (54 FR 46638, 11/6/89).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: November 25, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-28839 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 20-87]

Foreign-Trade Zone 70—Detroit, Michigan Withdrawal of Application for Subzone Status for American Yazaki Corporation

Notice is hereby given of the withdrawal of the application submitted by the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, requesting authority for subzone status for the auto wiring harness testing and distribution facility of American Yazaki Corporation in Canton Township, Wayne County, Michigan. The application was filed on September 16, 1987 (52 FR 37995, 10/13/87).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: November 25, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-28838 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 543]

Resolution and Order Approving the Application of Wynwood Community Economic Development Corporation for a Foreign-Trade Zone in the Miami, FL, Area; Resolution and Order

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Wynwood Community Economic Development Corporation, filed with the Foreign-Trade Zones Board (the Board) on October 17, 1990, requesting a grant of authority for establishing, operating, and maintaining an additional general-purpose foreign-trade zone in Miami, Florida, within the Miami Customs port of entry, the Board, finding the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Miami, FL

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under jurisdiction of the United States;

Whereas, The Wynwood Community Economic Development Corporation (the Grantee) has made application (filed October 17, 1990, FTZ Docket 40–90, 55 FR 43152, 10/26/90) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in the Wynwood community, Miami, Florida, within the Miami Customs port of entry;

Whereas, Notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, The Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 180, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations: Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, The Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 18th day of November, 1991, pursuant to Order of the Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 91-28837 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 47-91]

Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone; Ford Minivan Plant, Avon Lake, OH; Extension of Public Comment Period

The comment period for the above case, requesting authority for special-purpose subzone status for the passenger and cargo vehicle

manufacturing plant of Ford Motor Company in Avon Lake, Ohio (56 FR 42025, 8/26/91), is further extended to December 15, 1991, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: October 15, 1991.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-28880 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 59-91]

Foreign-Trade Zone 110—Albuquerque, NM Application for Expansion of Subzone 110A Adria-SP Pharmaceutical Products Plant; Correction

The notice on this case (notice document 91-26306), which appeared in the Federal Register on Thursday, October 31, 1991, at page 56054), is amended to change the address of the U.S. Department of Commerce office at which the application is available for public inspection to: U.S. Department of Commerce, District Office, 625 Silver Street SW., 3rd fl, Albuquerque, NM.

Dated: November 22, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-28840 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 77-91]

Foreign-Trade Zone 94—Laredo, Texas Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Laredo, Texas, grantee of FTZ 94, requesting authority to expand its zone in Laredo, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991.

FTZ 94 was approved on November 22, 1983 (Board Order 235, 48 FR 53737, 11/29/83) and expanded on March 26, 1990 (Board Order 468, 55 FR 12696, 4/5/90). It currently consists of three sites in the Laredo area: Site 1 (550 acres) within the 1600-acre city-owned Laredo International Airport Industrial Park; Site 2 (20 acres) owned by the Texas-Mexican Railway, along Highway 359 in Webb County; and Site 3 (550 acres) at 12800 Oil Mines Road, within the 1400-acre Killiam tract, owned by Killiam Oil Company.

The grantee is now requesting authority to expand the zone to include a site at the 7,000-acre International Commerce Center, owned by Dolores Development Company. (The application requests authority only to activate 1,500 acres within the center.) The center is part of the 14,000-acre Laredo Northwest business and residential development, adjacent to the Laredo Solidarity Bridge crossing to Mexico.

No manufacturing requests are being made at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, and examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donna De La Torre, Director, Office of Inspection and Control, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, suite 500, Houston, Texas 77057-3012; and, Colonel John A. Mills, District Engineer, U.S. Army Engineer District Fort Worth, P.O. Box 17300, Fort Worth, Texas 76102-0300.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 13, 1991.

A copy of the application is available for inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, Lincoln Juarez Bridge, Building #2, Laredo, Texas 78044-3130

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: November 22, 1991.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 91-28841 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than December 31, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping duty proceedings	Period
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A-351-602)	12/01/90-11/30/91
Canada: Elemental Sulphur (A-122-047)	12/01/90-11/30/91
Hong Kong: Photo Albums and Filler Pages (A-582-501)	12/01/90-11/30/91
Japan: Certain Small Business Telephone Systems and Subassemblies Thereof (A-588-809)	12/01/90-11/30/91
Japan: Cellular Mobile Telephones and Subassemblies (A-588-405)	12/01/90-11/30/91
Japan: Certain Electric Motors of 150-500 HP (A-588-091)	12/01/90-11/30/91
Japan: Drafting Machines and Parts Thereof (A-588-811)	12/01/90-11/30/91
Japan: Polychloroprene Rubber (A-588-046)	12/01/90-11/30/91
Japan: Steel Wire Strand for Prestressed Concrete (A-588-068)	12/01/90-11/30/91
Japan: Tuners (of the type used in consumer electronic products (A-588-014)	12/01/90-11/30/91
Mexico: Porcelain-On-Steel Cooking Ware (A-201-504)	12/01/90-11/30/91

Antidumping duty proceedings	Period
New Zealand: Low-Fuming Brazing Cooper Rod and Wire (A-614-502)	12/01/90-11/30/91
Sweden: Certain Carton-Closing Staples and Staple Machines (A-401-004)	12/01/90-11/30/91
Sweden: Seamless Stainless Steel Hollow Products (A-401-603)	12/01/90-11/30/91
Taiwan: Certain Small Business Telephone Systems and Subassemblies Thereof (A-583-806)	12/01/90-11/30/91
Taiwan: Certain Carbon Steel Butt-Weld Pipe Fittings (A-583-605)	12/01/90-11/30/91
Taiwan: Porcelain-On-Steel Cooking Ware (A-583-506)	12/01/90-11/30/91
The Federal Republic of Germany: Animal Glue and Inedible Gelatin (A-428-062)	12/01/90-11/30/91
The People's Republic of China: Porcelain-On-Steel Cooking Ware (A-570-506)	12/01/90-11/30/91
The Republic of Korea: Photo Albums and Filler Pages (A-580-501)	12/01/90-11/30/91
Venezuela: Aluminum Sulfate (A-307-801)	12/01/90-11/30/91
Mexico: Porcelain-On-Steel Cooking Ware (C-201-505)	01/01/91-12/31/91
Venezuela: Aluminum Sulfate (C-307-802)	01/01/90-12/31/90

In accordance with § 353.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review of specified individual producers or resellers covered by an order, if the requesting person states why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by December 31, 1991.

If the Department does not receive by December 31, 1991 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: November 22, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-28842 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-806]

Postponement of Preliminary Countervailing Duty Determination: Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: December 2, 1991.

FOR FURTHER INFORMATION CONTACT: Vince Kane or Gary Bettger, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 377-2815 or 377-2239, respectively.

POSTPONEMENT: On November 21, 1991, the North American Rubber Thread Company, petitioner in this investigation, requested that the Department postpone the preliminary determination in accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Accordingly, we are postponing the date of the preliminary determination until not later than December 20, 1991.

This notice is published pursuant to section 703(c)(2) of the Act and 19 CFR 355.15(e).

Dated: November 25, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-28843 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-DS-M

Woods Hole Oceanographic Institution; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 90-088R. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Relative Humidity Calibration Chamber. *Manufacturer:* Tecnequip Enterprises Pty., Ltd., Australia. *Intended Use:* See notice at 55 FR 28079, July 9, 1990.

Comments: None received.

Decision: Denied. An instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The application is a resubmission of a prior denial without prejudice to resubmission (DWOP) issued in accord with 15 CFR Part 301.5(e) to solicit additional technical information. The applicant's request for duty-free entry maintains that the foreign instrument provides three features, pertinent to its intended uses [within the meaning of CFR 15 301.2(s)] and not available in any domestic instrument:

(1) Calibration accuracy throughout the calibration chamber of 0.5% relative humidity.

(2) A calibration range of 0 to 100% relative humidity at temperatures from 5 to 35°C (revised to 10 to 98% in the resubmission).

(3) A maximum chamber dimension of 30 inches.

The National Oceanographic and Atmospheric Administration (NOAA) advises in its memorandum dated August 28, 1991 that these features are pertinent but that Model 6500 or 8500 series relative humidity (R/H) chambers manufactured domestically by Thunder Scientific Corp., Albuquerque, New Mexico, are of equivalent scientific value to the foreign instrument for such purposes as the instrument is intended

to be used. On the basis of Thunder Scientific's published product catalog, at the time of order, the applicant adopted the following performance specifications as the grounds for its claims of non-equivalence: (1) Accuracy of 1.0%, (2) relative humidity range of 8 to 98% and (3) a maximum chamber dimension of 24 inches. The applicant also noted that the total cost for the foreign instrument was $42,700 while the domestic system cost $105,000.

NOAA states in its memorandum that the designer of the Thunder Scientifics R/H chambers was contacted and confirmed that the company's R/H chambers:

> * * * can meet the R/H accuracy requirements over the temperature range specified by the applicant. He said specifications in the brochure are intentionally conservative. He again confirmed that Thunder Scientific has a larger "stretch" volume chamber (30"×24"×24") available. He said that this system has been sold to a number of U.S. organizations, and companies overseas. The 8500 chamber is PC controlled and is fully automated for long term continuous operation and can provide 0.5% R/H accuracy traceable to NIST, at specified temperatures over a 0–40°C temperature range.

The NOAA reviewer independently verified Thunder Scientific's claims by querying users of its instruments at the National Institute of Standards and Technology, Sandia National Laboratory, the U.S. Navy Primary Standards Laboratory and Lockheed Missiles and Space Corp., and concludes that "This review demonstrates that R/H standards/calibrations and test systems are readily available from a U.S. manufacturer that meet or surpass the applicant's requirements."

In its resubmission, the applicant addressed arguments for equivalency of the domestic instrument raised by the initial NOAA review, in its memorandum dated December 10, 1990, and by our DWOP [pursuant to 15 CFR 301.5(d)(1)(i)] by stating that:

> In assessing the capabilities of the chambers I had to rely on an accuracy figure which the company would back up in writing and that is the 1% R/H figure which appears in their catalog. This is not adequate.

In the original submission, when stating " * * * the basis for concluding that no instruments manufactured in the United States were scientifically equivalent to the foreign instrument for the intended purposes" (Question 9 of Form ITA–338P), the applicant replied:

> Thunder Scientific, 8 March 1989 by telephone. Discussed application and requested catalog. Sales person stated they could improve on catalog specifications only at substantially increased costs.

and

> Since the Thunder Scientific system was already much more expensive than the Tecnequip, I did not ask them to bid on such improvements.

Pursuant to 15 CFR 301.2(r):

> Evidence that specifications are "guaranteed" will normally consist of their being printed in a brochure or other descriptive literature of the manufacturer; being listed in a purchase agreement upon which purchase is conditioned; or appearing in a manufacturer's formal response to request for quote. If, however, no opportunity to submit a bid was afforded the domestic manufacturer or if, for any other reason, comparable guaranteed specifications of the foreign and domestic instruments do not appear on the record, other evidence relating to a manufacturer's ability to provide an instrument with comparable specifications may, at the discretion of the Director, be considered in the comparison of the foreign and the domestic instuments' capabilities.

Furthermore, pursuant to 15 CFR 301.2(s):

> "Pertinent" specifications are those specifications necessary for the accomplishment of the specific scientific research and/or science-related educational purposes described by the applicant. Specifications or features (even if guaranteed) which afford greater convenience, satisfy personal preferences, accommodate institutional commitments or limitations, or assure lower costs of acquisition, installation, operation, servicing or maintenance are not pertinent.

We find that the applicant, primarily on the basis of cost, declined to solicit a bid from a domestic manufacturer able and willing to provide a more comparable and capable instruments, and, accordingly, that a scientifically equivalent domestic instrument was available at the time of order.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–28844 Filed 11–29–91; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Business Development Center Applications; Tulsa, OK

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds, and a minimum of $29,118 in non-Federal (cost sharing) contributions from April 1, 1992 to March 31, 1993. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Tulsa, Oklahoma MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the

purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget period. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with Section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is December 31, 1991. Applications must be postmarked on or before December 31, 1991.

Note: Please mail completed application to the following address: San Francisco Regional Office, 221 Main Street, room 1280, San Francisco, California 94105.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001.

A pre-bid conference will be held on December 11, 1991 in the U.S. Courthouse, Grand Jury Room 411, on 333 West 4th Street, Tulsa, Oklahoma at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 25, 1991.

Bobby Jefferson,

Acting Regional Director, Dallas Regional Office.

[FR Doc. 91–28742 Filed 11–29–91; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 910807–1207]

RIN 0693–AA86

Extension of Comment Period for a Proposed Federal Information Processing Standard for Digital Signature Standard (DSS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: This notice extends the comment period for the proposed Federal Information Processing Standard for Digital Signature Standard (DSS) announced in the **Federal Register** (56 FR 42980) on August 30, 1991.

DATES: Comments on this proposed standard must be received on or before February 28, 1992.

ADDRESSES: Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, attn: Proposed FIPS for DSS, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Miles Smid, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2938

Dated: November 22, 1991.

John W. Lyons,

Director.

[FR Doc. 28718 Filed 11–29–91; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Regime to Govern Interactions Between Marine Mammals and Commercial Fishing Operations; Interim Draft Proposal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability, interim draft proposal.

SUMMARY: On May 24, 1991, NMFS published a proposed regime to govern

interactions between marine mammals and commercial fishing operations (56 FR 23958). A substantial number of public comments on the proposed regime were received. Following a review of the comments, and consultations with the Marine Mammal Commission (MMC), the Fishery Management Councils, the environmental community, the fishing community, and other interested groups, NMFS is modifying the draft proposal to clarify various aspects and provide additional details on the elements of the proposal, and to address comments received during the consultation meetings and the comment period. The purpose of this notice is to inform the public of the availability of this interim version of the proposal.

Section 114 of the Marine Mammal Protection Act requires that NMFS submit a final legislative proposal on marine mammal-fishery interactions to Congress by January 1, 1992. Section 114(1)(4) additionally requires NMFS to request public comment on its proposed regime before it is finalized. As noted, NMFS has already submitted a draft proposed regime for public review, received comments and conducted a number of consultation meetings. If any interested party wishes to submit further comments, NMFS will consider them during preparation of the final proposal. A Final Legislative Environmental Impact Statement will be prepared. That document will incorporate all substantive comments and NMFS responses to them.

DATES: Copies of the revised proposal will be available on November 26, 1991.

ADDRESSES: Copies of the interim draft proposal may be obtained from, and comments should be sent to, Herbert W. Kaufman, Office of Protected Resources, (F/PR2), NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Comments should be received in this office no later than December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, F/PR2, 301/427-2319.

Dated: November 26, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91-28771 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-22-M

Atlantic Bluefin Tuna Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public meetings.

SUMMARY: NMFS will hold a series of scoping meetings that will be open to the public. The purpose of the meetings is to discuss recent measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) concerning the Atlantic bluefin tuna fishery and to provide NMFS with public views on possible plans for domestic implementation of management measures.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and times of the meetings.

FOR FURTHER INFORMATION CONTACT: Richard Stone, 301-427-2347, or Kathi Rodrigues, 301-427-2337.

SUPPLEMENTARY INFORMATION: These public meetings are being held to provide an opportunity for informal discussion between the various constituency representatives and the NMFS on Atlantic bluefin tuna management. Because the meetings are not public hearings, and to provide an opportunity for in depth discussion, NMFS urges that associations and groups limit their participation to one or two representatives.

The public meetings are scheduled as follows:

1. December 11, 1991, 1 p.m.—National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, Massashusetts;
2. December 16, 1991, 1 p.m.—Holiday Inn, Raritan Center, Edison, New Jersey;
3. December 17, 1991, 7 p.m.—Quality Inn—Lake Wright, 6280 N. Hampton Blvd., Norfolk, Virginia.

Dated: November 25, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-28737 Filed 11-26-91; 10:28 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An agenda, published in the **Federal Register** as 56 FR 57619, on November 13, 1991, for public meetings of the North Pacific Fishery Management Council (Council), its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) in Anchorage, Alaska on December 2-8, 1991, has been amended. The new agenda now includes discussion of the following item:

Additional Item on Council Agenda

(1) The Council will consider an industry proposal to delay the pollock non-roe fishery until September 1, 1992.

For more information, contact Brent Paine or Chris Oliver, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271-2809.

Dated: November 25, 1991.

David S. Crestin,

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

[FR Doc. 91-28739 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The third Public Meeting of the Pacific Fishery Management Council's Puget Sound Salmon Stock Review Group (PSSSRG), notice of which was published at 56 FR 58368 (November 19, 1991), has been canceled. The PSSSRG was scheduled to meet on December 5, 1991, in Olympia, Washington. A new meeting date has not yet been determined.

For more information contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, Oregon 97201; telephone: (503) 326-6352.

Dated: November 25, 1991.

David S. Crestin,

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

[FR Doc. 91-28738 Filed 11-29-91; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service.

ACTION: Application for Scientific Research Permit (P166D).

Notice is hereby given that Louis M. Herman, Ph.D., Kewalo Basin Marine Mammal Laboratory, University of Hawaii at Manoa, 1129 Ala Moana Boulevard, Honolulu, Hawaii 96814, has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217-222).

Species and Type of Take

The applicant requests a Permit to harass annually, over a five-year period,

up to 400 humpback whales (*Megaptera novaeangliae*) during observational/photo-identification/sound playback studies and aerial surveys throughout the year in humpback whale seasonal breeding and feeding habitats in the North Pacific. Conduct of 1992 field research will be limited to the Kohala Coast of Hawaii and all coasts of Oahu. Individual animals may be harassed up to 15 times annually. The purpose of the proposed research is to continue the applicant's long-term study of the social and behavioral dynamics, migration trends and routes, habitat usage, birth rate and recruitment, life histories, and acoustic communication of North Pacific humpback whales.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, Maryland 20910 (301/427–2289)

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, 2570 Dole Street, Honolulu, Hawaii 96822–2396 (808/955-8831); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: November 22, 1991.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–28722 Filed 11–29–91; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Spectrum Planning Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of Meeting, Spectrum Planning Advisory Committee.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Spectrum Planning Advisory Committee (SPAC) will meet on December 13, 1991 from 9:30 a.m. to 4:30 p.m. in Room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of 19 members, 15 from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Discussion of the implementation of actions resulting from the NTIA spectrum study U.S. Spectrum Management: Agenda for the Future;

(2) Report of the VI–CITEL Conference;

(3) Report on the NTIA Openness Program;

(4) Discussion on the NTIA Strategic Spectrum Planning Program;

(5) Report on the NTIA Infrastructure Report: Telecommunications in the Age of Information.

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before December 10, 1991. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Executive Secretary, SPAC, Mr. W. Russell Slye, National Telecommunications and Information Administration, room 4099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202–377–1850.

Dated: November 26, 1991.

W. Russell Slye,

Executive Secretary, Spectrum Planning Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 91–28757 Filed 11–29–91; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in the Union of Soviet Socialist Republics

November 25, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of December 28, 1989 between the Governments of the United States and the Union of Soviet Socialist Republics establishes a limit for cotton sheeting and cotton printcloth in Categories 313/

315 for the period beginning on January 1, 1992 and extending through December 31, 1992.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3689.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Information regarding the 1992 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 25, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement of December 28, 1989 between the Governments of the United States and the Union of Soviet Socialist Republics; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton sheeting and printcloth in Categories 313/315, produced or manufactured in the Union of Soviet Socialist Republics and exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, in excess of 25,000,000 square meters of which not more than 4,000,000 square meters shall be in Category 315.

Imports charged to this category limit for the period January 1, 1991 through December 31, 1991 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Union of Soviet Socialist Republics.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–28591 Filed 11–29–91; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 2, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

It is proposed to add the following commodity and service to the Procurement List:

Commodity

Line, Multi-Loop,
1670–01–062–6308

Service

Janitorial/Custodial, IRS Service Center, 11631 Caroline Road, Philadelphia, Pennsylvania.

Deletion

It is proposed to delete the following service from the procurement list: Grounds Maintenance, Naval Weapons Station, China Lake, California.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–28792 Filed 11–29–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 2, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 21, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (56 FR 28539) of proposed additions to the Procurement List.

Comments were received during the development phase of these proposed additions to the Procurement List from the current contractor for the lead seals. The contractor claimed that loss of this business, together with loss of another lead seal to the Procurement List in 1982, would have a significant adverse effect on the company's business. The contractor also claimed that this work is unsuitable for persons with severe disabilities as it involves handling lead. The contractor stated that it could provide the seals to the Government at a lower price and with better service.

Despite two invitations to do so, the contractor refused to provide sales data to the Committee to assess impact of the proposed addition on the contractor. Based on data available to it, including data concerning the 1982 addition, the Committee has concluded that there will not be a serious adverse impact on the contractor as a result of adding these two lead seals to the Procurement List.

The current and 1982 additions together constitute only a small percentage of the contractor's sales, and the contractor has provided no information to substantiate its contention that the 1982 addition continues to have an effect on the contractor's sales.

In reaching its conclusion that the nonprofit agency in question is capable of producing the lead seals, the Committee relied on determinations by the Federal Agency that purchases these seals and a central nonprofit agency that the nonprofit agency in question is capable of producing the seals. Also, other nonprofit agencies are successfully producing products involving lead, so the Committee does not agree with the contention that this work is unsuitable for persons with severe disabilities.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.
b. The action will not have a serious economic impact on any contractors for the commodities listed.
c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the procurement list:

Seal, Metallic
5340–00–902–0426
5340–00–491–7632

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–28793 Filed 11–29–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 2, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 9, 23, September 6, 13, 20, 27, October 4 and 18, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 37900, 41833, 44077, 46602, 47742, 49177, 50316 and 52256) of proposed additions to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Cover, Shipping, Blade

11615–01–160–3748

Clamp, Loop

5340–00–165–7671
5340–01–013–7424
5340–01–160–0396

Folder, File

7530–00–200–4308
(Requirements for Palmetto, GA; Fort Worth, TX; Belle Mead and Burlington, NJ depots only)
7530–00–281–5938
7530–00–281–5940
7530–00–456–6140
7530–00–881–2957
7530–00–285–5879
7530–00–926–8979
7530–00–286–6978
7530–00–281–5939
7530–00–926–8977
7530–00–926–8974
7530–00–531–7809

Box, Wood

8115–00–NSH–0156	18×16×22
8115–00–NSH–0157	22×22×15
8115–00–NSH–0158	24×24×12
8115–00–NSH–0159	25×19×13
8115–00–NSH–0160	26×21×23
8115–00–NSH–0161	28×20×18
8115–00–NSH–0164	30×24×16
8115–00–NSH–0167	31×27×14
8115–00–NSH–0168	31×28×17
8115–00–NSH–0169	32×18×18
8115–00–NSH–0186	54×11×11
8115–00–NSH–1092	72×14×14

(Requirements for the Naval Supply Center, San Diego, CA)

Tissue, Facial

8540–00–281–8360
8540–00–793–5425
8540–00–900–4891

Services

Grounds Maintenance, Buildings 1020, 1610, 2650A and 6004, Edwards Air Force Base, California.
Janitorial/Custodial, Navy Commissary Store, Puget Sound Naval Shipyard, Bremerton, Washington.
Janitorial/Grounds Maintenance for the following locations:
Federal Aviation Administration, Air Traffic Control Tower and Automated Flight Service Station, Islip, New York.
Federal Aviation Administration, Air Traffic Control Tower, Farmingdale, New York.
Recycling Service, Department of the Army, Fort Drum, New York.
Recycling Service, Veterans Affairs Medical Center, Salisbury, North Carolina.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–28794 Filed 11–29–91; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange Proposed Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The MidAmerica Commodity Exchange (MCE or Exchange) has applied for designation as a contract market in rough rice futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before January 2, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the MidAmerica Commodity Exchange rough rice futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the MCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR part 145 and § 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the MCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 26, 1991.

Gerald Gay,

Director.

[FR Doc. 91–28790 Filed 11–29–91; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Health insurance Claim Form; HCFA Form 1500; 0720–0001.

Type of Request: Revision.

Average Burden Hours/Minutes Per Response: 15 minutes.

Responses Per Respondent: 1.

Number of Respondents: 6,500,000.

Annual Responses: 6,500,000.

Annual Burden Hours: 1,625,000.

Needs and Uses: The information collection requirement is used by CHAMPUS to determine reimbursement for health care services or supplies rendered by individual professional providers to CHAMPUS or CHAMPVA beneficiaries. The requested information is used to determine beneficiary eligibility, appropriateness and costs of care, other health insurance liability, and whether services received are benefits. Use of this form continues CHAMPUS commitments to use the national standard claim form for reimbursement of services/supplies provided by individual professional providers.

Affected Public: Individuals or households, State or local governments, businesses or other for profit, Federal agencies or employees, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Joseph F. Lackey.

Written comments and recommendations on the proposed information collection should be sent to Mr. Lackey at the Office of Management and Budget, Desk Officer for DoD, room 3002, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: November 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–28786 Filed 11–29–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

DIA Defense Intelligence College Board of Visitors; Meeting

AGENCY: Defense Intelligence Agency, Defense Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of Visitors has been scheduled as follows:

DATES: Friday, 6 December 1991, 0830 to 1630.

ADDRESSES: The DIAC, Washington, DC.

FOR FURTHER INFORMATION CONTACT: General Charles J. Cunningham, Jr., Lieutenant General, USAF (Ret), Commandant, DIA Defense Intelligence College, Washington, DC 20340–5485 (202/373–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b (c)(1), title 5 of the U.S. Code and therefore will be closed several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

Dated: November 26, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-28787 Filed 11-29-91; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on December 19, 1991, starting at 9 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. During the morning session, experienced acquisition managers from the Services and other government agencies will present their perspectives on needed acquisition law reform.

For further information contact Major Jean Kopala at (703) 355-2665.

Dated: November 26, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-28788 Filed 11-29-91; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Base Realignments and Closures; Aberdeen Proving Ground, MD

AGENCY: DOD, U.S. Army, Aberdeen Proving Ground, Maryland.

SUMMARY: The Defense Base Closure and Realignment Commission was mandated by Public Law 101-510, the Defense Base Closure and Realignment Act of 1990, to recommend military installations for realignment and closure. The Commission's recommendations were presented to the President in their report on July 1, 1991, and were approved by the President and forwarded to Congress on July 11, 1991. Included in the report was the recommendation to relocate the Army Research Institute MANPRINT function from Alexandria, Virginia; the Materials basic and applied research from Fort Belvoir, Virginia; and the Army Materials Technology Laboratory (less the Structures Element) from Watertown, Massachusetts; to establish a Combat Materiel Research Laboratory at Aberdeen Proving Ground.

ALTERNATIVES: Public Law 101-510 exempted the decision making process of the Commission in recommending installations to be closed or realigned from the provisions of the National Environmental Policy Act of 1969. The law also exempted the Department of Defense from considering the need for closing, realigning or transferring functions and from looking at alternative installations to realign or close. The Department of Army still must prepare environmental impact analyses to assess the environmental effects of realignment on installations receiving functions from other installations and the environmental effects of property disposal.

SCOPING: The Army will conduct a scoping meeting within the next four weeks at Aberdeen Proving Ground. Individuals or organizations are encouraged to participate in the scoping process by written comment or by attending the scoping meeting that will be announced in the Aberdeen Proving Ground local media. Comments and suggestions, and requests to be placed on the mailing list for announcements, should be sent to the U.S. Army Engineer District, Baltimore; Attn: Mr. Keith Harris (CENAB-PL-ES); P.O. Box 1715; Baltimore, MD 21203-1715. Comments and suggestions should be received no later than 15 days following the public scoping meeting to be considered in the Draft Environmental Impact Statement (DEIS). Questions regarding this proposal may be directed to Mr. Harris at (301) 962-4999.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 91-28891 Filed 11-29-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

[No. 3710-KF]

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Expansion of the Immigration and Naturalization Service Special Processing Center Florence, AZ

AGENCY: U.S. Immigration and Naturalization Service (Federal).

ACTION: Notice of intent to prepare a draft Environmental Impact Statement (EIS).

SUMMARY: The EIS is required to assess the potential effects of the proposed purchase of additional property and the future expansion of the Special Processing Center (SPC) of the Immigration and Naturalization Service (INS) in and near Florence, Arizona. The proposed purchase of approximately 150 acres of adjacent land, outside of the Florence City limits, and construction of facilities would increase the detainee capacity of an expanded SPC to about 2000. The project could entail site preparation on approximately 100 acres of the property to allow the phased construction of approximately 25 support and detention buildings over a ten year period. The U.S. Army Corps of Engineers will prepare the EIS in cooperation with INS and serve as the lead agency in compliance with the National Environmental Policy Act (NEPA). The purpose of the EIS is to assess the potential environmental impacts associated with the proposed project. Concerns about the proposed project should be received by 31 December 1991 to assist in the EIS scoping process.

FOR FURTHER INFORMATION CONTACT: Colonel Charles Thomas, District Engineer, Attn: Mr. Ron Ganzfried, Environmental Planning, U.S. Army Corps of Engineers, 300 N. Los Angeles St., P.O. Box 2711, Los Angeles, CA 90053-2325, (213) 894-2314.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Immigration and Naturalization Service has identified a need to increase the detainee capacity of their facilities in the southwestern states. Plans to increase the detainee capacity from approximately 250 to approximately 2000 involves a processing center much larger than is possible on the present site. Suitable land, about 150 acres, is available adjacent to the present SPC near Florence, Arizona. The land would be purchased and about 100 of the acres prepared for building of detention and support areas. An access road would be built from either U.S. Route 89 or the Hunt Highway. Full support facilities would be constructed, including medical, legal, water supply and waste treatment plants.

2. Study Alternatives

The EIS will address various alternatives in addition to the project as proposed, including but not limited to the following:

a. No Action Alternative

This alternative involves no change and no development at the SPC. The current facility would remain as it is. Any future limited increase in detainees could be housed in the present plant until overcrowding would occur.

b. Construct Additional Buildings on the Present SPC

This alternative involves constructing more buildings on the current facility. Due to the small size of the SPC,

approximately 20 acres, adequate space is not available to build any more significant detainee space.

c. Develop Other Sites

This alternative involves developing sites near other INS properties or entirely new locations within this jurisdiction.

d. Delay Planning and/or Acquisition Until Some Future Date

This alternative involves utilizing the current facilities until such time that overcrowding occurs and expansion is an absolute necessity. At that time some expansion in the region could take place at some unknown location and added expense.

3. The EIS Scoping Process

Singificant issues identified to date include: threatened species, water supply, waste treatment, security, cultural resources, aesthetics and socieconomic factors. Public comments received at scoping meetings and in writing will be considered during the EIS process.

Key tasks of the EIS will be the analysis of all alternatives and their potential impacts on the area. A mailing list will be compiled to include Federal, state, and local agencies and other concerned public and private organizations and persons. Formal coordination with appropriate Federal, state and local agencies will be conducted according to the requirements of the National Environmental Policy Act (NEPA) and other pertinent laws.

4. Public Meetings

a. The initial scoping meeting will be held in the Florence area approximately three weeks after publication of this NOI.

b. Public hearings regarding the DEIS will be held within about 30 days of the availability of the DEIS.

c. Notification of the above listed meetings and their dates will be published in the Florence area newspapers prior to the event.

5. Availability of the DEIS

The Draft report is expected to be available to the public for a 45 day review period during February or March of 1992.

Dated: November 15, 1991.

Charles S. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 91-28777 Filed 11-29-91; 8:45 am]

BILLING CODE 3710-KF-M

Department of the Army

[3710-HN]

Intent To Prepare a Draft Supplemental Environmental Impact Statement (SEIS) for Proposed Project Feature Changes and Additions to the Little Calumet River Flood Control Project, Lake County, IN

AGENCY: Chicago District, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: A Draft Supplemental Environmental Impact Statement (SEIS) will be prepared to evaluate the impacts of proposed project feature changes and additions that were not evaluated in the Final Environmental Impact Statement and subsequent Environmental Assessments previously prepared for this project.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Whitman, 312-353-8901, Environmental and Social Analysis Branch, Chicago District, U.S. Army Corps of Engineers, 111 North Canal Street, Chicago IL 60606.

SUPPLEMENTARY INFORMATION: 1. The current authorized project includes the construction of flood control leaves and floodwalls, recreation areas, and fish and wildlife mitigation and enhancement features. Other features have been included in the project during the feature design memorandum (FDM) stage. These include locating potential levee drainage system. Several design changes have also occurred in the project FDM phase including levee realignments and incorporating the results of value engineering studies. All of these project changes and additions will be evaluated in the SEIS.

2. The alternatives to be examined will include alternate sites for levee borrow material, various interior drainage system design alternatives, and no action.

3a. Project features have been coordinated with the appropriate local, State, and Federal agencies throughout the planning and design phases of this project. The proposed project changes and additions shall also be coordinated with the appropriate agencies during the early SEIS preparation stages.

3b. The most significant resources expected to be impacted by the proposed changes and additions are area wetlands. Other fish and wildlife habitats may also be impacted.

3c. Due to the expected discharge of fill material into waters of the U.S., a section 404(b)(1) Evaluation and Public Notice will be prepared and circulated for public review along with the SEIS in accordance with the Clean Water Act. Section 401 Certification will also be required from the Indiana Department of Environmental Management in accordance with the Clean Water Act.

4. No scoping meeting will be held.

5. The Draft SEIS is expected to be available for public review during the summer of 1992.

Dated: November 5, 1991.

Randall R. Inouye,

Lieutenant Colonel, U.S. Army, District Engineer.

[FR Doc. 91-28776 Filed 11-29-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before January 2, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations..

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: November 26, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: First Followup; Beginning Postsecondary Students Longitudinal Study.
Frequency: Biennially.
Affected Public: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
Reporting Burden:
Responses: 18,016.
Burden Hours: 7,509.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This study will collect, analyze, and report data about first-time-entering, first-year Postsecondary students in academic year 1989–90. The Department will use the information to enhance and expand the base of information available regarding persistence, progress, and attainment from initial time of entry into postsecondary education through leaving and entry or reentry into the work force.

Office of Postsecondary Education

Type of Review: Existing.
Title: Lender's interest and Special Allowance Request and Report.
Frequency: Quarterly.
Affected Public: State or local governments; Businesses or other for-profit; Non-profit institutions.
Reporting Burden:
Responses: 42,176.
Burden Hours: 84,352.
Recordkeeping Burden:
Recordkeepers: 10,544.
Burden Hours: 15,816.
Abstract: This form will be used by lenders participating in the part B loan programs to request payment of interest and special allowance on loans outstanding. The Department will use the information to enhance departmental reporting for budgetary projections, program planning and evaluations, departmental audits, and financial and statistical reporting on part B loan programs.

Office of Postsecondary Education

Type of Review: Extension.
Title: Performance Report for the Paul Douglas Teacher Scholarship.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 57.
Burden Hours: 200.
Recordkeeping Burden:
Recordkeepers: 57.
Burden Hours: 28.
Abstract: This report is completed by State Educational Agencies that have participated in the Paul Douglas Scholarship Program. The Department uses the information to assess the accomplishment of project goals and objectives and to aid in effective program management.

Office of Planning, Budget and Evaluation

Type of Review: New.
Title: Chapter 1 Schoolwide Project Survey.
Frequency: One time.
Affected Public: State or local governments.
Reporting Burden:
Responses: 1,746.
Burden Hours: 2,619.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This survey will provide the Department with information about design and characteristics of chapter 1 schoolwide projects, including the schools and districts in which they operate. The Department will use this information to evaluate the effectiveness of the projects.

[FR Doc. 91–28830 Filed 11–29–91; 8:45 am]
BILLING CODE 4000–01–M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisorys on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: December 16, 1991, 9 a.m. until 5 p.m. and December 17, 9 a.m. until 5 p.m. Place: Hyatt Regency Hotel Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC, 20001.

FOR FURTHER INFORMATION CONTACT: Robert K. Goodwin, Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB–3, Washington, DC 20202, telephone (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically Black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically Black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically Black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

This is the first meeting of the President's Board of Advisors on HBCUs for fiscal year 1992. Concurrent Task Force meetings will be held on Monday, December 16 to discuss the Board's activities and findings, and to develop recommendations for presentation to the full Board. On Tuesday, December 17 the full Board will convene to review the Task Forces' recommendations and to review achievements and progress toward enhancing the role and capabilities of the HBCUs, including the preparation of the Annual Federal Performance Report on Executive Agency Actions to Assist Historically Black Colleges and Universities. The agenda will include time for interested parties to comment on information to be

included in the annual report to the President.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative, U.S. Department of Education, ROB–3, room 3682, Washington, DC from the hours of 8:30 a.m. to 5 p.m., Monday through Friday.

Dated: November 25, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–28721 Filed 11–29–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 91–83–NG]

Enron Oil & Gas Marketing, Inc.; Application for Blanket Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice of the receipt on October 10, 1991, of an application filed by Enron Oil & Gas Marketing Inc. (EOGM), requesting blanket authorization to export to Mexico up to 50,000 Mcf per day of natural gas over a two-year term beginning on the date of first delivery. EOGM states that it would limit total export deliveries during the two-year term to 36.5 Bcf of natural gas. The proposed exports would take place at any point on the international border where existing pipeline facilities are located. No new pipeline construction would be involved.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filled at the address listed below no later than 4:30 p.m., Eastern time, January 2, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Diane Stubbs, Office of Assistance General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room, 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: EOGM, a Delaware corporation with its principal place of business in Houston Texas, is a natural gas marketer operating primarily in the southwest United States. EOGM requests authority to export gas, either for its own account or as agent for U.S. producers, for sale to Petroleos Mexicanos (Pemex) for local distribution by Pemex to its customers. However, if other customers materialize, EOGM indicated it would attempt to make export sales to them under this authorization. The terms and conditions of each transaction, including price and volume, would reflect the current natural gas market conditions. Since EOGM intends to use existing pipelines to transport its exported gas supplies and does not contemplate the construction of any new facilities, it asserts that the requested natural gas export authorization will have no significant impact on the environment. If its application is approved, EOGM agrees to provide DOE with quarterly reports.

The decision on this application for export authority will be made consistent with DOE's gas trade policy and DOE Delegation Order No. 0204–111, and 0204–127 (49 FR 6648, February 22, 1984), under which domestic need for the gas to be exported, and any other issues determined to be appropriate in a particular case, is considered. EOGM asserts the natural gas to be exported would be surplus to regional and national natural gas needs and the arrangement is otherwise consistent with DOE export policy. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if DOE approves this requested blanket export authorization, it may designate only a total authorized volume for the two-year term, and not the daily limit specified by EOGM, in order to provide EOGM with maximum flexibility of operation.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notice of intervention, request for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through response to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order

may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EOGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on November 22, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistance Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-28835 Filed 11-29-81; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the proposed procedures to be followed in refunding to adversely affected parties $9,000,000, plus accrued interest, that Anchor Gasoline Corporation is required to remit to the DOE pursuant to a Consent Order executed on September 22, 1988. The funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

DATE AND ADDRESS: Comments must be filed in duplicate on or before January 2, 1992 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a conspicuous reference to Case Number KEF-0120.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Anthony W. Swisher, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-8018 (Tedrow), (202) 586-6602 (Swisher).

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Anchor Gasoline Corporation to the DOE to settle alleged pricing and allocation violations with respect to the firm's sales of crude oil condensate and certain refined petroleum products. The DOE is currently holding funds received from Anchor totalling $8,252,879.68 in principal in an interest-bearing escrow account pending distribution. The balance of the $9,000,000 minimum required from Anchor must be remitted on or before September 1, 1994.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: November 25, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

November 25, 1991

Name of Firm: Anchor Gasoline Corporation

Date of Filing: October 12, 1988

Case Number: KEF-0120

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the Mandatory Petroleum Price and Allocation Regulations. See 10 CFR part 205, subpart V. On October 12, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Anchor Gasoline Corporation and its wholly-owned subsidiary, Canal Refining Company (Anchor).

I. Background

Anchor was a petroleum refiner as that term was defined at 10 CFR 212.62, engaged in the business of purchasing and refining crude oil, extracting, fractionating and selling natural gas liquids and natural gas liquid products. It therefore was subject to the Federal petroleum price and allocation regulations. An ERA audit of Anchor's records revealed possible violations of the price regulations, 10 CFR part 212. Specifically, the audit revealed that between September 1973 and October 1980, Anchor may have violated the DOE's pricing regulations with respect to its sales of gasoline, No. 2 distillate, and general refinery products. Furthermore, between September 1973 and July 1978, Anchor may have overcharged its customers in sales of crude oil condensate. Finally, the audit revealed that Anchor's subsidiary, Canal Refining Company, may have charged unlawful prices for unspecified products in seven transactions between July 1, 1980 and January 27, 1981.

In order to resolve its potential civil liabilities arising from the ERA's audit, Anchor entered into a Consent Order with the DOE on September 22, 1988. The Consent Order refers to ERA's allegations of overcharges, but does not find that any violations occurred. In addition, the Consent Order states that Anchor does not admit any such violations. Under the terms of the Consent Order, Anchor is required to deposit $7,775,000 into an escrow account for ultimate distribution by the DOE. Furthermore, Anchor is required to deposit into the escrow account a percentage of its profits each year until 1994, bringing the total Consent Order funds to a minimum of $9,000,000. Whether the amount Anchor pays is more than the $9,000,000 minimum will be determined by the firm's levels of profitability in the upcoming years. According to the ERA, Anchor is not a profitable firm and will, in all likelihood, not deposit more than the required $9,000,000.[1] Hence, our calculations for this proceeding are based upon the assumption that the total funds remitted by Anchor will be the minimum required. Should more funds become available in the future, we will adjust our refund payments accordingly, ensuring that claimants who have already received refunds receive a

[1] *See* memorandum of February 16, 1990 telephone conversation between Darlene Gee, OHA staff analyst, and Mike Tabor of the ERA.

proportionate share of any new funds as well. As of the date of this determination, Anchor has made payments totalling $8,552,879.68 into the account. The remainder of the required payments must be made on or before September 1, 1994. This Proposed Decision and Order sets forth the OHA's tentative plan for the distribution of the funds in the Anchor escrow account. Comments are solicited.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205 subpart V. The subpart V process may be used in situations where the DOE is unable to identify readily those persons who may have been injured by alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of Office of Enforcement, 9 DOE ¶ 82,508 (1981); and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

Because the Consent Order resolves alleged violations involving both sales of crude oil and refined petroleum products, we propose to divide the consent order fund into two pools. See Shell Oil Co., 18 DOE ¶ 85,492 (1989) (Shell). In the June 17, 1988, Federal Register Notice published by the ERA announcing the execution of a proposed Consent Order between the DOE Anchor, the ERA indicated that 60% of the funds remitted pursuant to the proposed Consent Order were attributable to alleged crude oil violations. The Notice indicated that the remaining 40% of the funds were the result of overcharges to purchasers of Anchor's refined petroleum products. Under these circumstances, we propose to distribute the funds received from Anchor according to these percentages: 60% of the funds to purchasers of crude oil in accordance with the provisions of the Final Settlement Agreement in the Stripper Well case, and the remaining 40% to purchasers of Anchor's alleged regulatory violations. However, the DOE is not bound by the initial percentages set forth by the ERA. See Tesoro Petroleum Corporation 20 DOE ¶ 85,665 (1990). Should we receive sufficient evidence from comments filed on this proposed Decision, or elsewhere, which would indicate that a different proportionate allocation of the consent order monies is warranted, we will certainly consider altering the proposed distribution. Accordingly, we propose that 60% of the consent order funds (or $5,400,000 plus accrued interest) be set aside as a pool of crude oil overcharge funds available for disbursement. We further propose that 40% of the consent order funds (or $3,600,000 plus accrued interest) be made available for distribution to purchasers of Anchor refined petroleum products who were not Anchor affiliates and who demonstrate that they were injured as a result of Anchor's alleged regulatory violations.[2] The specific distribution procedures for those funds are proposed in detail in the following section.

III. Crude Oil Claims

We propose that the funds in the crude oil pool be distributed in accordance with the Modified Statement of Restitutionary Policy (MSRP), which was issued by the DOE on July 28, 1986. 51 FR 27899 (August 4, 1986).[3] The MSRP, which was issued as a result of a court-approved Settlement Agreement in The Department of Energy Stripper Well Litigation, M.D.L. 378 (D. Kan. 1986), provides that crude oil overcharge payments will be distributed among the States, the United States Treasury, and eligible purchasers of crude oil and refined products.[4] Under the MSRP, up to 20 percent of these crude oil overcharge funds may be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal government for indirect restitution as directed by the MSRP. In the present case, we have decided to reserve the full 20 percent, or $1,080,000 of the initial $5,400,000 crude oil pool, plus a proportionate share of the accrued interest on that amount, for direct refunds to purchasers of crude oil and refined petroleum products who prove that they were injured as a result of alleged crude oil violations.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986). As in non-crude oil cases, applicants will be required to document their purchase volumes and prove that they were injured as a result of alleged violations (i.e., that they did not pass on the alleged overcharges to their customers). We propose to utilize standards for the showing of injury which OHA has developed for analyzing non-crude oil claims. See, e.g., Dorchester Gas Corp., 14 DOE ¶ 85,240 (1986). These standards include a presumption that end-users (i.e, ultimate consumers) whose businesses are unrelated to the petroleum industry absorbed the increased costs resulting from a consent order firm's alleged overcharges. See A. Tarricone, Inc., 15 DOE ¶ 85,495 at 88,894-896 (1987). However, reseller and retailer claimants must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. Id. They can, however, use econometric evidence of the type employed on the OHA Report in In Re: The Department of Energy Stripper Well Exemption Litigation, 6 Fed. Energy Guidelines ¶ 90,507.

Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil pool currently available ($1,080,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). Based upon the amount of the crude oil pool currently available, the crude oil volumetric refund amount in this proceeding is $0.000000534 per gallon. This volumetric refund amount will increase as interest accrues on the consent order fund. After all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between the federal and state governments. The federal

---

[2] We have previously held that affiliates or subsidiaries of a consent order firm are not eligible for refunds based upon the presumption that they were not injured. See, e.g., Marathon Petroleum Co./ EMRO Propane Co., 15 DOE ¶ 85,228 at 85,528 (1987). This presumption applies to firms affiliated with Anchor during the consent order period, whether or not currently affiliated with the firm. See Cosby Oil Co./Yucca Valley Liquor Store, 13 DOE ¶ 85,402 at 88,986 (1986). It also applies to firms that have become affiliated with Anchor after the consent order period, because their receipt of a refund would allow the consent order firm to benefit from this proceedings. See, e.g., Marathon Petroleum Co./ Webster Service Stations, 17 DOE ¶ 85,038 (1988).

[3] In the Order implementing the MSRP, the OHA solicited comments regarding the proper application of the MSRP to OHA refund proceedings involving alleged crude oil violations. On April 6, 1987, the OHA issued a notice which analyzes the comments that were submitted and explains the procedures the Office will follow in processing applications filed under Subpart V regulations for refunds from the crude oil overcharge funds. 52 Fed. Reg. 11737 (April 10, 1987). Since the procedures apply to all crude oil funds subject to Subpart V, we need not differentiate between the various crude oil transactions settled by the Anchor consent order.

[4] Under the Settlement Agreement, firms which applied for a portion of certain escrow funds established under the Settlement generally must have signed a waiver releasing their claims to any crude oil funds to be distributed by the OHA under Subpart V. Accordingly, those firms will not be eligible for a refund from the Anchor Crude oil pool.

government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

We propose that the remaining 80 percent of the crude oil pool ($4,320,000) and 80 percent of accumulated interest be disbursed in equal shares to the federal and state governments for indirect restitution. See Shell. If this proposal is adopted, we will direct the DOE's office of the Controller to segregate the crude oil share of Anchor's initial payment and distribute $2,160,000, plus appropriate interest, to the States and the same amount to the federal government. Refunds to the States will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share (ratio) of the funds in the account which each state will receive if these procedures are adopted is contained in Exhibit H of the Stripper Well Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the Sates under the Settlement Agreement.

IV. Refined Product Claims

The remainder of the Anchor consent order fund ($3,600,000 plus interest accrued on that amount) shall be made available to eligible injured purchasers of Anchor refined products. Anchor purchasers who may have been injured by Anchor's alleged overcharges in its sales of refined petroleum products during the August 19, 1973 through January 27, 1981 consent order period (the consent order period) may file applications for refund.[5] From our experience with subpart V proceedings, we expect that potential applicants generally will fall into the following categories: (i) End-users; (ii) regulated entities, such as public utilities and cooperatives; and (iii) refiners, resellers and retailers (hereinafter collectively referred to as "resellers").

A. Calculation of Refund Amounts

The first step in the refund process is the calculation of an applicant's potential refund. The ERA specifically noted, however, that it was unable to identify all of the customers whom Anchor allegedly overcharged. In order to determine the potential refunds for these purchasers, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all of Anchor's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

The volumetric refund presumption is rebuttable. The impact on an individual claimant may have been greater than its potential refund calculated using the volumetric methodology. Accordingly, a claimant may submit evidence detailing the specific alleged overcharge that it incurred in order to be eligible for a larger refund. See Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of eligible products that it purchased from Anchor during the consent order period, multiplied by a volumetric factor of $0.006942 per gallon. [6] In addition, each successful claimant will receive a pro-rata portion of the interest that has accrued on the Anchor funds since the date of remittance.

As in previous cases, only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. See, e.g., Mobil Oil Corp., 13 DOE ¶ 85,339 (1985); see also 10 CFR 205.286(b). If an applicant's potential refund is calculated using the volumetric methodology, it must have purchased at least 2,161 gallons of Anchor refined products in order for its claim to be considered.

B. Determination of Injury

Once a claimant's potential refund has been calculated, we must determine whether the claimant was injured by its purchases from Anchor, *i.e.*, whether it was forced to absorb the alleged overcharges. Based on our experience in numerous subpart V proceedings, we propose to adopt certain presumptions concerning injury in this case. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 CFR 205.282(e). An applicant that is not covered by one of these presumptions must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. Injury Presumptions

The presumptions we plan to adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider the refund applications in the most efficient way possible. We will presume that end users of Anchor refined products, certain types of regulated firms, and cooperatives were injured by their purchases from Anchor. In addition, we will presume that resellers and retailers of Anchor products submitting small claims were injured by their purchases. On the other hand, we will presume that resellers and retailers that made spot purchases of Anchor products and those who sold it on consignment were not injured by their purchases. Each of these presumptions is listed below, along with the rationale underlying its use.

a. *End Users.* First, in accordance with prior subpart V proceedings, we will presume that end users, *i.e.*, ultimate to the petroleum industry, were injured by the firm's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. See Marion Corp., 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Anchor products to demonstrate that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* Second, public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms routinely would have passed through price increases to their customers. Likewise, their customers would share the benefits of cost

[5] OHA will not accept Applications for Refund on behalf of classes of applicants. We have previously determined that such claims are inappropriate because they amount to a proposal for "indirect" restitution, i.e. to distribute the funds attributable to parties not specifically identified by the DOE. See Standard Oil Co. (Indiana)/Diesel Automotive Association, 11 DOE ¶ 85,250 (1984); Office of Special Counsel, 10 DOE ¶ 85,048 at 88,214 (1982).

[6] The minimum amount to be paid by Anchor, as set out in the consent order, is $9,000,000. Of that figure, 40% is to be distributed to Anchor's customers of refined petroleum products. We computed the initial volumetric factor by dividing $3,600,000 ($9,000,000 × .40 = $3,600,000) by the total volume of covered products sold by the firm during the consent order period (513,589,086 gallons).

decreases resulting from refunds. See, *e.g.*, Office of Special Counsel, 9 DOE ¶ 82,538 (1982) (Tenneco); Office of Special Council, 9 DOE ¶ 82,545 at 85,244 (1982)(Pennzoil). Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body of membership group to monies received. Purchases by cooperatives that were subsequently resold to non-members will generally not be covered by this presumption.

c. *Reseller and Retailer Small Claims.* Third, we will presume that a reseller or a retailer seeking a refund of $10,000 or less, excluding accrued interest, was injured by Anchor's pricing practices. Claimants requesting refunds based on purchases of up to 1,440,507 gallons of Anchor products fall into this category. In past proceedings, the OHA has generally established the small claims threshold at $5,000. However, for a number of reasons, in this proceeding we conclude that a $10,000 small claims threshold is a more equitable solution.

The proposed volumetric calculated in this proceeding, i.e., $0.006942, is relatively high compared to volumetric factors adopted in other subpart V special refund proceedings. We applied this factor to the customer purchase volume information provided to us by Anchor, and found that a very substantial number of the refunds that are available to claimants in the Anchor proceeding fall between $5,000 and $10,000. As a consequence, a disproportionately large number of Anchor customers will be required to make a full demonstration of injury in order to receive the full volumetric refund for which they qualify. Despite the size of these refunds, the purchasers involved are nonetheless relatively small entities that are unlikely to have maintained sophisticated systems of records. For the same reason, in the absence of actual records, these entities are also unlikely to have the resources to assemble the data necessary to an alternative showing of injury. See, *e.g.*, Agway/Davis Oil Co., Case No. RF324–28 (May 24, 1991). Moreover, the consent order refund period ended more than ten years ago, records dating back as many as eighteen years may be required for a full demonstration of injury—and records of this age are difficult to assemble under the best of circumstances. In a number of other proceedings we have encountered this situation and have concluded that the interests of prospective refund applicants and those of the Department are best served by establishing the small purchaser injury presumption at the $10,000 level rather than $5,000. See, *e.g.*, Texaco, Inc., 20 DOE ¶ 85,147 (1990). We propose adopting a $10,000 small purchaser injury presumption level in the Anchor refund proceeding as well. A small claimant that wishes to claim a refund below this level need only document the volumes of products it purchased from Anchor. See Texas Oil & Gas Corp., 12 DOE ¶ 85,069 at 88,210 (1984). Resellers and retailers of Anchor products that are seeking refunds in excess of $10,000 must follow the procedures that are outlined below in Section 2.

d. *Resellers and Retailers Filing Mid-Level Claims.* Fourth, in lieu of making a detailed showing of injury, a reseller claimant whose allocable share exceeds $10,000 may elect to receive as its refund the larger of $10,000 or 40 percent of its allocable share up to $50,000.[7] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. See Marathon, 14 DOE at 88,515. In some prior special refund proceedings, we have performed detailed economic analysis in order to determine product-specific levels of injury. See, *e.g.*, Mobil Oil Corp., 13 DOE ¶ 85,339 (1985). However, in Gulf Oil Corp., 16 DOE ¶ 85,381 at 88,737 (1987), we determined that based upon the available data, it was accurate and efficient to adopt a single presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined product that they purchased, based upon the results of our analyses in prior proceedings. We believe that approach to be sound in the absence of more detailed information regarding injury, and we therefore propose to adopt a 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Anchor refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share, or $10,000, whichever is greater.

e. *Spot Purchasers.* Fourth, resellers and retailers that were spot purchasers of Anchor products, *i.e.*, firms that made only sporadic, discretionary purchases, are presumed not to have been injured, and consequently, generally will be ineligible for refunds. The basis for this presumption is that a spot purchaser tended to have considerable discretion as to where and when to make a purchase, and therefore, would not have made a purchase unless it was able to recover the full amount of its purchase price, including any alleged overcharges, from its customers. See Vickers at 85,396–7. A spot purchaser can rebut this presumption by demonstrating that its base period supply obligation limited its discretion in making the purchases and that it resold the product at a loss that was not subsequently recouped. See, *e.g.*, Saber Energy, Inc./Mobil Oil Corp., 14 DOE ¶ 85,170 (1986).

f. *Consignees.* Finally, we will presume that consignees of Anchor products were not injured by the firm's alleged pricing violations. See, *e.g.*, Jay Oil Co., 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement whereby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products that it sold. A consignee may rebut the presumption of non-injury by demonstrating that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Anchor's pricing practices. See Gulf Oil Corp./C.F. Canter Oil Co., 13 DOE ¶ 85,388 at 88,962 (1986).

2. Non-Presumption Demonstration of Injury

A reseller or retailer whose allocable share is in excess of $10,000 that does not elect to receive a refund under the small claims or mid-level reseller presumptions will be required to demonstrate its injury. There are two aspects to such a demonstration. First, a firm is required to provide a monthly schedule of its banks of unrecouped increased products costs for products that it purchased from Anchor. Cost banks should cover the period August 19, 1973, through January 27, 1981. If a firm no longer has records of contemporaneously calculated cost banks for products, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) A monthly schedule of the weighted average gross profit margins that it received for the product during the period August 19, 1973, through January 27, 1981; and

[7] That is, claimants who purchased between 3,601,268 gallons and 18,006,338 gallons of Anchor refined petroleum products during the consent order period (mid-level claimants) may elect to utilize this presumption. Claimants who purchased more than 18,006,338 gallons may elect to limit their claim to $50,000.

(3) A monthly schedule of the firm's purchase or sales volume of the products during the period, August 19, 1973, through January 27, 1981.

The existence of banks of unrecovered increased product costs that exceed an applicant's potential refund is only the first part of an injury demonstration. A firm must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Anchor were higher than average market prices for the same level of distribution.[8] Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Anchor for products during the period August 19, 1973 through January 27, 1981.

If a reseller or retailer that is eligible for a refund in excess of $10,000 does not submit cost bank and purchase price information described above, it can still apply for a refund of $10,000 plus accrued interest, using the small claims presumption. If, however, a firm provides the above-mentioned data and we subsequently conclude that the firm should receive a refund of less than the $10,000 small claims threshold, the firm cannot opt for a full $10,000 refund.

V. Allocation Claims

We may also receive claims based upon Anchor's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as Standard Oil Company (Indiana), 10 DOE ¶ 85,048; OKC Corp./Town & Country Markets, Inc., 12 DOE ¶ 85,094 (1984); and Marathon Petroleum Co./Research Fuels, Inc., 19 DOE ¶ 85,575 at 89,049–50 (1988) (Marathon/RFI), *aff'd, Research Fuels, Inc.* v. *DOE*, No. CA3–89–2983–G (N.D. Tex. October 3, 1991). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury. Claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the profit lost as a result of their failure to receive the allocated product.[9]

VI. Distribution of Remaining Funds

In the event that money remains after all meritorious refund applications have been processed, the residual funds in the Anchor escrow account will be disbursed in accordance with the provisions of the Petroleum Overcharge and Distribution Act of 1986 (PODRA). 15 U.S.C.A. 4501–4507 (West Supp. 1989).

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Anchor Gasoline Corporation pursuant to the Consent Order executed on September 22, 1988, will be distributed in accordance with the foregoing Decision.

[FR Doc. 91–28836 Filed 11–29–91; 8:45 am]

BILLING CODE 6450–01–M

[8] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

[9] If we receive numerous allocation claims, we may adopt a more general formula for calculating refunds based on alleged allocation violations.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4037–3]

Proposed Settlement and Request for Public Comment; Benzene Waste Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("Act"), notice is hereby given of a proposed settlement of the following cases: *Conoco, Inc. and Sun Refining and Marketing Co.* v. *United States Environmental Protection Agency*, No. 91–1266 (D.C. Cir.) and *Conoco, Inc. and Sun Refining and Marketing Co.* v. *United States Environmental Protection Agency*, No. CV–91–113–BLG–RAW (D. Mont.).

These cases involve a challenge to EPA's interpretation of the language of 40 CFR 61.342(a), which provides the method for determining whether a particular source is subject to the subpart.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive comments relating to the settlement from persons who are not named as parties to this litigation. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such a settlement is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the settlement has been lodged with the Clerks of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Montana. Copies of the proposed settlement are also available from Robert J. Martineau, Jr., Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 260–7609. Written comments should be sent to Robert J. Martineau, Jr., at the above address and must be submitted on or before January 2, 1992.

Dated: November 25, 1991.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 91–28827 Filed 11–29–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–00114; FRL–4004–3]

Carpet Policy Dialogue; Memorandum of Understanding: Testing Program for Carpet Cushion Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has entered into a Memorandum of Understanding (MOU) with the Carpet Cushion Council (CCC) acting on behalf of the carpet cushion industry for the purpose of initiating the provisions stated within the context of the Carpet Policy Dialogue - Consensus Statement: Testing Program for Carpet Cushion Products. The MOU provides for carpet cushion product testing for total volatile organic compound emissions (TVOC) and reporting of data as outlined in the testing program.

DATES: The MOU was entered into on September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dave Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202) 554–1404, TDD: (202) 554–0557, or FAX (202) 554–5603 (document requests only). For

information on the Carpet Policy Dialogue Project contact Richard W. Leukroth, Jr., Carpet Policy Dialogue Coordinator, Telephone: (202) 260–3832. Copies of the MOU may be obtained from the Environmental Assistance Division at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Carpet Policy Dialogue (August 21, 1990 to September 27, 1991) was part of the Agency's response to a petition under section 21 of TSCA (55 FR 17404; 55 FR 31640). EPA charged the dialogue to work out the details of voluntary product testing programs that report TVOC's that emit from carpet, carpet installation adhesives, and carpet cushion products. In addition, the Carpet Policy Dialogue was asked to explore and, where possible, reach agreement on a variety of issues including: the sampling and analytical methods for the voluntary product testing for TVOC's, any additional information needed, identification of cost-effective process changes to reduce TVOC emissions, information about carpet installation practices, and to provide the interested public with information on TVOC emissions. The Carpet Policy Dialogue formed three working Subgroups (Product Testing, Process Engineering, and Public Communications) to respond to the EPA charter.

The Carpet Policy Dialogue on TVOC emissions was a nonregulatory approach focusing on product stewardship through voluntary actions on the part of industry. It emphasized exposure reduction (pollution prevention), and addressed the public desire for information that could lead to consumer choice. The Carpet Policy Dialogue exemplified how government, industry, public interest groups, and the scientific community can work together to resolve exposure reduction and pollution prevention issues, including those related to indoor air exposures. Proposed testing programs were developed during Subgroup discussion and submitted to the Carpet Policy Dialogue for the benefit of a consensus process of review and comment. In reaching consensus and accepting the carpet cushion testing program, the Carpet Policy Dialogue indicated to its sponsor (EPA) that such a statement can provide the basis for a memorandum of understanding to initiate voluntary action(s) in response to the charter set by EPA in the **Federal Register** notices (55 FR 17404 and 55 FR 31640).

II. Memorandum of Understanding

The EPA and CCC entered into the MOU on September 26, 1991. The MOU signed by EPA and CCC formally establishes a framework in which a voluntary program response for actions described in the **Federal Register** notices noted above can be fulfilled. It contains provisions initiating the Carpet Cushion Testing Program on TVOC emissions and certain follow-on activities.

A. Carpet Cushion Testing Program

Under the terms and conditions of the MOU, the CCC has voluntarily agreed to conduct product testing to determine TVOC emissions factors for the five product types currently available in commerce over the next 3 years. The objectives of the Carpet Cushion Testing Program are to: (1) Study carpet cushion emissions decay characteristics, (2) address the question of TVOC emission variability, or the lack thereof, across carpet cushion product types, and (3) determine the time point(s) for measuring TVOC emissions from the five product types. Results from this testing will be used in finalizing the design of a follow-on industry-wide study of a representative sample of carpet cushion products.

B. Participants

Placement of responsibilities for the actions described in the MOU is with the Executive Director, Carpet Cushion Council and the Director, Office of Toxic Substances, EPA.

III. Administrative Record

The MOU is available to the public in the Carpet Emissions Administrative Record. This Administrative Record is available for reviewing and copying in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Dated: November 25, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91–28825 Filed 11–29–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–00115; FRL–4004–4]

Carpet Policy Dialogue; Memorandum of Understanding: Testing Program for Carpet Installation Adhesives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has entered into a Memorandum of Understanding (MOU) with the Floor Covering Adhesive Manufacturers Committee (FCAMC), of the National Association of Floor Covering Distributors for the purpose of initiating the provisions stated within the context of the Carpet Policy Dialogue - Consensus Statement: Testing Program for Carpet Installation Adhesives. The MOU provides for test method development, decay curve testing, carpet installation adhesive product testing for total volatile organic compound emissions (TVOC), and reporting of data as outlined in the testing program.

DATES: The MOU was entered into on September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dave Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202) 554–1404, TDD: (202) 554–0557, or FAX (202) 554–5603 (document requests only). For information on the Carpet Policy Dialogue Project contact Richard W. Leukroth, Jr., Carpet Policy Dialogue Coordinator, Telephone: (202) 260–3832. Copies of the MOU may be obtained from the Environmental Assistance Division listed at the address above.

SUPPLEMENTARY INFORMATION:

I. Background

The Carpet Policy Dialogue (August 21, 1990 to September 27, 1991) was part of the Agency's response to a petition under section 21 of TSCA (55 FR 17404; 55 FR 31640). EPA charged the dialogue to work out the details of voluntary product testing programs that report TVOC's that emit from carpet, carpet installation adhesives, and carpet cushion products. In addition, the Carpet Policy Dialogue was asked to explore and, where possible, reach agreement on a variety of issues including: the sampling and analytical methods for the voluntary product testing for TVOC's, any additional information needed, identification of cost-effective process changes to reduce TVOC emissions, information about carpet installation practices, and to provide the interested public with information on TVOC emissions. The Carpet Policy Dialogue formed three working Subgroups (Product Testing, Process Engineering, and Public Communications) to respond to the EPA charter.

The Carpet Policy Dialogue on TVOC emissions was a nonregulatory approach focusing on product stewardship through voluntary actions on the part of industry. It emphasized exposure reduction (pollution

prevention), and addressed the public desire for information that could lead to consumer choice. The Carpet Policy Dialogue exemplified how government, industry, public interest groups, and the scientific community can work together to resolve exposure reduction and pollution prevention issues, including those related to indoor air exposures. Proposed testing programs were developed during Subgroup discussion and submitted to the Carpet Policy Dialogue for the benefit of a consensus process of review and comment. In reaching consensus and accepting the carpet installation adhesive testing program, the Carpet Policy Dialogue indicated to its sponsor (EPA) that such a statement can provide the basis for a memorandum of understanding to initiate voluntary action(s) in response to the charter set by EPA in the Federal Register notices (55 FR 17404 and 55 FR 31640).

II. Memorandum of Understanding

The EPA and FCAMC entered into the MOU on September 26, 1991. The MOU signed by EPA and FCAMC formally establishes a framework in which a voluntary program response for actions described in the **Federal Register** notices noted above can be fulfilled. It contains provisions initiating the Carpet Adhesive Testing Program on TVOC emissions and certain follow-on activities.

A. Carpet Adhesive Testing Program

Under the terms and conditions of the MOU, the FCAMC has voluntarily agreed to develop an analytical test method for measuring TVOC emissions from adhesive products, conduct decay curve testing to determine the time point(s) for measuring TVOC emissions from the selected test procedure, and conduct product testing to determine TVOC emissions factors for five adhesive product types currently available in commerce over the next 2 years. The objectives of the Carpet Adhesive Testing Program are to: (1) Study carpet adhesive emissions decay characteristics, and (2) characterize quantitatively the distribution of TVOC emissions factor performance of the carpet adhesive product types currently in commerce.

B. Participants

Placement of responsibilities for the actions described in the MOU is with the Chairperson, Floor Covering Adhesive Manufacturers Committee of the National Association of Floor Covering Distributors and the Director, Office of Toxic Substances, EPA.

III. Administrative Record

The MOU is available to the public in the Carpet Emissions Administrative Record. This Administrative Record is available for reviewing and copying in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Dated: November 25, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91–28824 Filed 11–29–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS–00113; FRL–4004–2]

Carpet Policy Dialogue; Memorandum of Understanding: SBLMC Reporting Program for 4-PC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has entered into a Memorandum of Understanding (MOU) with the Styrene Butadiene Latex Manufacturers Council (SBLMC) for the purpose of initiating the provisions stated within the context of recommendations from the Carpet Policy Dialogue. The MOU provides for the public reporting of company quality assurance data on 4-phenylcyclohexene (4-PC), and a feasibility assessment for future quality control activities.

DATES: The MOU was entered into on September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dave Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: (202) 554–1404, TDD: (202) 554–0557, or FAX (202) 554–5603 (document requests only). For information on the Carpet Policy Dialogue Project contact Richard W. Leukroth, Jr., Carpet Policy Dialogue Coordinator, Telephone: (202) 260–3832. Copies of the MOU may be obtained from the Environmental Assistance Division at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

The Carpet Policy Dialogue (August 21, 1990 to September 27, 1991) was part of the Agency's response to a petition under section 21 of TSCA (55 FR 17404; 55 FR 31640). EPA charged the dialogue to work out the details of voluntary product testing programs that report TVOC's that emit from carpet, carpet installation adhesives, and carpet cushion products. In addition, the Carpet Policy Dialogue was asked to explore and, where possible, reach agreement on a variety of issues including: the sampling and analytical methods for the voluntary product testing for TVOC's, any additional information needed, identification of cost-effective process changes to reduce TVOC emissions, information about carpet installation practices, and to provide the interested public with information on TVOC emissions. The Carpet Policy Dialogue formed three working Subgroups (Product Testing, Process Engineering, and Public Communications) to respond to the EPA charter.

The Carpet Policy Dialogue on TVOC emissions was a nonregulatory approach focusing on product stewardship through voluntary actions on the part of industry. It emphasized exposure reduction (pollution prevention), and addressed the public desire for information that could lead to consumer choice. The Carpet Policy Dialogue exemplified how government, industry, public interest groups, and the scientific community can work together to resolve exposure reduction and pollution prevention issues, including those related to indoor air exposures. Recommendations developed during Subgroup discussion were submitted to the Carpet Policy Dialogue for the benefit of a consensus process of review and comment. In reaching consensus and accepting the SBLMC 4-PC company quality assurance reporting program, the Carpet Policy Dialogue indicated to its sponsor (EPA) that such a recommendation can provide the basis for a memorandum of understanding to initiate voluntary action(s) in response to the charter set by EPA in the **Federal Register** notices (55 FR 17404 and 55 FR 31640).

II. Memorandum of Understanding

The EPA and SBLMC entered into the MOU on September 26, 1991. The MOU signed by EPA and SBLMC formally establishes a framework in which a voluntary program response for actions described in the **Federal Register** notices noted above can be fulfilled. It contains provisions describing the 4-PC company quality assurance reporting program and certain follow-on activities.

A. SBLMC Quality Assurance Reporting Program for 4-PC

Under the terms and conditions of the MOU, the SBLMC has voluntarily agreed to report data from their ongoing

quality analysis programs. The SBLMC will report the company-by-company weighted average of 4-PC in styrene butadiene latex sold for carpet backing applications for the last quarter of 1991 and the last quarter of 1992. The individual company average 4-PC measurements used as input to the weighting calculations as well as the weighting calculation methodology will be reported.

In addition, the SBLMC has agreed to assess the styrene butadiene latex 4-PC data developed from ongoing quality analysis programs noted above to determine the feasibility of utilizing the information to develop future quality control activities. SBLMC will provide a report to EPA on its assessment of the feasibility on or before July 1, 1993. The report will be submitted to the EPA and entered into the Carpet Emissions Administrative Record.

B. Participants

Placement of responsibilities for the actions described in the MOU is with the Chairperson, Styrene Butadiene Latex Manufacturers Council and the Director, Office of Toxic Substances, EPA.

III. Administrative Record

The MOU is available to the public in the Carpet Emissions Administrative Record. This Administrative Record is available for reviewing and copying in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Dated: November 25, 1991.

Mark A. Greenwood,

Director, Office of Toxic Substances.

[FR Doc. 91-28826 Filed 11-29-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-00312; FRL-4006-2]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, beginning on December 9, 1991, and ending on December 10, 1991. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Monday, December 9, 1991, from 8:30 a.m. to 5 p.m. and on Tuesday, December 10, 1991, beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: Hyatt Regency - Crystal City, 2799 Jefferson Davis Highway, Arlington, VA, (703) 486-1234.

FOR FURTHER INFORMATION CONTACT: By mail: Arty Williams, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1100E, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of SFIREG includes the following:

1. Regional SFIREG reports.
2. Reports from the SFIREG Working Committees.
3. Update on activities of Registration Division, Office of Pesticide Programs.
4. Update on activities of the Special Review and Reregistration Division, Office of Pesticide Programs.
5. Update on activities of the Office of Compliance Monitoring.
6. Office of Compliance Monitoring's Strategic Dialogue Task Force - progress report.
7. Update on activities of the Field Operations Division.
8. Other topics as appropriate.

Dated: November 22, 1991.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 91-28822 Filed 11-29-91; 8:45 am]

BILLING CODE 6560-50-F

[OPP-66154A; FRL 4000-6]

Cancellation of Products Containing 2-Ethyl-1,3-Hexanediol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final cancellation orders.

SUMMARY: On September 4, 1991, [56 FR 43767] EPA announced receipt of requests for voluntary cancellation of registrations for products containing 2-ethyl-1,3-hexanediol. These requests were received pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) section 6(f)(1) and the cancellations were effective October 4, 1991. Final orders of cancellation have been issued and distribution, sale or use of existing stocks is prohibited as of that date.

DATES: The cancellations listed in this notice were effective October 4, 1991.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, 1921 Jefferson Davis Highway, Alexandria, VA 22212, (703) 557-0502.

SUPPLEMENTARY INFORMATION: 2-ethyl-1,3-hexanediol was registered as an insect repellent for use on human skin, clothing, and window and door screens, excluding use in commercial food preparation and serving areas. On July 31, 1991, Union Carbide Corporation submitted, under the authority of section 6(a)(2) of FIFRA, preliminary data which indicated possible adverse developmental effects associated with the use of 2-ethyl-1,3-hexanediol. The Agency conducted a preliminary risk assessment of margins of exposure (MOE) based upon the data submitted and determined that the use of 2-ethyl-1,3-hexanediol as a repellent by pregnant women represented an unacceptable developmental risk. The products listed in the following table in ascending order by EPA Registration number were cancelled by these orders:

Registration No.	Product Name	Company
3282-49	6-12 Plus Repellent Stick	D-Con Company, Montvale, NJ
3282-50	6-12 Plus Insect Repellent Liquid	
4822-164	OFF Insect Repellent IV	S.C. Johnson & Son, Inc., Racine, WI
4822-191	6100 Formula 2, Fly & Mosquito Repellent Gel	
4822-203	Johnson Wax 6017 Formula 10 Insect Repellent	
10352-34	2-Ethyl-1,3-hexanediol	Union Carbide Chemicals & Plastics Company, Bound Brook, NJ
41878-1	BF-100 Blackfly Repellent Solution	LJB Laboratories, St. Johns, MI

EPA will not permit the distribution, sale, or use of existing stocks of the products containing 2-ethyl-1,3-hexanediol as listed in the above table effective October 4, 1991. EPA will reconsider the prohibition on the distribution, sale, or use of the existing stocks if any person requests reconsideration on or before November 4, 1991.

Dated: October 31, 1991.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 91-28823 Filed 11-29-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Washington; Amendment to Notice of a Major Disaster Declaration

[FEMA-922 DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Washington (FEMA–922–DR), dated November 13, 1991, and related determinations.

DATED: November 22, 1991.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3606.

NOTICE: The notice of a major disaster for the State of Washington, dated November 13, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 13, 1991: Ferry and Whitman Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 91–28791 Filed 11–29–91; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Georgia Ports Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200371–003.

Title: Georgia Ports Authority/ Compagnie Generale Maritime Terminal Agreement.

Parties: Georgia Ports Authority, Compagnie Generale Maritime.

Synopsis: The Agreement, filed November 18, 1991, adds a daily reefer charge for electrical services.

Agreement No.: 224–200578–001.

Title: Lease Between Board of Commissioners of the Port of New Orleans and E.C. Colley Warehouse Corporation; First Street Wharf Facility.

Parties: Board of Commissioners of the Port of New Orleans E.C. Colley Warehouse Corporation.

Synopsis: The amendment, filed November 18, 1991, provides that Sections one through twelve of the First Street Wharf facility be leased to E.C. Colley rather than Sections eighteen through twenty-seven as contemplated by the original lease. The amendment provides for an increase of rental to be paid due to an increase of square footage leased. The rental rate of $1.05 per square foot shall remain the same.

Dated: November 25, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–28732 Filed 11–29–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CB Financial 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 December 30, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. CB Financial Corporation, Jackson, Michigan; to merge with CCSB Corporation, Charlevoix, Michigan, and thereby indirectly acquire Charlevoix County State Bank, Charlevoix, Michigan.

2. IBC Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of International Bank of Chicago, Chicago, Illinois, a *de novo* bank.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. United Central Bancshares, Inc., Bowling Green, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of South Central Bank of Bowling Green, Inc., Bowling Green, Kentucky.

Board of Governors of the Federal Reserve System, November 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-28747 Filed 11-29-91; 8:45 am]

BILLING CODE 6210-01-F

Society Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) 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, or to engage in such an activity. Unless otherwise noted, these 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 December 30, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; to merge with Ameritrust Corporation, Cleveland, Ohio, and thereby indirectly acquire 100 percent of the voting shares of Ameritrust Company National Association, Cleveland, Ohio, Ameritrust Development Bank, Cleveland, Ohio; and Ameritrust Indiana Corporation, Elkhart, Indiana, and thereby indirectly to acquire 100 percent of the Ameritrust National Bank, Central Indiana, Indianapolis, Indiana, Ameritrust National Bank, Michiana (Elkhart), Elkhart, Indiana, Ameritrust National Bank, Michiana (Sturgis), Sturgis, Michigan, and Ameritrust Bank, Howard County Kokomo, Indiana.

Society Corporation has also applied to acquire an option to buy up to 16.6 percent of the voting shares of Ameritrust Corporation on a fully diluted basis.

Society Corporation has also applied to acquire the following nonbank subsidiaries of Ameritrust Corporation:

(a) Ameritrust Company of New York, New York, New York, and thereby engage in providing corporate trust services to the public pursuant to § 225.25(b)(3) of the Board's Regulation Y;

(b) Ameritrust Southeast National Association, Tampa, Florida, and thereby engage in providing corporate and personal trust services to the public pursuant to § 225.25(b)(3) of the Board's Regulation Y;

(c) Ameritrust Texas National Association, Dallas, Texas, and thereby engage in providing corporate and personal trust services to the public pursuant to § 225.25(b)(3) of the Board's Regulation Y;

(d) Ameritrust Petroleum Corp., Dallas, Texas, and thereby engage in (1) providing investment advisory services to the public with respect to investments in oil, gas, and mineral properties pursuant to § 225.25(b)(4) of the Board's Regulation Y, and (2) providing real estate appraisal services to the public pursuant to § 225.25(b)(13) of the Board's Regulation Y;

(e) Ameritrust Realty Corp., Dallas, Texas, and thereby engage in (1) providing investment advisory services to the public with respect to investments in real estate pursuant to § 225.25(b)(4) of the Board's Regulation Y, (2) providing real estate appraisal services to the public pursuant to § 225.25(b)(13) of the Board's Regulation Y, and (3) acting as an intermediary in arranging equity financing for commercial and industrial income-producing real estate pursuant to § 225.25(b)(14) of the Board's Regulation Y;

(f) Ameritrust Securities Corp., Dallas, Texas, and thereby engage in providing investment advisory services to the public, including the provision of portfolio investment advice both to unaffiliated corporate entities, endowment funds and foundations, and to individuals, pursuant to § 225.25(b)(4) of the Board's Regulation Y;

(g) AT Investment Services Corp., Cleveland, Ohio, and thereby engage in (1) offering sercurities brokerage services to the public pursuant to § 225.25(b)(15) of the Board's Regulation Y, and (2) the purchase and sale of gold and silver bullion and gold coins for the accounts of its customers pursuant to *Ameritrust Corp.*, 74 Federal Reserve Bulletin 341 (1988).

(h) First Indiana Life Insurance Company, Elkhart, Indiana, and thereby engage, as a reinsurer, in underwriting life insurance and accident and health insurance written in connection with extensions of credit by affiliate banks pursuant to § 225.25(b)(8) of the Board's Regulation Y;

(i) Lake Life Insurance Company, Cleveland, Ohio, and thereby engage, as a reinsurer, in underwriting life insurance and accident and health insurance written in connection with extensions of credit by affiliate banks pursuant to § 225.25(b)(8) of the Board's Regulation Y;

(j) AT Acceptance Corporation, Cleveland, Ohio, an inacting subsidiary pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8));

(k) AT Financial Corporation, Cleveland, Ohio, an inactive subsidiary pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8));

(l) ATEK Check Printing Company, Cleveland, Ohio, an inactive subsidiary pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8));

(m) Franklin Financial Corporation, Indianapolis, Indiana, an inactive subsidiary pursuant to § 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)).

Society Corporation also intends to acquire indirect control of Ameritrust International Corporation, Cleveland, Ohio, a wholly-owned subsidiary of Ameritrust Company National Association and an indirect subsidiary of Ameritrust Corporation, pursuant to § 25(a) of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, November 25, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-28748 Filed 11-29-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Development of Guidelines, Medical Review Criteria, Standards of Quality, and Performance Measures on Otitis Media in Children, Post-Stroke Rehabilitation, and Congestive Heart Failure

The Agency for Health Care Policy and Research (AHCPR) has awarded contracts to three non-profit organizations to develop clinical practice guidelines, medical review criteria, standards of quality, and performance measures for otitis media in children, post-stroke rehabilitation, and congestive heart failure secondary to coronary vascular disease. A panel of experts and health care consumers will be established by each contractor to assist in developing guidelines, review criteria standards and performance measures for the particular condition or treatment. AHCPR, on behalf of the contractors, hereby invites nominations of qualified individuals to serve as chairpersons and as members of the panel of experts and health care consumers for each of the contractors.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) enacted on December 19, 1989, added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR is to achieve its goals through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing and delivery of health care services.

Section 911 of the Act (42 U.S.C. 299b) established within the AHCPR the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically. As clinical guidelines are completed, AHCPR arranges for the transformation of these guidelines into medical review criteria, standards of quality, and performance measures to assist health care providers and other appropriate entities to review the provision of health care and assure the quality of such care.

Section 912 of the Act (42 U.S.C. 299b–1) requires that the guidelines be:

1. Based on the best available research and professional judgment;
2. Presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers of health care; and
3. In forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.

Section 913 of the Act (42 U.S.C. 299b–2) describes two mechanisms through which AHCPR may arrange for development of guidelines: 1. Panels of qualified experts and health care consumers may be convened, and 2. Contracts may be awarded to public and private nonprofit organizations. The AHCPR has elected to use the contract process for development of clinical practice guidelines, medical review criteria, standards of quality, and performance measures for otitis media in children, post-stroke rehabilitation, and congestive heart failure secondary to coronary vascular disease.

Panel Nominations

There will be a panel for each of the three contractors. Each panel will be composed of a chairperson and ten to fifteen appropriately qualified experts and health care consumers. The role of each panel is to assist the contractor to: develop a decision making process; determine the focus of the guidelines and the questions to be addressed; advise and monitor the review and analysis of the scientific literature; to consider and advise on the principal health policy issues; monitor and provide counsel on the development of medical review criteria, standards, and performance measures; and review and approve the interim and final drafts. The contractors will submit their proposed candidates for panel members of AHCPR for approval.

To assist in identifying members for the panels, AHCPR is requesting recommendations from a broad range of interested individuals and organizations, including physicians representing primary care and relevant specialties, nurses, and allied health and other health care practitioners, as well as consumers with pertinent experience or information. The AHCPR is especially interested in receiving nominations of: (1) Persons with experience in developing clinical guidelines, medical review criteria, standards of quality, and performance measures for the three medical conditions in question or other conditions; (2) persons with relevant experience in basic and clinical research in the three conditions; (3) persons with relevant experience and clinical and technical skills needed to diagnose and treat the three conditions; and, (4) health care consumers who have had personal experience with one of the three conditions, either as a patient or as a family member or friend of a patient.

This Notice requests nominations of qualified individuals to serve on each of the three contractor panels as members and as panel chairpersons. The functions of panel chairpersons are critical to the process of developing guidelines, medical review criteria, standards of quality, and performance measures. The chairpersons will provide leadership to each panel regarding methodology, literature review, panel deliberations, and formation of the final products. Nominations for the chairpersons should take into consideration the criteria specified below, which the contractors and AHCPR will use in making panel selections.

- Relevant training and clinical experience,
- Demonstrated interest in quality assurance and research on the clinical condition(s) under consideration and the related treatment of the condition(s), including publication of relevant peer-reviewed articles,
- Commitment to the need to produce clinical guidelines, medical review criteria, standards of quality, and performance measures,
- Recognition in the field with a record of leadership in relevant activities,
- Board public health view of the utility of particular procedure(s) or clinical service(s),
- Demonstrated capacity to lead a health care term in a group decisionmaking process,
- Demonstrated capacity to respond to consumer concerns, and
- Prior experience in developing guidelines, medical review criteria, standards of quality, or performance measures for the clinical condition in question.
- No potential conflict of interest that would impair the impartial participation

in the development of the guidelines.

Subsequent to approval by AHCPR, the contractors will appoint the panel chairpersons.

Once each panel chairperson has been selected, nominations for members of each panel will be reviewed by each contractor with the chairperson, prior to proposing panel members to AHCPR. Following AHCPR review and approval of proposed members' qualifications, and the overall composition of the panel to ensure representation of a range of experience and expertise, the contractors will appoint panel members.

Nominations should indicate whether the individual is recommended to serve as the chairperson or as a member of the panel. Each nomination must include a copy of the individual's curriculum vitae or resume, plus a statement of rationale for the specific nomination. Nominations should be sent directly to the appropriate contractor listed below. To be considered, nominations must be received by the appropriate contractor on or before December 27, 1991 at the following addresses:

Otitis Media Contractor: Robert H. Sebring, Ph.D., American Academy of Pediatrics, 141 Northwest Point Blvd., P.O. Box 927, Elk Grove Village, IL 60009–0927, (708) 228–5005, FAX (708) 228–5097.

Congestive Heart Failure Contractor: Robert Brook, M.D., The RAND Corporation, 1700 Main Street, Santa Monica, CA, 90406–2138, (213) 393–0411, FAX: (213) 393–4818.

Post Stroke Rehabilitation Contractor: William Stason, M.D., Center for Health Economics Research, 300 Fifth Avenue, 6th Floor, Waltham, MA 02154, (617) 487–0200, FAX (617) 487–0202.

For Additional Information

Additional information on the guideline development process is contained in the AHCPR Program Note, Clinical Guideline Development, dated August 1990. This Program Note, describing the activities underway by AHCPR for facilitating the development of clinical practice guidelines, includes the process and criteria for panel selection. Copies may be obtained by calling the Center for Research Dissemination and Liaison, Agency for Health Care Policy and Research, at (301) 443–2904.

For further information on the process for developing guidelines, medical review criteria, standards of quality, and performance measures, contact Kathleen A. McCormick, Ph.D., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 327, Rockville, MD 20852, Telephone: (301) 227–6671.

Dated: November 22, 1991.

J. Jarrett Clinton,

Administrator.

[FR Doc. 91–28773 Filed 11–29–91; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 91C–0432]

Ethicon, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ethicon, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 to color polyglecaprone 25 (e-caprolactone/glycolide copolymer) absorbable sutures for general surgery.

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1) (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 1C0236) has been filed by Ethicon, Inc., P.O. Box 151, Somerville, NJ 08876–0151. The petition proposes to amend the color additive regulations in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in polyglecaprone 25 (e-caprolactone/glycolide copolymer) absorbable sultures for general surgery.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statements is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 20, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–28754 Filed 11–29–91; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91F–0430]

Ciba-Geigy Corp; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for additional safe uses of 2-methyl-4,6-bis[(octylthio)methyl]phenol as a stabilizer in can-end and side seam cements and in various polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF–355), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1B4283) has been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532–2188. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for addition safe uses of 2-methyl-4,6-bis[(octylthio)methyl]phenol as a stabilizer in can-end and side seam cements and in various polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 20, 1991

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–28753 Filed 11–29–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BPD-750-N]

Medicare and Medicaid Programs; ICD-9-CM Coordination and Maintenance Committee Meeting

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

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday and Friday, December 5 and 6, 1991 from 9 a.m. to 5 p.m. Eastern Standard Time.

ADDRESSES: The meetings will be held in room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Laura T. Green, RRA, (301) 966-9364.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system that we require for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid, and all other health-related programs under the Department of Health and Human Services. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use in Federal programs. It is co-chaired by the National Center for Health Statistics (NCHS) and the Health Care Financing Administration.

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for input concerning these issues from representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the director of NCHS and the Administrator of HCFA for their approval.

At the December 5 and 6, 1991 meeting, the Committee will discuss the following issues: The proposed revisions to the format and structure of Volume Three of ICD-9-CM, including the revision of the cardiovascular chapter and the respiratory chapter; insertion of sphenoidal electrodes; brush biopsy of the lung; permanent magnetic colostomy; rectal resection with anastomosis; percutaneous drainage of subphrenic abscess; hysterectomy, not otherwise specified; artificial pacemaker slew rate check; post-polio alveolar hypoventilation; hypoxia and birth asphyxia; gram negative infections; peripheral vascular disease; urinary incontinence; chronic liver disease and cirrhosis; facial anomalies; eosinophilia-myalgia syndrome; surveillance of implantable subdermal contraceptive capsules; and other topics.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; No. 93.774, Medicare—Supplementary Medical Insurance)

Dated: November 12, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-28719 Filed 11-29-91; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

National Institute of General Medical Sciences; Meeting

Notice is hereby given of a correction in the notice of meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, January 23 and 24, 1992, in Building 31C, Conference Room 10, National Institutes of Health, which was published in the **Federal Register** on October 29, (56 FR 55661).

The meeting will be open to the public from 8:30 a.m. to 11 a.m. on January 23, not 8:30 a.m. to 11 p.m., for opening remarks; report of the Director, NIGMS; and other business of the Council.

Dated: November 22, 1991.

Sue Feldman,

Committee Management Officer, NIH.

[FR Doc. 91-28714 Filed 11-29-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting, Announcement of NTP Draft Technical Reports Projected for Public Peer Review From November 1991 Through Summer 1993

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies and short-term toxicity studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee during their next six meetings from November 1991 through summer 1993. The listing will continue to be updated with announcements in the **Federal Register** approximately twice a year. The meeting date for 1991 is November 21. Meeting dates for 1992 are March 17-18, June 23-24, and December 1-2. Specific dates for 1993 meetings will be established at a later time.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or established dates of reviews and includes Chemical Abstracts Service registry numbers, responsible study scientists with telephone numbers, NTP report numbers (if assigned), primary use(s), species, route of administration, and exposure levels used.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP study scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone 919/541-3971, FTS 629-3971, will furnish final agendas, and other program information prior to a

meeting, and summary minutes subsequent to a meeting.

Kenneth Olden,

Director, National Toxicology Program.

National Toxicology Program Toxicology and Carcinogenesis Studies

Chemicals Projected for Peer Review, November 1991 through Summer 1993

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS PROJECTED FOR PEER REVIEW

Chemical Name/Cas No.	Study		Route	Species	Exposure levels	NTP TR No.
	Use	Scientist				
Chemicals Tentatively Scheduled for Peer Review, November 21-22, 1991						
Long-term studies:						
1,3-BUTADIENE 106-99-0	RUBR	R. Melnick, 919-541-4142	INHAL	M	0, 6.25, 20, 62.5, 200, 625 PPM/50 per group	434
P-Nitroaniline100-01-6	DYE	R. Irwin, 919-541-3340	GAV	M	0,3,30,100 MG/KG/50 per group	418
O-Nitroanisole 91-23-6	PHAR	R. Irwin, 919-541-3340	FEED	RM	R: 0,222,666,2000, M: 0,666, 2000, 6000 PPM/ 50 per group.	416
Pentachloroanisole 1825-21-4	PEST	M. McDonald, 919-541-4132	GAV	RM	MR: 0,10,20,40, FR&M: 0,20,40 MG/KG	414
Triamterene 396-01-0	PHAR	J. Dunnick, 919-541-4811	FEED	RM	R: 0,150,300,600, M: 0,100, 200, 400 PPM restart mice: 0, 400 PPM/50 per group.	420
Short-term toxicity studies:						
Diethanolamine 111-42-2	TEXL	R. Melnick, 919-541-4142	SP	RM	R&M:0,37,5,75,300,600 MG/ML	20
Diethanolamine111-42-2	TEXL	R. Melnick, 919-541-4142	WATER	RM	MR:0,.32,.63,1.25,2.5,5.0MG/ML FR:0,.16,.32,.63,1.25,2.5MG/ML MICE:0,.63,1.25,2.5,5.0,10.0MG/ML.	20
Dimethylformamide 68-12-2	SOLV	D. Lynch, 513-684-8213	INHAL	Rm	R&H:0,50,100,200,400,800 PPM	22
2-Hydroxy-4-Methoxybenxophenone 131-57-7.	COSM	J. French, 919-541-2569	FEED	RM	R&M:0,3125,6250,12500,25000, 50000PPM	21
2-Hydroxy-4-Methoxybenzophenone 131-57-7.	COSM	J. French, 919-541-2569	SP	RM	R:0,12.5,25,50,100,200;M:0,22.75,45.5,91,182,364 MG/KG.	21
Methyl Ethyl Ketone Peroxide 1338-23-4	PLAS	E. Zeiger, 919-541-4482	SP	RM	R&M: 0,0.3,1,3,10, 30 %	18
M-Nitrotoluene 99-08-1	DYE	J. Dunnick, 919-541-4811	FEED	RM	R&M: 0, 625, 1250, 2500, 5000, 10000 PPM/10 per group.	23
O-Nitrotoluene 88-72-2	RUBR	J Dunnick, 919-541-4811	FEED	RM	R&M: 0, 625, 1250, 2500, 5000, 10000 PPM/10 per group.	23
P-Nitrotoluene 99-99-0	DYE	J. Dunnick, 919-541-4811	FEED	RM	R&M: 0, 625, 1250, 2500, 5000, 10000 PPM/10 per group.	23
Chemicals Tentatively Scheduled for Peer Review Spring 1992						
Long-term studies:						
1-Amino-2,4-Dibromoanthraquinone 81-49-2.	DYE	J. Huff, 919-541-3780	FEED	RM	R: 0,.2,.5,1.02.0, M: 0,1.0 2.0 %/50 per group	383
0-Benzyl-P-Chlorophenol 120-32-1	GERM	J. Dunnick, 919-541-4811	SP	M	Acetone Control, DMBA/DMBA, DMBA/Acetone, DMBA/TPA, DMBA/BCP (1,10,30 MG/ML), TPA/TPA, BCP)100)/TPA, BCP/BCP, BCP(10)/BCP(1,10,30).	424
O-Benzyl-P-Chlorophenol 120-32-1	GERM	J. Dunnick, 919-541-4811	GAV	RM	MR: 0,30,60,120, FR: 0,60,120, 240, M: 0,120,240,480 MG/KG/50 per group.	424
Coumann 91-64-5	PHAR	J. Dunnick, 919-541-4811	GAV	RM	R: 0,25,50,100; M: 0,50,100, 200 MG/KG/60 & 70 per group respectively.	422
2,3-Dibromo-1-Propanol 96-13-9	FLAM	K. Abdo, 919-541-7819	SP	RM	R; 0,188,375, M: 0,88,177 MG/KG/50 per group	400
3,4-Dihydrocoumarin 119-84-6	FOOD	J. Dunnick, 919-541-4811	GAV	RM	R: 0,150,300,600, M: 0,200,400,800 MG/KG/50 per group.	423
Diphenylyhdantoin (Phenytoin) 57-41-0	PHAR	R. Chhabra, 919-541-3386	FEED	RM	R: 0,240,800,2400, MM: 0,30,100,300, FM: 0,60,200,600 PPM/50 per group.	404
Manganese Sulfate Monohydrate 10034-96-5.	DYE	J. Cirvello, 919-541-1408	FEED	RM	0,1500,5000,15000 PPM/ 50 per group	428
Polybrominated Biphenyl Mixture (Firemaster FF-1) 67774-32-7.	FLAM	R. Chhabra, 919-541-3386	FEED	RM	0,1,3,10,30 PPM/50 per group	398
Promethazine Hydrochloride 58-33-3	PHAR	M. McDonald, 919-541-4132	GAV	RM	R: 0,8.3,16.6,33.3, FM: 0, 3.75, 7.5,15.0, MM: 0,11.25,22.5,45.0 MG/KG.	425
Talc 14807-96-6	COSM	K. Abdo, 919-541-7819	INHAL	RM	0,6,18 MG OF TALC/M3 of atmosphere	421
Tricresyl Phosphate 1330-78-5	PLAS	R. Irwin, 919-541-3340	FEED	RM	R: 0,75,150,300,600, M: 0,60,125,250 PPM/50 per group.	433
Turmeric, Oleoresin (Curcumin) 8024-37-1	FOOD	J. Dunnick, 919-541-4811	FEED	RM	0, .2,1.0,5.0%	427

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical Name/Cas No.	Study		Route	Species	Exposure levels	NTP TR No.
	Use	Scientist				
Short-term toxicity studies:						
Glutaraldehyde 111-30-8	ADHS	F. Kari, 919-541-2926	INHAL	RM	0, 62.5, 125, 250, 500 OR 1000 PPB (10/S/S)	
1,6-Hexanediamine, Dihydrochloride 6055-52-3.	INTR	J. French, 919-541-2569	INHAL	RM	R&M: 0,1.6,5,16,50,160 MG/M3	
Chemicals Tentatively Scheduled for Peer Review Summer 1992						
Long-term studies:						
Barium Chloride Dihydrate 10326-27-9	DYE	K. Abdo, 919-541-7819	WATER	RM	0,500,1200,2500 PPM	432
Benzethonium Chloride	GERM	K. Abdo, 919-541-7819	SP	RM	R&M: 0,0.15,0.5,1.5 MG/KG/50/group	438
Benzyl Acetate 140-11-4	FOOD	K. Abdo, 919-541-7819	FEED	RM	R: 0,0.3,0.6,1.2%, M: 0,0.033, 0.1,0.3%/50 per group.	431
Tert-Butyl Alcohol 75-65-0	PHAR	J. Dunnick, 919-541-4811	WATER	RM	R: 0,0.125, 0.25, 0.5%(M). 0, 0.25, 0.5, 1.0%(F). M:0, 0.5,1.0,2.0%(M&F)/50 per group.	436
C.I. Direct Blue 218 28407-37-6	DYE	J. Dunnick, 919-541-4811	FEED	RM	0, 1000, 3000, 10000 PPM/60 per group	430
Corn Oil 8001-30-7	FOOD	G. Boorman, 919-541-3440	GAV	R	0, 2.5, 5, 10 ML corn oil/KG for 103 weeks./50 per group.	426
Diethyl Phthalate 84-66-2	INTR	W. Eastin, 919-541-7941	SP	RMM	R: 0,100,300 M: 0,7.5,15,30 UL/100 UL solution/50 per group.	440
Diethyl Phthalate 84-66-2	INTR	W. Eastin; 919-541-7941	SP	RM	100 UL (promoter) neat chemical	429
Dimethyl Phthalate 131-11-3	PLAS	W. Eastin; 919-541-7941	SP	M	100 UL (promotor) neat chemical on uninitiated and DMBA initiated skin.	429
Hexachlorocyclopentadiene 77-47-4	PEST	K. Abdo; 919-541-7819	INHAL	RM	R: 0,.01,.05. 2PPM M: 0, .01, .05, .2, .5PPM/50 per group.	437
Methylene Chloride 75-09-2	SOLV	G. Boorman; 919-541-3440	GAV	R	Male rats only 0, 2.5, 5, 10 ML/KG/50 per group (corn oil), methylene chloride is same at all corn oil doses (500 MG/KG). testing the interaction of MC on corn oil.	426
Safflower Oil 8001-23-8	FOOD	G. Boorman; 919-541-3440	GAV	R	0, 2.5, 5, 10 ML/KG/50 per group	426
4,4-Thiobis (6-Tert-Butyl-M-Cresol) 96-69-5.	RUBR	S. Eustis; 919-541-3231	FEED	RM	R: 0, .05, .1, .25, M: 0, .025, .05, .1%	435
Tricaprylin 538-23-8	FOOD	G. Boorman; 919-541-3440	GAV	R	0, 2.5, 5, 10 ML/KG/50 per group	426
Short-term toxicity studies:						
.2-(4-Aminophenyl)-6-Methyl-7-Benzothiazole Sulfonic Acid.	INTER	J. Bucher; 919-541-4532	FEED	RM	R&M: 0, .25, .5, 1.0, 2.0, 4.0%	
Chemical Mixture-Drinking Water Contaminants Chemmixh20.	COMT	J. Bucher; 919-541-4532	WATER	RN		
Cupric Sulfate 7758-99-8	ELEC	J. Bucher; 919-541-4532	FEED	RM	R: O, 500, 1000, 2000, 4000, 8000 PPM M: 0, 1000, 2000, 4000, 8000, 16000 PPM (10/S/S).	
Dibutyl Phthalate 84-74-2	PLAS	J. Bucher; 919-541-4532	FEED	RM	R: 0, 2500, 5000, 10000, 20000, OR 40000 PPM R: 0, 1250, 2500, 5000, 10000, 20000 PPM (10/S/S).	
5,6-Dichloro-2-Benzothiazolamine 24072-75-1.	INTER	J. Bucher; 919-541-4532	FEED	RM	R: 0.0, 0.15, 0.38, 0.96, 2.4, 6.0, M: 0, 0.075, 0.15, 0.38, 0.96, 2.4 MG/G.	
Ethylene Glycol Monobutyl Ether (EGMBE) 111-76-2.	SOLV	G. Henningsen; 513-533-8194	WATER	RM	Core study: R&M 0, 750, 1500, 3000, 4500, 6000 PPM/10 per group: stop study: R: 0, 1500, 3000, 6000 PPM/30 per group.	
Ethylene Glycol Monoethyl Ether (EGMEE) 110-80-5.	SOLV	G. Henningson; 513-533-8194	WATER	RM	Core study: R. 0, 1250, 2500, 5000, 10000, 20000, M: 0, 2500, 5000, 10000, 20000, 40000 PPM/10 per group stop study: PPM/30 per group.	
Ethylene Glycol Monomethyl Ether (EGMME) 109-86-4.	COSM	G. Henningsen; 513-533-8194	WATER	RM	Core study: R: 0, 750, 1500, 3000, 4500, 6000, M: 0, 2000, 4000, 6000, 8000, 1000 PPM/10 per group; stop study doses: R: 0, 1500, 3000, 6000 PPM/30 per group.	
Ferrocene	FUEL	J. Bucher; 919-541-4532	INHAL	RM	O, 3, 10, 30 MG/M3	
6-Methoxy-2-Benzothiazolamine 1747-60-0.	INTR	J. Bucher; 919-541-4532	FEED	RM	0, .25, 4.0 MG/GM	
4-(6-Methyl-2-Benzothiazolyl)-Benzenamine 92-36-4.	INTR	J. Bucher; 919-541-4532	FEED	RM	R: 0, .00625, .0125, .025, .05, .1%, M: 0, .0125, .025, .05, .1, .2%.	
3-Methyl-6-Methoxy-2-Amino-Benzothiazolium Chloride.	INTR	J. Bucher; 919-541-4532	FEED	RM	R&M: 0, 0.25, 0.5, 1.0, 2.0, 4.0 MG/G	
Riddelline 23246-96-0	PHAR	P. Chan; 919-541-7561	GAV	RM	0, 0.33, 1.0, 3.3, 10.0, 25.0 MG.KG	
Sodium Cyanide 143-33-9	FUME	J. bucher; 919-541-4532	WATER	RM	R&M: 0, 3, 10, 30, 100, 300 PPM (10 per group)	
Sodium Selenate 13410-01-0	PEST	J. Bucher; 919-541-4532	WATER	RM	3.75, 7.5, 15, 30, 60 PPM	
Sodium Selenite 10102-18-8	FEED	J. Bucher; 919-541-4532	WATER	RM	0, 2, 4, 8, 16, 32 PPM (10 per group)	

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical Name/Cas No.	Study		Route	Species	Exposure levels	NTP TR No.
	Use	Scientist				
Tetrachlorophthalic Anhydride 117-08-8	FLAM	F. Kari, 919-541-2926	GAV	RM	0, 94, 187, 375, 750, 1500 MG/KG	
Chemicals Tenatively Scheduled for Peer Review Fall, 1992						
Long-term studies:						
Init/Prom Comparative Mouse Study (DMBA/TPA/BPO/MNNG) init/prom.	PHAR	W. Eastin, 919-541-7941	SP	MM	DMBA/Acetone(50,25,2.5UG), DMBA 2.5 TPA 5UG, BPO 20MG, DMBA/TPA (2.5,25,50UG/5UG), DMBA/BPO (2.5,25UG/20MG) and MNNG/acetone(1000,500,100UG), MNNG 100UG, TPA 5UG, BPO 20MG, MNNG/BPO(100,500,1000UG/20MG),MNNG/TPA(100,1000UG/5UG).	
Init/Prom Comparative Mouse Study (DMBA/TPA/BPO/MNNG) init/prom.	PHAR	W. Eastin, 919-541-7941	SP	MM	DMBA/Acetone(25,2.5,.25UG), DMBA 2.5 TPA 5UG, BPO 20MG, DMBA/TPA (.25,2.5,25UG/5UG), DMBA/BPO (2.5,25UG/20MG) and MNNG/acetone(1000,500,100UG), MNNG 100UG, TPA 5UG, BPO 20MG, MNNG/BPO(100,500,1000UG/20MG),MNNG/TPA(100,1000UG/5UG).	
Init/Prom Comparative Mouse Study (DMBA/TPA/BPO/MNNG) init/prom.	PHAR	W. Eastin, 919-541-7941	SP	MM	DMBA/Acetone(25,2.5,.25UG): DMBA 2.5:TPA 1UG:BPO 20MG: DMBA/TPA(.25,2.5,25/1UG): DMBA/BPO (2.5,25UG/20MG) and MNNG/Acetone(1000,500,100UG): MNNG 100UG:TPA 5UG:BPO 20MG: MNNG/BPO(100,500,1000 UG/20MG).	
Methylphenidate Hydrochloride 298-59-9	PHAR	J. Dunnick, 919-541-4811	FEED	RM	R: 0,100,500,1000 PPM. M: 0,50,250,500 PPM/50 per group	
P-Nitrobenzoic Acid 62-23-7	INTR	K. Abdo; 919-541-7819	FEED	RM	0, 1250, 2500, or 5000 PPM /60 per group	
Short-term toxicity studies:						
Carisoprodol 78-44-4	PHAR	P. Chan; 919-541-7561	GAV	RM 0,25,400 MG/KG/5 per group		
Chemicals Tentatively Scheduled for Peer Review Spring, 1993						
Long-term studies:						
Acetonitrile 75-05-8	SOLV	J. Roycroft, 919-541-3627	INHAL	RM	R. 0, 100, 200, OR 400 PPM M: 0, 50, 100, OR 200 PPM; 50/group.	
Isobutyl Nitrite 542-56-3	INTR	K. Abdo, 919-541-7819	INHAL	RM	R&M: 0, 37, 75, OR 150 PPM	
Nickel (II) Oxide 1313-99-1	INTR	W. Eastin, 919-541-7941	INHAL	RM	R: 0, .62, 1.25, OR 2.5 M: 0, 1.25, 2.5, OR 5.0 MG/M3; 50/group.	
Nickel Sulfate Hexahydrate 10101-97-0	INTR	W. Eastin, 919-541-7941	INHAL	RM	R: 0, 0.125, 0.25, or 0.5 M: 0, .25, .5, or 1.0 MG/M3; 50/group.	
Nickel Subsulfide 12035-72-2	ENVH	W. Eastin, 919-541-7941	INHAL	RM	R: 0, 0.075, OR 0.15, M: 0, 0.6, OR 1.2 MG/M3; 50/group.	
Scopolamine Hydrobromide Trihydrate 6533-68-2.	PHAR	W. Eastin, 919-541-7941	GAV	RM	R&M: 0, 1, 5, OR 25 MG/KG; 70/group diet restriction mice: 0 OR 0.25 MG/KG; 70/group.	
Tetrafluoroethlene 116-14-3	FOOD	J. Roycroft, 919-541-3627	INHAL	RM	Mice & FR: 0, 312, 625, OR 1250 MR: 0, 156, 312, OR 625 PPM; 50/group.	
1-Trans-Delta-9-Tetrahydrocannabinol 1972-08-3.	PHAR	J. Dunnick, 919-541-4811	GAV	RM	R: 0, 12.5, 25, OR 50; M: 0, 125, 250, OR 500 MG/KG; 50/group.	
Triethanolamine 102-71-6	DTRG	W. Eastin, 919-541-7941	SP	RM	MR: 0, 32, 63, OR 125; FR: 0, 63, 125, OR 250; MM: O, 200, 630, OR 2000; FM: 0, 100, 300, OR 1000 MG/KG; 60/group.	
Chemicals Tentatively Scheduled for Peer Review Summer, 1993						
Long-term studies:						
2,2-Bis(Bromomethyl)-1,3-Propanediol	FLAM	R. Irwin, 919-541-3340	FEED	RM	R: 0, 2500, 5000, OR 10000 PPM M: 0, 362, 625, OR 1250 PPM.	
T-Butylhydroquinone 1948-33-0	FOOD	K. Abdo, 919-541-7819	FEED	RM	R&M: 0, 0.125, 0.25, OR 0.5% IN FEED; 60 RATS, 50 Mice.	
Codeine 76-57-3	PHAR	D. Walters, 919-541-3355	FEED	RM	R: 0, 400, 800, OR 1600 M: 0, 750, 1500, OR 3000 PPM; 60/group.	
D & C Yellow No. 11 8003-22-3	DYE	W. Eastin, 919-541-7941	FEED	R	0, 0.05, 0.17, OR 0.5% 50/group	
1,2-Dihydro-2,2,4-Trimethylquinoline (Monomer) 147-47-7.	RUBR	J. Dunnick, 919-541-4811	SP	RM	Rats: 0, 60, OR 100 MG/KG Mice: 0, 6, OR 10 MG/KG (Core).	
Nitromethane 75-52-5	FUEL	J. Roycroft, 919-541-3627	INHAL	RM	R: 0, 94, 188, OR 375 PPM; 50/group M: 0, 188, 375, OR 750 PPM; 50/group.	
Ozone 10028-15-6	IND	G. Boorman, 919-541-3440	INHAL	RM	R&M: 0, 0.12, 0.5, OR 1.0 PPM (50/S/S)	

NTP TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS PROJECTED FOR PEER REVIEW—Continued

Chemical Name/Cas No.	Study		Route	Species	Exposure levels	NTP TR No.
	Use	Scientist				
Ozone 10028-15-6	IND	G. Boorman, 919-541-3440	INHAL	RM	R&M: 0, 0.5, OR 1.0 PPM (50/S/S)	
Ozone/NNK 10028-15-6	TBCO	G. Boorman, 919-541-3440	INHAL	R	Male rats only: 0, 0.5 PPM ozone with 0, 0.1, 1.0 MG/KG NNK by S.C. Injection (20 weeks only).	
Salicylazosulfapyridine 599-79-1	PHAR	F. Kari, 919-541-2926	GAV	RM	R: 84, 168, OR 337.5 MG/KG M: 625, 1350, OR 2700 MG/KG 50/group.	
Tetrahydrofuran 109-99-9	SOLV	J. Roycroft, 919-541-3627	INHAL	RM	R&M: 0, 200, 600, OR 1800 PPM (50/S/S)	

Abbreviations used:
USE Primary Use Category:
ADHS As or in Adhesives, Glues, and Tape

COMT Contaminates and/or Impurities
COSM Cosmetics, Perfumes, Fragrances, Hair Products
DTRG Detergents and Cleaners
DYE As or in Dyes, Inks, and Pigments
ELEC In Electrical and/or Dielectric Systems

ENVH Environmental (Air/Water) Pollutants

FEED As or in Animal Feed or Feed Products

FLAM Flame Retardants
FOOD Food, Beverages, or Additives
FUEL As or in Fuel or Oil Products
FUME Fumigants
GERM Germicides, Disinfectants, Antiseptics

IND Industrial Uses
INTR Chemical Intermediate or Catalyst
PEST Pesticides, General or Unclassified
PHAR Pharmaceuticals or Intermediates
PLAS As or in Plastics
RUBR Rubber Chemical
SOLV Vehicles and Solvents
TBCO Tobacco and Tobacco Products
TEXL In Manufacture of Textiles.
ROUTE Route of Administration:
FEED Oral in Feed
GAV Oral, Gavage
INHAL Inhalation
SP Skin Paint
WATER Oral with Water.
SPEC Species:
R=Rats
M=Mice.

[FR Doc. 91-28715 Filed 11-29-91; 8:45 am]
BILLING CODE 4140-01-M

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 56 FR 55678, October 29, 1991) is amended to reflect the following changes in the Office of the Director, National Institutes of Health (NIH): (1) Revise the functional statement of the Office of Extramural Programs (OEP) (HNA32); and (2) establish an Office of the Director (HNA321) within the Office of Extramural Programs. These changes will more clearly reflect the Office's roles and responsibilities, while creating an organizational focal point for the execution of extramural policy development and implementation, program review, and coordination of the extramural programs of the research institutes.

Section HN-B, Organization and Functions, is amended as follows: (1) Under the heading Office of Extramural Programs (HNA32), delete the functional statement in its entirety and insert the following:

(1) Advises the Deputy Director for Extramural Research and the Associate Director for Extramural Affairs on matters pertaining to the management of NIH extramural research programs; (2) develops and implements regulations, policies, and procedures governing scientific program management and review aspects of NIH extramural awards (grants, cooperative agreements, and contracts); (3) establishes and maintains communication between the Office of Extramural Programs and the research institutes concerning policies and procedures dealing with the management of extramural programs; also acts to coordinate programs involving two or more institutes, as appropriate; (4) establishes and maintains communication between NIH and awardee and applicant institutions and investigators; in particular, ensures the complete and timely publication of extramural policies and funding opportunities through the NIH Guide for Grants and Contracts; (5) develops and implements regulations, policies, and procedures regarding financial conflict of interest and promotion of research ethics and responsible conduct of research; (6) develops and implements regulations, policies, and procedures governing all aspects of extramural research training and development; (7) manages staff training activities for (a) health-related scientists in health science administration for the extramural programs of NIH/PHS; (b) NIH employees (Staff Training in Extramural Programs (STEP)); and (c) academic administrators from minority and womens' institutions to acquaint them with opportunities for NIH support of biomedical research and to enhance the research environment of these institutions; (8) fosters and maximizes competition in the awarding of research and development contracts throughout NIH; approving non-competitive contracts within established dollar thresholds; (9) manages the process of applicant appeals to the peer review and adverse post-award determinations of competing assistance applications; (10) oversees and coordinates the Small Business Innovation Research (SBIR), the Academic Research Enhancement Award (AREA), and the Small Instrumentation (SI) programs; (11) receives and maintains all documentation relating to extramural inventions made with the assistance of research grants or research and development contracts from NIH and ADAMHA; and (12) performs special studies relating to extramural issues.

Office of the Director (HNA321). The Director, Office of Extramural Programs (OEP), supervises and manages the development and promulgation of policies, procedures, and plans for meeting the responsibilities of the Office. Additionally, the Director advises the Deputy Director for Extramural Research and the Associate Director for Extramural Affairs on matters pertaining to the management of NIH extramural research programs; conducts evaluations of programs, policies, and procedures, serves on numerous permanent ad hoc NIH, Departmental, interagency, and non-governmental committees concerned with extramural program activities; and serves as the Office of Extramural Research liaison to the Associate Administrator for Extramural Programs,

Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

Dated: November 19, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-28716 Filed 11-29-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 101-512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: December 16, 17, and 18, 1991; 9 a.m. to 5:30 p.m. daily; the Sheraton Tampa East, 7401 Hillsborough Avenue, Tampa, Florida. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs, MS 4140, 1849 C Street NW., Washington, DC, 20240, Telephone number (202) 208-4173.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss the Agency and Area Office organizational structures proposed by tribal leaders from each Area and will continue the analysis of the Central Office structure, functions, responsibilities, and authorities that need to be changed based on the Agency and Area Office proposals. The Budget Process, Delegations of Authority, Central Office Structure, Report Writing, and Economic Development Work Groups will continue work to present the results of their analyses as recommendations for Task Force action. Time for comments from the public on Task Force issues will be available during the meeting.

Dated: November 27, 1991.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 91-28952 Filed 11-29-91; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AZA-25267; A004]

Realty Action; Receipt of Conveyance of Mineral Interest Application

ACTION: Correction notice.

SUMMARY: The notice of realty action published on Monay, August 12, 1991, in Federal Register Volume 56, Number 155, page 38154, is corrected as follows:

1. Page 38154, column 1, line 23 should read: T. 3 N., R. 6 W.

2. Page 38154, column 1, line 65 should read: Consisting of 33,064.40 acres, more or less.

Dated: November 21, 1991.

Henri R. Bisson,

District Manager.

[FR Doc. 91-28775 Filed 11-29-91; 8:45 am]

BILLING CODE 4310-32-M

[AK-932-4214-10; AA-58199]

Conformance to Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice provides official publication of the surveyed description for Air Navigation Site No. 102 at Medfra. The plat of survey was officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska on July 19, 1991. United States Survey No. 10551, containing 36.75 acres, represents the land that was previously described as follows:

Kateel River Meridian

T. 27 S., R. 22 E.,

Beginning at the initial point marked by an iron pipe which is situated N. 26°55' W. 1811 feet from a point in the center of the Medfra-Nixon Mine Road at its terminus on the bank of the Kuskokwim River, all in the Mt. McKinley Recording Precinct.

Thence N. 37° E. 768 feet to Corner No. 1;
S. 53° E. 500 feet to Corner No. 2;
S. 37° W. 3200 feet to Corner No. 3;
N. 53° W. 500 feet to Corner No. 4;
N. 37° E. 2432 feet to the place of beginning (all corners being marked with iron pipes).

The area as described contained approximately 36.73 acres.

ADDRESSES: Inquiries about this land should be sent to the Alaska State Office, Bureau of Land Management, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907-271-3342.

Mike Haskins,

Acting Chief, Branch of Land Resources.

[FR Doc. 91-28720 Filed 11-29-91; 8:45 am]

BILLING CODE 4310-JA-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement in Anticipation of Receiving a Permit Application To Incidentally Take the Threatened Desert Tortoise in Washington County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) anticipates receiving an application from Washington County, Utah, for a permit to allow incidental take of the desert tortoise (*Gopherus agassizii*) in Washington County, Utah. An Environmental Impact Statement (EIS) will be prepared to evaluate the environmental impacts of the habitat conservation plan that will accompany the permit application. This notice describes the habitat conservation plan (proposed action) and possible alternatives, invites public participation in the scoping process for preparing the Statement, and identifies the Service official to whom questions and comments concerning the proposed action may be directed. This notice solicits written comments and notifies the public of five public scoping meetings to be held in Washington County, Utah, from December 10 through 12, 1991.

DATES: Five public scoping meetings will be held in Washington County, Utah. One public meeting will be held in Springdale on Tuesday, December 10, 7 p.m. to 9 p.m.; one in Hurricane on Wednesday, December 11, 3 p.m. to 6 p.m.; one in Washington on Wednesday, December 11, 7:30 p.m. to 9:30 p.m.; one in Ivins on Thursday, December 12, 3 p.m. to 5:30 p.m.; and one in St. George on Thursday, December 12, 7 p.m. to 10 p.m. (See **ADDRESSES** below for specific locations). Written comments must be received by January 13, 1992, at the address below.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104-5110.

The public meeting in Springdale will be held at the Springdale Elementary School, 898 Zion Park Boulevard. The meeting in Hurricane will be held at the Multi-Purpose Room of Hurricane Elementary School, 63 South 100 West. The meeting in Washington will be held at the Washington Elementary School, 300 North 300 East. The meeting in Ivins will be held at Ivins Town Hall, 90 West Center. The meeting in St. George will be held at the Washington County Building, 197 East Tabernacle.

FOR FURTHER INFORMATION CONTACT: Reed Harris, Field Supervisor Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, at the above address, telephone (801) 524–4430 or FTS 588–5630.

SUPPLEMENTARY INFORMATION: The Mojave population of the desert tortoise was listed as a threatened species on April 4, 1990. Because of its listing as threatened, the Mojave population of the desert tortoise is protected by the Endangered Species Act's (Act) prohibition against "taking." The Act defines "take" to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. "Harm" is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

However, the Service may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. For threatened species, such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition or educational purposes, incidental taking, or special purposes consistent with the purposes of the Act.

Washington County, Utah, is preparing to apply to the Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Act. This permit would authorize the incidental take of the desert tortoise during the course of development on private and State trust lands in Washington County, Utah. A private contractor was assigned the technical responsibility of preparing the permit application and accompanying habitat conservation plan for Washington County, and obtaining the information needed to prepare an EIS for Service review and approval. The purpose of the habitat conservation plan is to establish a program that will ensure the continued existence of the desert tortoise in Washington County, Utah, while resolving potential conflicts that may arise from otherwise lawful development activities on desert tortoise habitat on non-Federal lands within Washington County. The environmental impacts of the habitat conservation plan and other possible alternatives will be evaluated in the EIS. Washington County has assembled a 15-member Steering Committee to oversee the process of information gathering, development, and preparation of the Section 10(a)(1)(B) permit application, habitat conservation plan, and the EIS, which are being coordinated simultaneously.

The proposed action is a long-term habitat conservation plan. Development of the habitat conservation plan is currently underway through a public process that includes open meetings of the Steering Committee and a Technical Advisory Subcommittee established by the permit applicant in the fall of 1990. The primary purpose of the Steering Committee is to oversee preparation of the habitat conservation plan. The Steering Committee also has brought together groups affected by the listing of the desert tortoise and that have an interest in the development of the habitat conservation plan. The Technical Advisory Subcommittee consists of biologists and wildlife experts assigned the responsibility of collecting and analyzing species data and making recommendations to the Steering Committee.

Three subalternatives within the proposed action are identified. These subalternatives differ with respect to: (a) The location and size of specific areas in which incidental take of desert tortoises would be allowed, and (b) the use and size of tortoise management areas which would be managed for the conservation of the desert tortoise. Each of the three subalternatives is described below.

Subalternative A

This subalternative would allow incidental take in several small designated areas, totaling approximately 5,000 acres. There are an estimated 135,000 acres of tortoise habitat in Washington County. Tortoise habitat in the county is delineated into three categories by the Utah Division of Wildlife Resources. There are an estimated 108,000 acres of low density habitat (10 to 50 tortoises/square mile); an estimated 17,000 acres of medium density habitat (50 to 100 tortoises/square mile); and an estimated 10,000 acres of high density tortoise habitat (100 plus tortoises/square mile). Incidental take would be allowed in approximately 4 percent of all tortoise habitat in the county. These 5,000 acres would be restricted primarily to areas of low tortoise density as identified by the Steering Committee's Technical Advisory Subcommittee; however, a small percentage could come from the medium and high density areas. A program to provide appropriate biological compensation for incidental take of desert tortoises in these areas (which, among other things, may include establishment of tortoise management areas) would likely occur.

Subalternative B

This subalternative would allow incidental take in areas where conflicts exist between projected municipal growth and tortoise habitat. These conflict areas are principally within the corporate boundaries of northwest St. George (5,000 acres), northwest Hurricane (2,000 acres), north and northeast of Washington (7,500 acres), and north and east of Ivans (2,000 acres). This represents a total of 16,500 acres, which is approximately 12 percent of the total tortoise habitat in Washington County. An estimated breakdown of this acreage by tortoise density is provided below:

Municipality	Total acres	Tortoise habitat (acres)		
		Low density	Medium density	High density
St. George	5,000	1,500	500	3,000
Washington	7,500	250	6,750	500
Hurricane	2,000	750	1,000	250
Ivins	2,000	1,000	500	500
Totals	16,500	3,500	8,750	4,250

A program to provide appropriate biological compensation for incidental take of desert tortoises in these areas (which, among other things, may include establishment of tortoise management areas) would likely occur.

Subalternative C

This subalternative consists of the establishment of four tortoise management areas in which no desert tortoise take would be allowed. Incidental take would be allowed in all other habitat areas. The first tortoise management area would be the Beaver Dam Slope, an area of approximately 50,000 acres that includes desert tortoise critical habitat established in 1980 on Bureau of Land Management and State managed lands. The second area would be north of St. George, east of Highway 18, and west of the Turkey Farm Road, an area of approximately 5,000 acres consisting of the highest tortoise density habitat known in the United States. A third area would be on Bureau of Land Management lands north of St. George and Washington, an area of low and medium tortoise density of approximately 10,000 acres. The fourth area would be east of Interstate 15 and north and east of the town of Hurricane and the Virgin River, an area of approximately 5,000 acres consisting of low and medium tortoise density habitat. In all, approximately 70,000 acres of tortoise habitat would be preserved in tortoise management areas, approximately one-half of the total tortoise habitat in Washington County.

It is likely that one of the above described subalternatives of the proposed action, or some variation thereof, will be pursued by the project applicant. The major impacts associated with implementation of the proposed alternative would include:

(1) Potential impacts to species listed under the Act, particularly on the viability of the remaining desert tortoise populations in Washington County following implementation of the habitat conservation plan; and

(2) Potential impacts to development activities in Washington County, particularly if restrictions are required on development of private and State trust lands.

Three alternatives to the proposed action are identified. These are No Action, Special Legislation by Congress, and a Short-Term/Interim Habitat Conservation Plan.

The No Action (Status Quo) alternative would protect the desert tortoise by the Service's enforcement of the section 9 taking prohibition of the Act and from adverse impacts due to Federal activities through section 7 consultation. The only legally allowable means for non-Federal lands containing tortoise habitat to be developed would be if incidental take were permitted as a result of section 7 consultation on a proposed development involving a Federal action, or if individual section 10(a)(1)(B) permits are issued allowing incidental take by private individuals. Implementation of this alternative, which would protect the desert tortoise on a case-by-case basis, would reduce the feasibility of implementing county-wide conservation measures to protect the desert tortoise and six other listed species in Washington County, as would occur under the Proposed alternative.

The Special Legislation by Congress alternative could be pursued to specifically exempt Washington County from complying with the section 9 taking prohibitions of the Act with respect to the desert tortoise. However, special legislation is considered unlikely as it is extremely rare and usually implemented only for selected projects and not on a regional level.

The Short-Term/Interim Habitat Conservation Plan alternative would involve development of a short-term habitat conservation plan and issuance of a short-term permit that would allow incidental take of desert tortoises on non-Federal lands for a period of 1 to 3 years. This alternative would allow proposed development projects that were in progress at the time the desert tortoise was listed to proceed. An appropriate compensation plan would compensate for biological impacts to the desert tortoise. Following completion of the short-term habitat conservation plan, a long-term habitat conservation plan would likely to be prepared to cover future development actions on non-Federal lands.

The primary issue that must be addressed during the scoping and planning process for the habitat conservation plan and EIS is how to resolve conflicts between development and land management practices with listed and candidate species in Washington County. A tentative list of issues, concerns, and opportunities was developed. There will be a discussion of the potential effect, by alternative, in relationship to the following areas:

1. Desert tortoise;
2. Other endangered or threatened species in Washington County (woundfin minnow, Virgin River chub, peregrine falcon, bald eagle, Siler pincushion cactus, dwarf bear-poppy);
3. Candidate species in Washington County;
4. Multiple uses on Federal lands (livestock grazing, off-road vehicle use, recreation);
5. Local economy;
6. Growth and development in Washington, County; and
7. State trust lands.

Environmental review of the permit application will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), National Environmental Policy Act Regulations (40 CFR parts 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act, to obtain suggestions and information from other agencies and the public, on the scope of issues to be addressed in the Statement. Comments and participation in this scoping process are solicited.

The Draft Environmental Impact Statement should be available to the public in the spring of 1992.

Dated: November 22, 1991.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 91–28746 Filed 11–29–91; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 23, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 17, 1991.

Carol D. Shull,

Chief of Registration National Register.

ARIZONA

Pima County

Upper Davidson Canyon Archaeological District, Address Restricted, Sonoita vicinity, 91001891

CALIFORNIA

Alameda County

The Bellevue-Staten, 492 Staten Ave., Oakland, 91001896

Orange County

Casa Romantica, 415 Avenida Granada, San Clemente, 91001900

IDAHO

Payette County

McColl District Administrative Site, Jct. of W. Lake and Mission Sts., McCall, 91001892

KANSAS

Coffey County

Miller, Cleo F., House, Jct. of Broadway and Coffey Sts., Lebo, 91001897

KENTUCKY

Jackson County

Brushy Ridge Petroglyphs (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, McKee vicinity, 91001890
Goy, William, Petroglyph (Prehistoric Rock Sites in Kentucky MPS), Address Restricted, Macedonia vicinity, 91001889

Lee County

Big Sinking Creek Turtle Rock Petroglyphs (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Mt. Olive vicinity, 91001888

Menifee County

Skidmore Petroglyphs (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Fagan vicinity, 91001887

Powell County

Amburgy Hollow Petroglyphs (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Nada vicinity, 91001885
Mortin Fork Petroglyphs (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Nada vicinity, 91001885
Nodo Tunnel 2 (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Nada vicinity, 91001883
White's Rockshelter Petroglyphs (Prehistoric Rock Art Sites in Kentucky MPS), Address Restricted, Knowlton vicinity, 91001884

MASSACHUSETTS

Barnstable County

Nye, Benjomin, Homestead, 85 Old County Rd., Sandwich, 91001899

Middlesex County

First Congregotionol Church in Woburn, 322 Main St., Woburn, 91001898

MISSISSIPPI

Covington County

Covington County Courthouse, Dogwood Ave., Collins, 91001894

Monroe County

Lenoir Plontotion House, Off US 45 Alt., 3 mi. S of jct. with NM 382, Prairie vicinity, 91001893

NEW MEXICO

Otero County

Hoy Conyon Logging Comp (Railrood Logging Sites of the Sacramento Mountoins, New Mexico MPS, Address Restricted, Mayhill vicinity, 91001880
Hubbell Canyon Log Chute (Roilrood Logging Sites of the Socramento Mountoins, New Mexico MPS), Address Restricted, Cloudcroft vicinity, 9100882
Wills Conyon Spur Trestle (Roilrood Logging Sites of the Socramento Mountoins, New Mexico MPS), Address Restricted, Cloudcroft vicinity, 91001881

Rio Arriba County

Cottonwood Conyon Novojo Refugee Pueblito (Novojo—Refugee Pueblo TR), Address Restricted, Blanco vicinity, 91001879
Joramillo Conyon Novojo Refugee Pueblito (Novojo—Refugee Pueblo TR), Address Restricted, Blanco vicinity, 91001878
Lo Jora Novojo Refugee Pueblito (Novojo—Refugee Pueblo TR), Address Restricted, Blanco vicinity, 91001876
Poblo Spring Novojo Refugee Pueblito (Novojo—Refugee Pueblo TR), Address Restricted, Blanco vicinity, 91001877

OKLAHOMA

Cleveland County

DeBorr Historic District, Roughly bounded by Boyd St., DeBarr Ave., Duffy St. and the A T & S F RR tracks, Norman, 91001904
Gimeno, Potricio, House, 800 Elm St., Norman, 91001902

Oklahoma County

Gower Cemetery, Covel Rd. between Douglas and Post Rds., Edmond, 91001895

Ottawa County

McNoughton, John Potrick, Born, OK 137, 1.5 mi. N of OK 10, Quapaw vicinity, 91001903

Washington County

Bortlesville Downtown Historic District, Roughly bounded by SE Second St., SE Cherokee Ave., SE Fourth St. and the A T & S F RR tracks, Bartlesville, 91001905

TEXAS

Dallas County

Cedor Springs Ploce, 2531 Lucas Dr., Dallas, 91001901

[FR Doc. 91-28760 Filed 11-29-91; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-26,130, et al]

Tonka Corp., et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance.

In the matter of TA-W-26, 130 St. Louis Park, Minnesota Tonka Products Division—TA-W-26, 133 St. Louis Park, Minnesota; TA-W-26, 134 El Paso, Texas and Sales Personnel Operating in the Following States—TA-W-26, 113A Ohio; TA-W-26, 133B Illinois; TA-W-26,133C California; TA-W-26, 133D Washington; TA-W-26,133E New Jersey; TA-W-26, 133F New York; TA-W-26, 133G Texas; Parker Brothers Division—TA-W-26, 143 Beverly Massachusetts; TA-W-26, 144 Salem, Massachusetts; Kenner Products Division—TA-W-26, 145 Cincinnati, Ohio.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) The Department of Labor issued a Certification of Eligibility to apply for worker adjustment assistance on October 23, 1991, applicable to all workers of Tonka Corporation, St. Louis Park, Minnesota (TA-W-26, 130); Tonka Products Division, St. Louis Park, Minnesota (TA-W-26, 133) and El Paso, Texas [TA-W-26, 134] Parker Brothers Division, Beverly, Massachusetts (TA-W-26, 143) and Salem, Massachusetts (TA-W-26, 144); and the Kenner Products Division, Cincinnati, Ohio (TA-W-26, 145). The notice was published in the **Federal Register** on November 5, 1991 (56 FR 56530).

The Department is amending the subject certification by changing the impact date from July 16, 1990 to July 17, 1990. The July 16, 1990 impact date was inadvertently set one year and one day prior to the date of the July 17, 1991 petition.

Also, at the request of the State Agency, the Department reviewed the subject certifications. New information shows that several sales workers who worked for the Tonka Products Division were not included in the certification. The new information shows that the sales workers who worked for the Tonka Products worked primarily out of their homes in other States. The intent of the certification is to include all workers who were adversely affected by increased imports of articles like or directly competitive with toys and games. Therefore, the certification is amended to include the Tonka Products sales workers and their employment locations.

The amended notice applicable to TA-W-26, 130; TA-W-26, 133; TA-W-26, 134; TA-W-26, 143; TA-W-26, 144 and TA-W-26, 145 is hereby issued as follows:

"All workers of the following firms of Tonka Corporation:

(1) Tonka Corporation, St. Louis Park, Minnesota (TA-W-26, 130); (2) Tonka Products Division, St. Louis Park, Minnesota (TA-W-26, 133) and (3) El Paso, Texas (TA-W-26, 134); (4) Parker Brothers Division, Beverly, Massachusetts (TA-W-26, 143) and (5) Salem, Massachusetts (TA-W-26, 144); and (6) Kenner Products Division, Cincinnati, Ohio (TA-W-26, 145) who became totally or partially separated from employment on or after July 17,

1990 and all Tonka Products Division's sales personnel operating in the following States: Ohio, Illinois, California, Washington, New Jersey, New York and Texas (TA–W–26, 133A–G) who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed in Washington, DC, this 22nd day of November 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–28750 Filed 11–29–91; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Native American Programs' Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended 29 U.S.C. 1671(h)(1), notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee.

Times and Dates: The meeting will begin at 9 a.m. on January 15, 1992, and continue until close of business that day; and will reconvene at 9 a.m. on January 16, 1992, and adjourn at 12 p.m. that day. The final hour of the meeting on January 16 will be reserved for participation and presentations by members of the public.

Place: Department of Labor, 200 Constitution Avenue, NW., rooms S–4215 A, B and C, Washington, DC.

Status: The meeting will be open to the public.

Matters to be considered: The agenda will focus on a review of the activities of the subcommittees and a continued discussion of the issues identified at the last meeting of May 21–22, 1991 held in Spokane, Washington.

Contact person for more information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0500 (this is not a toll-free number).

Signed at Washington, D.C., 25th day of November, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91–28751 Filed 11–29–91; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Georgia Power Co. et al.; Vogtle Electric Generating Plant, Units 1 and 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF–68 and Facility Operating License No. NPF–81 issued to Georgia Power Company, et al. (licensee), for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia 30830.

The proposed amendments would change the Technical Specifications (TS) to revise the minimum required thermal design flow (TDF). Specifically, the footnote in TS Table 2.2.1, for "Loop Design Flow" would be changed to reduced the specified flow from 95,700 gpm to 93,600 gpm. Similarly, in TS 3.2.5.c, the "Reactor Coolant System (RCS) Flow" specified in the LCO (limiting condition for operation) and associated TS Bases 3/4.2.5 would be revised from 393,136 gpm to 384,509 gpm.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The TDF is a design input parameter in the accident analyses and reactor core thermal/hydraulic design calculations that demonstrate the necessary heat removal from the reactor core. The TDF value assumed in these analyses and reflected in the plant TS provide the licensing basis for the plant. The licensee indicates that the reduction in the TDF has been factored in the accident analyses including evaluation of components and systems, and radiological consequences, as part of its previously NRC approved analyses for VANTAGE–5 reload fuel, and relocation of steam generator narrow range level instrumentation taps. The licensee also indicates that additional transients and events, which were not considered in its VANTAGE–5 or level tap relocation analyses, have been reanalyzed. The structural and functional integrity of the plant systems are based on RCS flow assumptions that are more conservative than the currently proposed TDF values.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. Under the Commission's regulations, this means that operation of the facility in accordance with the provided amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The reduction in TDF and the LCO value do not involve a significant increase in the probability or consequences of an accident previously evaluated. An assumed lower TDF value for the accident analyses will not cause acceptance criteria to be exceeded as determined by the component and systems evaluation. Structural and functional integrity of the plant systems is maintained since design criteria are based on conservative higher RCS flow assumptions. The reduced LCO flow value will similarly not affect any mechanical design issues. The results of the accident analyses have been shown to meet all acceptance criteria at the reduced TDF value. RCS flow rate is an initial condition assumption to the accident analyses but it is not itself an initiator for any transient. Therefore, the probability of occurrence is not affected.

The radiological consequences of operation at 3565 MWt with reduced TDF have been assessed as part of VANTAGE–5 fuel program. It was concluded that offsite dose predictions remain within the acceptance criteria for each of the transients affected and this evaluation bounds the conditions of operation at 3411 MWt. Therefore, the consequences of an accident previously evaluated are not increased.

2. The decrease in TDF and the LCO flow value does not create the possibility of a new or different kind of accident from any accident previously evaluated. No new operating configuration is imposed as a result of the assumed or measured flow reduction. Hence, no new failure modes or failure scenarios are being created for any plant equipment. System and component design bases continued to be based on conservatively higher RCS flow rates. The structural and functional integrity is not challenged as a result of a change in the flow value assumed in the accident analyses or by a reduced flow measurement requirement. Therefore, the types of accidents defined in the FSAR (Final Safety Analysis Report) continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

3. The proposed change does not involve a significant reduction in the margin of safety since the accident analyses meet all acceptance criteria and the plant systems and equipment integrity have not been adversely affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 2, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amendmented petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to reply to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to

David B. Matthews: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, suite 1400, 127 Peachtree Street, NW., Atlanta, Georgia 30303–1810 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 12, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Budke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 26th day of November 1991.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91–28921 Filed 11–29–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Lighting Co. (Shoreham Nuclear Power Station); Exemption

I

Long Island Lighting Company (LILCO or the licensee) is the holder of Possession Only License No. NPR–82, which authorizes the possession of the Shoreham Nuclear Power Station (the facility) but does not allow operation at any reactor power level. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a boiling-water reactor located at the licensee's site in Suffolk County, New York, and is currently defueled with the fuel stored in the spent fuel pool.

II

By letter dated June 11, 1990, and supplemented by letter dated April 11, 1991, the Long Island Lighting Company (LILCO or the licensee) requested an exemption from 10 CFR 50.75 regarding the requirements for providing financial assurance of adequate funding for decommissioning. The Shoreham Nuclear Power Station (SNPS or Shoreham) was permanently shut down on February 28, 1989, and defueling was commenced. On June 28, 1989, an agreement (1989 Settlement Agreement) between the State of New York and LILCO became effective. Under the 1989 Settlement Agreement, LILCO is committed never to operate Shoreham as a nuclear facility and to transfer it to the Long Island Power Authority (LIPA) for decommissioning. On August 9, 1989, SNPS was completely defueled. LILCO and LIPA entered into a Site Cooperation and Reimbursement Agreement (Site Agreement) on January 24, 1990. This agreement, among other things, sets forth the mechanism for payment, by LILCO, for the decommissioning of SNPS. Additionally, a possession only license was issued by the NRC on June 14, 1991, prohibiting the operation of the SNPS reactor.

III

The decommissioning regulations were last amended by a final decommissioning rule on June 27, 1988, which established several acceptable methods by which power reactor licensees could provide assurance that they will have sufficient funds to decommission their plants by the time the plants are permanently shut down. Essentially, all power reactor licensees plan to use external sinking funds that accumulate decommissioning money over the remaining facility operating life. In considering the final decommissioning rule, the Commission acknowledged that there might be instances in which reactors would permanently shut down before attaining a full-term operating life. However, because it was viewed as unlikely that many instances of premature decommissioning would occur, the rule did not explicitly provide remedies for this situation. For plants that had shut down before the effective date of the rule (i.e., July 27, 1988), requirements for contents of the decommissioning plan, including provisions for assuring adequate funding "may be modified with the approval of the Commission to reflect the fact that the decommissioning process has been initiated previously" (10 CFR 50.82(a)). For plants that permanently shut down after July 27, 1988, 50.75(e) calls for funds to be provided by one of three methods: Prepayment, surety, or external sinking fund in which the total amount of funds would be sufficient to pay for decommissioning costs at the time termination of operation is expected. These funding requirements are designed to provide reasonable assurance that at the time of permanent end of operations sufficient funds are available to decommission the facility in a manner which protects public health and safety.

The NRC staff has determined that requiring prematurely shut down plants (ones after July 27, 1988) to comply fully with the 10 CFR 50.75(e) regulations might impose a severe financial burden on these plants since they have not operated long enough to have accumulated sufficient funds for decommissioning. On November 26, 1990, the staff solicited guidance from the Commission (SECY–909–386) on this issue. In its December 21, 1990, Staff Requirements Memorandum, the Commission responded to SECY–90–386 instructing the staff to develop a proposed decommissioning rule whereby the appropriate decommissioning funding accumulation period for licensees having prematurely shut down after July 27, 1988, be determined on a "case-by-case" basis. Furthermore, the staff was instructed, in the interim, to use the "case-by-case" approach in determining the decommissioning funding requirements for the three plants currently in the category or having prematurely ceased operation after July 27, 1988 (i.e. Shoreham, Rancho Seco, and Fort St. Vrain).

LILCO's decommissioning funding plan is comprised of the following:

(1) A commitment to deposit into LIPA accounts, decommissioning funds projected for the third following month of decommissioning, based on the January 24, 1990 Site Agreement.

(2) $10 million external account to cover unexpected decommissioning complications and to put the plant in a safe condition, if necessary.

(3) $300 million unused line of credit (LOC) which can be used for decommissioning costs, if necessary.

(4) Commitment to fund the Shoreham decommissioning in the event that the Site Agreement is invalidated.

In reviewing the licensee's proposed funding plan, the NRC staff has determined that the $300 million unused LOC available to LILCO partially meets the surety method of financial assurance

described in 10 CFR 50.75(e)(iii). The LOC, however, does not meet all the conditions set forth in paragraphs (A), (B), and (C) of 10 CFR 50.75(e)(iii). Namely, (1) the surety method (i.e. LOC) is not open ended or automatically renewed, (2) the LOC is not payable to a decommissioning trust, and (3) the LOC is not specified to remain in effect until the Commission has terminated the license. Accordingly, the proposed action would include an exemption from the conditional requirement for a surety method as specified in 10 CFR 50.75(e)(iii)(A), (B), and (C).

The underlying purpose of the decommissioning funding regulations is to provide reasonable assurance that sufficient funds are available to decommission the facility in a manner which protects public health and safety. The NRC staff has examined the licensee's proposed funding assurance plan and has determined that it adequately assures decommissioning funds are available to decommission Shoreham. LILCO estimated the total decommissioning effort for Shoreham to be $186 million over a 27 month period. The $300 million unused LOC more than adequately covers the decommissioning effort. Moreover, an exemption from the condtional requirements to the use of a surety method does not demonstrably affect the assurance of providing adequate decommissioning funding. The minor non-compliance with the surety method conditions is mitigated by (1) the short (27 month) decommissioning effort, (2) the $10 million external fund, (3) LILCO's commitment to fund three months advance decommissioning costs, and (4) LILCO's and New York State's commitments to fund the decommissioning effort, unconditionally. Furthermore, LILCO's $300 million LOC, although not open ended or automatically renewed, can be renewed annually with the consent of the lenders.

The NRC staff has determined that the licensee's financial assurance plan meets the intent of the decommissioning regulations, ensures protection of the public health and safety and is an appropriate application of the "case-by-case" approach as required by the Commission.

The NRC staff has determined that requiring the licensee to fully comply with the conditional requirements for using a surety method as financial assurance, in light of the premature shut down of the Shoreham facility, is not necessary to achieve the underlying purpose of the regulations and would impose and undue financial burden on the licensee. Therefore, a special circumstance as defined in 10 CFR 50.12(a)(2)(ii) and (iii) exists.

For these reasons, the Commission finds the licensee has provided an acceptance basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR 50.12.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) and (iii) are present to justify the exemption. Application of 10 CFR 50.75 in the particular circumstances present is not necessary to achieve the underlying purpose of that rule with the conditions here imposed, and a failure to grant this exemption would impose an undue hardship or costs on the license significantly in excess of those contemplated when the regulation was adopted.

Based on the foregoing, the Commission hereby grants the following exemption:

"The Long Island Lighting Company (LILCO) is exempt from the conditional requirements for the use of a surety method as financial assurance specified in 10 CFR 50.75(e)(iii), (A), (B), and (C) under the conditions that:

(1) LILCO funds to an external account sufficient to cover at all times, three months of projected decommissioning costs, as specified in the January 24, 1990 Site Agreement;

(2) LILCO maintain a $10 million external fund for emergency decommissioning costs;

(3) Notice be given to the NRC at least 90 days in advance in the event of cancellation or alteration of $300 million line of credit; and

(4) LILCO maintain and commit an amount of its unused line of credit during the decommissioning of the Shoreham facility, sufficient to cover estimated, yet to be incurred decommissioning costs.

Non-compliance with the above conditions will invalidate this exemption and will require full compliance with the regulation."

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (56 FR 58931, November 22, 1991).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 22nd day of November, 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

FR Doc. 91-28806 Filed 11-29-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

November 25, 1991.

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:

Aon Corp.
Series, B Convertible Preferred, $1.00 Par Value (File No. 7-7617)
Banco Bilbao Vizcaya International
American Depositary Shares (Rep. one Non-Cum. Guar. Pref. Share, Series A) (File No. 7-7618)
Carnival Cruise Lines, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-7619)
Foundation Health Corp.
Common Stock, $.01 Par Value (File No. 7-7620)
Joy Technologies, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-7621)
Kimco Realty Corp.
Common Stock, $.01 Par Value (File No. 7-7622)
Nuveen California Quality Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7623)
Nuveen New York Quality Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-7624)
Owens-Illinois, Inc.
Common Stock, $.01 Par Value (File No. 7-7625)
RJR Nabisco Holdings Corp.
$.835 Dep. Shares (Rep. ¼ of a Share of Series A Convertible Preferred Stock) $.01 Par Value (File No. 7-7626)
Sears Roebuck & Co.
American Depository Shares (Rep. ¼ of 8.88% Pfd. Share, 1st Series) $1.00 Par Value (File No. 7-7627)
Standard Pacific Corp.
Common Stock, $.01 Par Value (File No. 7-7628)
Stop & Shop Companies, Inc.

Common Stock, $.01 Par Value (File No. 7–7629)
Advanced Magnetics, Inc.
Common Stock, $.01 Par Value (File No. 7–7630)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 17, 1991, 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. 91–28798 Filed 11–29–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

November 25, 1991

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:

Ford Motor Co.
Depository Shares (each representing 1/1,000 of a share of Series A Cumulative Convertible Preferred Stock, $1.00 Par Value) (File No. 7–7591)
Harold's Stores, Inc.
Common Stock, $.01 Par Value (File No. 7–7592)
Carolina Financial Corporation
Common Stock, $.01 Par Value (File No. 7–7593)
Horace Mann Educators Corporation
Common Stock, $.001 Par Value (File No. 7–7594)
Joy Technologies, Inc.
Common Stock, No Par Value (File No. 7–7595)
Vitro, Sociedad Anonima
American Depositary Shares (each representing one ordinary participation certificate) (File No. 7–7596)
Abiomed, Inc.
Common Stock, $.01 Par Value (File No. 7–7597)
Bayou Steel Corporation
Class A Common Stock, $.01 Par Value (File No. 7–7598)
Ellsworth Convertible Growth and Income Fund
Common Stock, $.01 Par Value (File No. 7–7599)
Everest & Jennings International, Ltd.
Class A Common Stock, $1.00 Par Value (File No. 7–7600)
Enzo Biochem, Inc.
Common Stock, $.01 Par Value (File No. 7–7601)
Falcon Cable Systems Company
Units, No Par Value (File No. 7–7602)
Fidelity National Financial, Inc.
Common Stock, $.001 Par Value (File No. 7–7603)
Hooper Holmes, Inc.
Common Stock, $.04 Par Value (File No. 7–7604)
Healthcare International, Inc.
Class A Common Stock, $.10 Par Value (File No. 7–7605)
Pec Israel Economic Corp.
Common Stock, $1.00 Par Value (File No. 7–7606)
Intermark, Inc.
Common Stock, $1.00 Par Value (File No. 7–7607)
Littlefield, Adams & Co.
Common Stock, $1.00 Par Value (File No. 7–7608)
Lumex, Incorporated
Common Stock, $.10 Par Value (File No. 7–7609)
Mercury Air Group, Inc.
Common Stock, $.25 Par Value (File No. 7–7610)
MIP Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–7611)
Newcor, Incorporated
Common Stock, $1.00 Par Value (File No. 7–7612)
PLM International, Inc.
Common Stock, $.01 Par Value (File No. 7–7613)
Resort Income Investors, Inc.
Common Stock, $.01 Par Value (File No. 7–7614)
Rogers Corporation
Common Stock, $1.00 Par Value (File No. 7–7615)
Sandy Corporation
Common Stock, $.01 Par Value (File No. 7–7616)

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 December 17, 1991, written data, views and arguments concerning the above-referenced application. 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 application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is 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. 91–28796 Filed 11–29–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Incorporated

November 25, 1991.

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:

Aon Corporation
Series B Conversion Preferred Stock, $1.00 Par Value (File No. 7–7584)
Broad, Inc.
Depositary Shares (each representing ¼ of a Series A Mandatory Conversion Premium Preferred Stock), No Par Value (File No. 7–7585)
Ford Motor Co.
Depositary Shares (each representing 1/1000 of a share of 8.40% Series A Cumulative Convertible Preferred Stock), $1.00 Par Value (File No. 7–7586)
Sears Roebuck & Co.
Depositary Shares (each representing 1/4 of an 8.88% Preferred Shares, 1st Series) $1.00 Par Value (File No. 7–7587)
Texas Instruments, Inc.
$2.26 Depositary Shares (each representing 1/4 of a Series A Convertible Preferred Stock), $25.00 Par Value (File No. 7–7588)
General Motors Corp.
Series A Convertible Preferred ("PERCS"), $1.00 Par Value (File No. 7–7589)
Morgan Stanley Group, Inc.
Depositary Shares (each representing 1/8 of a share of 8.88% Cumulative Preferred Stock), No Par Value (File No. 7–7590)

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 December 17, 1991,

written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application 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. 91-28797 Filed 11-29-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

November 25, 1991

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:

St. Paul Companies, Inc.
Common Stock, No Par Value (File No. 7-7581)
Joy Technologies, Inc.
Class A Common Stock, $.01 Par Value (File No. 7-7582)
Latin American Equity Fund
Common Stock, $.001 Par Value (File No. 7-7583)

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 December 17, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application 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. 91-28795 Filed 11-29-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18417; 812-7811]

American General Life Insurance Company of Delaware, et al.

November 22, 1991.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: American General Life Insurance Company of Delaware ("AG Life"), American General Life Insurance Company of Delaware Separate Account D, ("Separate Account D"), and American General Securities Incorporated ("AGSI").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) 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 mortality and expense risk charges from the assets of Separate Account D under certain flexible premium deferred variable annuity contracts.

FILING DATE: The application was filed on October 24, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 pm. on December 16, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. 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, American General Life Insurance Company of Delaware, 2929 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272-2058, or Heidi Stam, Assistant 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. AG Life is a stock life insurance company organized under the laws of Delaware. Separate Account D was established under Delaware law and is registered under the 1940 Act as a unit investment trust. Separate Account D currently funds three forms of variable annuity contracts issued by AG Life.

2. Applicants intend to offer to the public certain flexible premium deferred variable annuity contracts (the "Contracts") through Separate Account D.

3. Separate Account D is currently subdivided into 12 divisions, eight of which will be available under the Contracts. Each division invests solely in the shares of a corresponding series of one of two underlying mutual funds. American General Series Portfolio Company is currently the underlying investment medium for Separate Account D. American Capital Life Investment Trust will become an underlying investment medium for certain variable annuity contracts. AGSI, a registered broker-dealer, is the principal underwriter of contracts funded through Separate Account D.

4. In connection with the charges under the Contract, Applicants rely on such rules as 0-1(e), 6c-8, 26a-1 and 2a-2 under the 1940 Act. AG Life will assess an annual administrative charge of $36 per Contract during the accumulation period and a daily asset charge, at an annual effective rate of .30% per year, during both the accumulation and annuity periods. AG Life will not raise the administrative charge for the duration of the Contracts. AG Life does not expect that the total revenues from the administrative charges will exceed the expected costs of administering the Contracts, on average.

5. AG Life will assess Separate Account D with a daily charge for mortality and expense risks at an aggregate rate of 1.25% per year. If the administrative charges and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by AG Life. Conversely, if the amount deducted proves more than sufficient, the excess will be profit to AG Life. AG Life expects to profit from the mortality and expense risk charge.

6. AG Life will assume a mortality risk by its contractual obligation to pay a death benefit in a lump sum (which may also be taken in the form of an annuity payment option) upon the death of an annuitant or Contract owner prior to the annuity date. The lump sum death benefit payable upon death prior to age 75 is the greatest of: (a) The excess of the full amount of all net purchase payments over any previous partial surrenders; (b) the total value of the Contract's fixed accumulation account and variable accumulation account as of AG Life's receipt of proof of death and the beneficiary's election of a settlement option; or (c) such total value as of the most recent five-year Contract anniversary, less the amount of any subsequent partial withdrawals. The lump sum death benefit payable upon death after age 75 is the total value of the Contract's fixed accumulation account and variable accumulation account as of AG Life's receipt of proof of death, less any applicable surrender charge, any uncollected annual maintenance charge and any applicable premium tax. AG Life also asserts that it assumes a mortality risk arising from its agreement not to impose upon the death benefit any surrender charge if the death occurs before age 75. Finally, AG Life assumes an additional mortality risk by its contractual obligation to continue to make annuity payments for the entire life of the annuitant under annuity payment options involving life contingencies.

7. AG Life will also assume an expense risk under the Contracts. The expense risk reflects the risk that the administrative charge may not cover actual administrative expenses.

8. Applicants have reviewed publicly available information regarding products of other companies, taking into consideration such factors as: Guaranteed minimum death benefits, guaranteed annuity purchase rates, minimum initial and subsequent purchase payments, other contract charges, the manner in which charges are imposed, market sector, investment options under contracts, and availability to individual qualified and non-tax-qualified plans. Based upon this review, Applicants have concluded that the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts.

9. AG Life will maintain, at its principal office, a memorandum setting forth in detail the variable annuity products analyzed and the methodology and results of Applicants' comparative review. Applicants will make this memorandum available to the SEC and its staff upon request.

10. No front-end sales charge is imposed under the Contracts. However, a surrender charge will be assessed against certain full or partial surrenders. The surrender charge is equal to 7.5% of purchase payments withdrawn in the first through third years, 6.5% in the fourth through sixth years, 4.5% in the seventh year, 2.5% in the eight year, 1.5% in the ninth year, and 0% after nine years.

11. The surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts. If a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the surrender charge. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of the Contracts.

12. AG Life concludes that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit Separate Account D and Contract owners. AG Life will maintain at its principal office, and make available on request to the Commission or its staff, a memorandum setting out the basis for such conclusion.

13. Separate Account D will invest only in an underlying mutual fund that undertakes, in the event it should adopt any plan under rule 12b–1 under the Act to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not interested persons of such fund within the meaning of section 2(a)(19) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–28733 Filed 11–29–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–18416; International Series Rel. No. 346; 812–7822]

Panther Partners, L.P.; Notice of Application

November 22, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Panther Partners, L.P.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3) of the 1940 Act and Rule 12d3–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks a conditional order permitting it to invest in certain securities of foreign issuers that, in each of their most recent fiscal years, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or an investment adviser ("foreign securities companies"), provided such investments meet the conditions described in proposed amendments to Rule 12d3–1 under the 1940 Act.

FILING DATES: The application was filed on November 13, 1991.

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 December 19, 1991, 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, 101 Park Avenue, New York, New York 10178.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, 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, a Delaware limited partnership, intends to register as a closed-end non-diversified management investment company under the 1940 Act. Panther Management Corporation, one of Applicant's general partners, will provide investment advisory services to Applicant.

2. Applicant will seek to achieve its investment objective of maximizing total return primarily through purchases and sales of domestic and foreign common and preferred stock and options and

warrants on such securities. Applicant believes that the securities of foreign securities companies may represent important investment opportunities, and it wishes to be able to invest in securities and foreign companies that, in their most recent fiscal year, derived more than 15% of their gross revenues from their activities as a broker, dealer, underwriter or investment adviser.

3. Applicant seeks relief from section 12(d)(3) of the 1940 Act and Rule 12d3–1 under the 1940 Act to the extent allowed by currently proposed amendments to Rule 12d3–1. Investment Company Act Release No. 17096 (Aug. 3, 1989). The proposed amendments to Rule 12d3–1 would, among other things, facilitate the acquisition by registered investment companies of equity securities issued by foreign securities companies.

Applicant's Legal Analysis

1. Section 12(d)(3) of the 1940 Act generally prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser of an investment company or an investment adviser registered under the Investment Advisers Act of 1940. Rule 12d3–1 under the 1940 Act provides an exemption from section 12(d)(3) for investment companies acquiring securities of an issuer that derived more than 15% of its gross revenues in its most recent fiscal year from securities-related activities, provided the acquisitions satisfy certain conditions set forth in the Rule.

2. Subparagraph (b)(4) of Rule 12d3–1 provides that "any equity security of the issuer * * * (must be) a 'margin security' as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System." Certain equity securities issued outside the United States can now qualify as margin securities under recent amendments to Regulation T. In particular, any foreign equity security meeting specified qualification requirements will be eligible for marginability, provided that it appears on the Board of Governors' List of Foreign Margin Stocks. However, the "margin security" requirements of subparagraph (b)(4) of Rule 12d3–1, notwithstanding the Regulation T amendments, currently bar registered investment companies from acquiring equity securities of many foreign securities companies.

3. The proposed amendments to Rule 12d3–1 provide that the "margin security" requirement would be excused if the acquiring company purchases the equity securities of foreign securities companies that meet criteria comparable to those applicable to equity securities of United States securities-related businesses. The criteria, as set forth in the proposed amendments, "are based particularly on the policies that underlie the requirements for inclusion on the list of over-the-counter margin stocks." Applicant's proposed investments in securities issued by foreign securities companies would meet the conditions of the proposed amendments to Rule 12d3–1 and also would be consistent with Applicant's investment objectives and policies.

Applicant's Condition

If the exemptive order requested by the application is granted, Applicant agrees to the following condition:

Applicant will comply with the provisions of the proposed amendments to Rule 12d3–1 (Investment Company Act Release No. 17096 (Aug. 3, 1989), 54 FR 33027 (Aug. 11, 1989)), and as such amendments may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–28734 Filed 11–29–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2530; Amendment #1]

Declaration of Disaster Loan Area; California

The above-numbered Declaration is hereby amended in accordance with an amendment dated November 4, 1991, to the President's major disaster declaration of October 22, to establish the incident period for this disaster as beginning on October 20 and continuing through October 29, 1991.

All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on December 23, 1991, and for economic injury until the close of business on July 22, 1992.

The economic injury number for the State of California is 744200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 12, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–28768 Filed 11–29–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2531; Amendment #1]

Declaration of Disaster Loan Area; Massachusetts

The above-numbered Declaration is hereby amended in accordance with amendments dated November 5 and 7, to the President's major disaster declaration of November 4, to include Norfolk County in the State of Massachusetts as a disaster area as a result of damages caused by a major coastal storm, and to establish the incident period as beginning on October 30 and continuing through November 2, 1991.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Worcester in the State of Massachusetts and Providence County in the State of Rhode Island 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 previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is January 3, 1992, and for economic injury until the close of business on August 4, 1992.

The economic injury number assigned to this disaster for the State of Rhode Island is 746500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 12, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–28769 Filed 11–29–91; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration Region V Advisory Council, located in the geographical area of Chicago, will hold a public meeting at 10 a.m. on Wednesday, December 4, 1991, at the Small Business Administration, 500 W. Madison Street, suite 1250, Chicago, Illinois, 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. John L. Smith, District Director, U.S. Small Business Administration, 500 W. Madison Street, suite 1250, Chicago, Illinois, 60661, (312) 353–4508.

Dated: November 21, 1991.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 91–28764 Filed 11–29–91; 8:45 am]

BILLING CODE 8025–01–M

[License No. 05/05–0204]

Wisconsin Community Capital, Inc.; License Surrender

Notice is hereby given that Wisconsin Community Capital, Inc., One South Pinckney Street, suite 500, Madison, Wisconsin, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). Wisconsin Community Capital, Inc. was licensed by the Small Business Administration on December 17, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on October 28, 1991, 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: November 7, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91–28767 Filed 11–29–91; 8:45 am]

BILLING CODE 8025–01–M

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Monday, December 9, 1991, from 9 a.m. to 4:30 p.m. and on Tuesday, December 10, 1991, from 9 a.m. to 12 Noon in the Fifth Floor Conference Room, at the Small Business Administration, 409 3rd Street, SW., Washington, DC, 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 Judith Dunn, U.S. Small Business Administration, 409 3rd Street, SW., suite 6750, Washington, DC 20416, telephone (202) 205–7301.

Dated: November 21, 1991.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 91–28763 Filed 11–29–91; 8:45 am]

BILLING CODE 8025–01–M

Region II Advisory Council Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 9 a.m. on Monday, December 2, 1991, at the U.S. Small Business Administration, Newark District Office, 60 Park Place, 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: November 21, 1991.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 91–28765 Filed 11–29–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, will hold a public meeting at 1 p.m. on Friday, December 6, 1991, at the City Club of San Antonio, 6243 Northwest Expressway, San Antonio, Texas, 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. Rodney W. Martin, District Director, U.S. Small Business Administration, 7400 Blanco Rd., suite 200, San Antonio, Texas 78216–4300, (512) 229–4530.

Dated: November 21, 1991.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 91–28766 Filed 11–29–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Solicitation for Aviation Research Grant Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is currently soliciting proposals for research grants and cooperative agreements addressing the long-term technical needs of the National Airspace System (NAS) pursuant to section 9205, Aviation Research Grant Program, and section 9208, Catastrophic Failure Prevention Research Program, of the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 (Pub. L. 101–508), and section 107 of the Aviation Security Improvement Act of 1990 (Pub. L. 101–604). Specific research areas called out include air traffic control automation, aviation applications of artificial intelligence, aviation training techniques and technologies, human factors in highly automated environments, and aircraft safety. Grant awards typically will range from $75,000.00 to $200,00.00. Although sections 9208 and 9209 of Public Law 101–504 permit the Administrator to establish Centers of Excellence, no applications for designation as a Center of Excellence are being solicited or accepted at this time.

DATES: Proposals may be submitted to the person listed below in the **ADDRESSES** section at any time after the effective release date of this notice. Closing date for proposal submission is September 30, 1992. Applicants should allow at least 3 months for review and processing.

ADDRESSES: Inquiries regarding this subject matter should be directed to: Albert A. Lupinetti; Office of Research and Technology Applications, ACT–1; FAA Technical Center; Atlantic City International Airport; NJ 08405; (609) 484–4761.

SUPPLEMENTARY INFORMATION:

Background

The Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 (Pub. L. 101–504) was enacted to enhance the FAA's access to resources and research facilities available at colleges, universities, and other non-profit research institutions. The Aviation Research Grant Program, section 9205,

states its purpose is "to conduct aviation research into areas deemed by the Administrator to be required for the long-term growth of civil aviation." The Catastrophic Failure Prevention Research Grants Program, section 9208, directs the FAA "to conduct aviation research relating to development of technologies and methods to assess the risk and prevent defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances which could result in a catastrophic failure of an aircraft." The Act authorizes the FAA to establish a research grant program that encompasses a broad spectrum of aviation research activities and Centers of Excellence that are targeted at specific areas of long-term aviation research. As a result, the base of aviation research talent will be increased and this valuable resource will be available to the FAA and the aviation community. By encouraging academic institutions to establish aviation research programs, and by expanding the role these institutions play in aviation research, the FAA will nurture the long-term growth of the aviation industry.

The Aviation Security Improvement Act of 1990 (Pub. L. 101–604) was a response to the report issued by the President's Commission on Aviation Security and Terrorism, dated May 15, 1990. This Act authorized the creation of a grants program "to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation." There is a special emphasis on "human factors" projects which include "research and development of both technological improvements and ways to enhance human performance." The central purpose of the FAA Research Grant Program is to encourage and support innovative, advanced research of potential benefit to the long-term growth of civil aviation.

Research Areas

The legislation cited earlier provides for grants programs in three general categories: (1) Areas deemed by the Administrator to be required for the long-term growth of civil aviation; (2) areas related to research on the prevention of catastrophic failures; and (3) areas related to research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. These three specific areas of interest may be found within the eight broad program areas identified in the FAA Research, Engineering, & Development (RE&D) Plan which comprises the agency's research and development initiatives. These areas, which contribute to the FAA mission of improving aviation safety, capacity, efficiency, and security, are as follows:

1. Capacity and Air Traffic Control Technology
2. Communications, Navigation and Surveillance
3. Aviation Weather
4. Airports
5. Aircraft Safety Technology
6. System Security Technology
7. Human Factors and Aviation Medicine
8. Environment and Energy

The following are more detailed descriptions of these eight program areas and are offered to illustrate possible topics of interest to those who may consider applying for a grant.

1. *Capacity and Air Traffic Control Technology.* This area represents the FAA's effort to improve the capacity of the airspace while maintaining high safety standards. The primary goal is to increase the capacity and use of airspace and airport resources in a safe manner through automation of enroute and terminal Air Traffic Control (ATC) and flow management. Successful implementation of the result of this research will reduce delays and enable as many aircraft as possible to operate on their preferred flight trajectories. Major areas of interest include research in advanced cockpit technologies and the development of automation tools for ATC in enroute and terminal airspace and on the airport surface.

2. *Communications, Navigation, and Surveillance.* The thrust of this area is the development and standardization of essential communication, navigation, and surveillance services required for air traffic management. The goals are to exploit emerging technologies to provide cost-effective services that have high levels of integrity, reliability, availability, and coverage. A principal initiative in this area is the development and application of satellite based-services.

a. Communications. Communications users include not only pilots and controllers, but also computer systems, surveillance systems, weather sensors, and air-ground equipment. These users are linked together today with the largest civil communications system in the federal government.

b. Navigation and Landing. The FAA has the responsibility for developing and implementing radio navigation systems to meet the need for safe and efficient navigation and control of all civil aviation and a significant portion of military aviation. Three major areas comprise this program: Precision approach and landing, navigational systems development, and improvements to present landing systems.

c. Surveillance. This technical area includes radar, ground based surveillance of airborne aircraft and the surveillance of aircraft and ground vehicles on airport surfaces. Secondary surveillance employing active airborne transponders, such as Mode S, and related equipment such as airborne collision avoidance and Automatic Dependent Surveillance, would be three related research areas.

d. Satellite Applications. The maturing of satellite technology has substantially increased interest in satellite systems, although questions remain concerning their applications in an aviation environment and their economic viability. The two principal technical areas which comprise satellite applications are Satellite-Based Air-Ground Communications and Future Satellite Communications, Navigation and Surveillance Systems.

3. *Aviation Weather.* Weather is, and will continue to be, a critical factor in all flight operations. Inclement weather is the single largest contributor to delays and a major factor in aircraft accidents and incidents. Weather service users encompass the entire spectrum of the aviation community, from general aviation to large air transport operators. An overall system is required that includes the acquisition of a wide variety of weather data, analysis, and forecasting based on ATC and pilot needs. The system must quickly and efficiently communicate appropriate weather data to the controller and the pilot. Activities in the weather area include airborne windshear detection equipment, hazardous weather cell detection and warning, and improved forecasting of winds, turbulence, etc. to support air traffic management automation.

4. *Airports.* Agency efforts in this area target a multiplicity of issues comprising the physical and environmental aspects of airports. Efforts in airport standards and guidelines address the design, construction, operation, and maintenance of airports. Specific considerations are: Airport layout and geometrics; pavements, terminal buildings, and heliports; fire fighting and rescue equipment; runway friction; snow and ice control; surface lighting and visual guidance aids; bird and wildlife control; runway surface contamination detection and removal; and

environmental impacts of aircraft operations. Landside capacity is also addressed through such considerations as highway systems, pedestrian systems, parking, and mass transit access.

5. *Aircraft Safety Technology.* One of the central responsibilities of the FAA is the certification of aircraft based on appropriate technical and operational standards. Modification of these standards and regulatory criteria is a continuous process as the regulatory framework keeps pace with the technological and operational changes to ensure safe, efficient air travel. The research goal in this area is to assure a continuing solid technology base to support the regulatory framework designed to improve the airworthiness and crash worthiness of aircraft. The primary focus in the aircraft safety research area is on aging aircraft, fire protection, engine maintenance, and structural crashworthiness. Atmospheric hazards such as icing and lightning, as well as new materials and advanced control systems, are also subjects of research.

6. *System Security Technology.* The presence of international terrorism makes it imperative for the FAA to identify and develop the advanced technologies that can be applied to practical security systems. The goal is to improve security without unreasonable increases in cost or inconvenience to passengers. The focus of FAA initiatives in this area is to develop systems that deter or prevent hijacking and sabotage against civil aviation. The continued emphasis of the RE&D program has been on the development of capabilities to prevent the introduction of explosives and weapons onto the aircraft. This effort encompasses research in the areas of sensors, image processing, nuclear, X-ray and chemical instrumentation, as well as systems integration.

7. *Human Factors and Aviation Medicine.* Human error is identified as a causal factor in 66% of fatal air carrier accidents, in 79% of fatal commuter accidents, and in 88% of fatal general aviation accidents. Research in this area focuses on increasing both the understanding and effectiveness of human performance. The goals are to assess approaches to automation that minimize human error, and to understand and alleviate errors caused by lack of training and experience. Areas of research include human factor concerns for flight crews, controllers, and maintenance technicians.

8. *Environment and Energy.* This area represents the FAA's effort to improve regulatory standards for sources of air and noise pollution, and to develop better technologies for predicting, measuring and abating the environmental impact of emissions. Projects in this area support national goals to protect the environment while keeping the transportation industry strong and competitive. RE&D goals are technology improvements that address environmental and regulatory issues such as noise abatement, aircraft pollution, and improved certification of clean, quiet, fuel efficient aircraft.

Eligibility

The eligibility of the applicants for the award of a research grant varies depending upon the nature of the proposer's organization as well as the character of work one proposes to perform. In general, colleges, universities, and other non-profit research institutions are eligible to qualify for grants to perform research in all specified areas. Other appropriate research institutions and governmental entities may qualify for grants to perform research in aviation security under section 107 of Public Law 101-604. The FAA is seeking to ensure an equitable geographical distribution of grant funds and the inclusion of historically black colleges and universities and other minority institutions for funding consideration.

Proposal Submission

The proposal should contain sufficient information to demonstrate that the proposed activity is both sound and worthy of support under the FAA criteria listed below for the selection of projects. The proposal should be succinct and self-contained. At the present time, the FAA does not have a published application kit. However, guidelines on the application format and content are contained in the Solicitation for Grants for Aviation Research No. 91.1 which is available by contacting the office identified in the **ADDRESSES** paragraph. Four copies of the proposal should be forwarded to the address indicated in the **ADDRESSES** paragraph. The outside of the mailer should be marked "Grant Proposal". A return mail postcard will be sent to the proposer to acknowledge receipt of the proposal. Every effort will be made to reach a decision and inform the applicant promptly.

Proposal Review

Research proposals will be received, assigned a proposal number, and acknowledged in writing. Each proposal will be reviewed by the grants staff to assure that it has been signed, that it is in the format described in Solicitation for Grants for Aviation Research No. 91.1, that all relevant information has been submitted, that it satisfies the conditions of a grant instrument rather than a procurement instrument, and that the proposed research falls under the FAA research grant authority. After initial proposal review, the proposal will be reviewed carefully for technical merit by a technical evaluation team. The team will consist of three or more technically qualified people, some of whom may be reviewers from outside the government. An FAA representative will be designated as the team leader. The team leader is responsible for developing an overall rating based on the ratings of the team members.

Evaluation Criteria

The FAA has established four criteria against which each proposal will be evaluated in order to determine whether it will be eligible for funding. Failure to meet any one of the criteria may result in the proposal being judged ineligible. The criteria and a brief explanation of each are listed below.

(1) Intrinsic Value. This is the likelihood that the proposed research will lead to new discoveries or fundamental advances within a specific field of science or engineering or have substantial impact on progress in that field or in other scientific or engineering fields pertinent to FAA research. The introduction of new ideas or innovative approaches will be viewed positively.

(2) Relevance to the FAA Mission. This is the establishment of a logical connection and probable application to the long-term growth of civil aviation.

(3) Technical Soundness of the Proposal. This is the quality of the overall approach proposed to verify concepts or apply new technologies. The proposal must be formulated in a clear and logical fashion, utilizing known scientific principles and their extensions to reach a definable, substantial, relevant goal.

(4) Research Performance Competence. This is the capability of the organization (personnel and resources) to carry on successful work. The grantee should identify specific resources which are required and note whether adequate access to these will exist or whether they will be acquired in the course of the proposed activity. Past achievement will be considered in evaluating performance competence. The principal investigator should demonstrate an established reputation in the relevant field. Such reputation may be shown by publications, patents, conference contributions, or any other relevant information that demonstrates

capability to advance the state of knowledge in the proposed area.

Each eligible proposal will be rated as either a category A, B, or C proposal. These categories will be used to differentiate the proposals according to technical merit.

(1) A Category A proposal will have met the evaluation criteria with no distinction.

(2) A Category B proposal will have met the evaluation criteria with distinction in one or more of the criteria.

(3) A Category C proposal will have met each of the evaluation criteria with distinction and presents a strong, well-constructed program in all respects.

Award Date

Recipients of FAA research grants will be announced throughout the remainder of Fiscal Year 1992.

Issued in Atlantic County, New Jersey, on November 22, 1991.

Harvey B. Safeer,

Director, Federal Aviation Administration Technical Center.

[FR Doc. 91-28783 Filed 11-29-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Hawaii County, HI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Hawaii County, Hawaii.

FOR FURTHER INFORMATION CONTACT: W.R. Bird, Environmental Planning Engineer, Federal Highway Administration, P.O. Box 25246, Denver, Colorado 80225, telephone 303-236-3410.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii, the County of Hawaii, and the United States military, will prepare an environmental impact statement (EIS) for a proposed improvement of a portion of Hawaii State Highway 200, the Saddle Road (military access road project A-AD-5). The proposed improvement will be a 2-lane paved roadway with paved shoulders, beginning at the intersection of Mauna Kea Observatory road and proceeds westerly approximately 14.5 miles to about 1 mile northwest of the western boundary of the Pohakuloa Training Area. The purpose of this proposal is to provide a safe road that eliminates the conflict between the travelling public and military training operations. Alternatives being evaluated include (1) the "no build," (2) the improvement of the existing facility to appropriate American Association of State Highway and Transportation Officials (AASHTO) design criteria, and (3) a new alignment along the north boundary of the Pohakuloa Training Area. Other alternatives that are developed during the scoping process will also be evaluated.

Notices describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. Interagency scoping meetings and public scoping meetings will be held in the project area. Public hearings will also be held. Information on the time and place of public scoping meetings and public hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: November 21, 1991.

Larry D. Henry,

Project Development Engineer, Denver.

[FR Doc. 91-28774 Filed 11-29-91; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM-87-2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before January 8, 1992 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Arkansas and Missouri Railroad

[Waiver Petition Docket Number RSGM 87-2]

The Arkansas and Missouri Railroad (AM) was granted a waiver of compliance, with certain conditions, of the Safety Glazing Standards (49 CFR part 223) for one locomotive in 1987. The railroad has now purchased an additional locomotive for which they have requested an extension of the waiver. The carrier reports there have been no accidents involving glazing nor any incidents of vandalism.

Ashtabula Carson Jefferson Railroad

[Waiver Petition Docket Number RSGM 91-24]

The Ashtabula Carson Jefferson Railroad (ACJR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The railroad operates over approximately 6.25 miles of track between Carson and Jefferson, Ohio. The area, located in northeastern Ohio, is primarily agricultural. The railroad reports there have been no incidents of vandalism regarding glazing.

Michigan Southern Railroad Company, Inc.

[Waiver Petition Docket Number RSGM 91-29]

The Michigan Southern Railroad Company, Inc. (MSO) seeks a

permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The MSO operates over approximately 20 miles of track in an agricultural area of southern Michigan. The railroad reports there have been no problems with vandalism.

Ohi-Rail Corp.

[Waiver Petition Docket Number RSGM 91–30]

The Ohi-Rail Corp. (OHIC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The OHIC operates approximately 39.4 miles of track between Hopedale and Minerva, Ohio. The locomotives are used primarily for switching in a yard and the area is entirely rural. The carrier states the installation of FRA glazing would be an economic hardship.

The Nimishillen and Tuscarawas Railway Company

[Waiver Petition Docket Number RSGM 91–31]

The Nimishillen and Tuscarawas Railway Company (NTRY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for seven locomotives. The locomotives were previously covered by RSGM–82–12 issued to their prior owner, Mahoning Valley Railway. The locomotives operate the majority of the time within the Republic Engineered Steels plant at Canton, Ohio. The locomotives also operate on adjacent interchange tracks and are occasionally hauled "dead" to another plant facility at Massillon, Ohio. The carrier reports that installation of certified glazing would be an economic hardship.

Alabama Railroad Company

[Waiver Petition Docket Number RSGM 91–33]

The Alabama Railroad Company (ALAB) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. The railroad operates over 60 miles of track between Flomaton and Beatrice, Alabama. The carrier advises the area is very rural and not prone to vandalism.

Georgia Marble Railroad

[Waiver Petition Docket Number RSGM 91–34]

The Georgia Marble Railroad (GMA) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The railroad operates seven miles of track between their plant at Marble Hill, Georgia and interchange with Georgia Northeastern Railroad Company (GNRR) at Tate, Georgia. The locomotives do switching on ¾ miles of the GNRR track. The railroad reports there have been no incidents of vandalism.

Pigeon River Railroad Company

[Waiver Petition Docket Number RSGM 91–35]

The Pigeon River Railroad Company (PGRV) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The PGRV operates approximately 14 miles of track between Ashley-Hudson and Wolcottville, Indiana. This is a rural farming area and there have been no incidents of vandalism according to the railroad.

Issued in Washington, DC, on November 18, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–28725 Filed 11–29–91; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

[Docket No. S–886]

Lykes Bros. Steamship Co., Inc.; Request To Exceed Its Contractual Maximum Sailing Allowance on Trade Route 13 (U.S. South Atlantic & Gulf/ Mediterranean, Black Sea and Portugal)

Lykes Bros. Steamship Co., Inc. (Lykes) by letter dated November 22, 1991, has requested that the Maritime Administration grant two additional subsidized sailings on Trade Route 13 (U.S. South Atlantic & Gulf/ Mediterranean, Black Sea and Portugal) in 1991. Lykes claims that a result of Desert Shield and Desert Storm, the demand for U.S.-flag liner service on TR 13 increased substantially during 1991. According to Lykes, the US/ Mediterranean and Middle East commercial eastbound container market grew by 9% (almost 31,000 TEUs) this year, creating additional tonnage opportunities in which Lykes was able to participate. Lykes states that it met this increased demand through a combination of a four-containership Mediterranean service and its monthly Mediterranean conventional service. In a spirit of cooperation, Lykes introduced the MV MARGARET LYKES into the Mediterranean Service at the end of 1990 to provide additional relay service to the Middle East. In March of this year, it introduced its direct Middle East Container Service (Line H), using its TR 18 privilege off of its TR 13 Service. Lykes maintains that additional U.S.-flag container service on TR 13 was also required as a result of the drydocking of four Farrell vessels (in February, May, July and August of 1991).

As a result of the foregoing surge in commercial vessel space demand, through October 31, 1991, Lykes had forty-two (42) sailings on TR 13. It is anticipated by Lykes that during the period November 1, 1991, through December 31, 1991, it will have an additional eight (8) sailings on this Trade Route. This will exceed the maximum number of subsidized sailings permitted under Operating-Differential Subsidy Agreement, MA/MSB–451 in 1991.

Lykes's statistics indicate that there is not sufficient U.S.-flag tonnage on the berth to accommodate the cargo which these two sailings would lift. As a result, Lykes believes that the cargo would move on foreign-flag vessels, which is not in keeping with the purposes and policies of the Merchant Act, 1936 as amended.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on December 9, 1991.

Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies.

By Order of the Maritime Subsidy Board.

Dated: November 27, 1991.

Joel C. Richard,

Assistant Secretary.

[FR Doc. 91–28956 Filed 11–29–91; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. 91–58–IP–No.1]

Navistar International Transportation Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Navistar International Transportation Corp. (Navistar) of Fort Wayne, Indiana, has determined that some of its vehicles fail to comply with 49 CFR 571.106,

"Brake Hoses," and has filed an appropriate report pursuant to 49 CFR part 573. Navistar has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S7.3.7 of Standard No. 106 specifies that, "Except for hose reinforced by wire, an air brake hose shall withstand a tensile force of eight pounds per inch of length before separation of adjacent layers." On September 24, 1991, Navistar's five Parts Distribution Centers were notified by Anchor Swan, Inc. that certain cartons they received of bulk air brake hose, manufactured in 1987, failed to comply with the adhesion requirements of FMVSS No. 106. Navistar supports its petition for inconsequential noncompliance with the following:

Navistar believes the 8 pound adhesion test set forth in subparagraph S7.3.7 of FMVSS 106 is directly derived from SAE standards developed in the 1960's. It is further believed that this test provision was a reflection of concern that brake hoses experiencing an adhesion problem under a vacuum condition could present a safety problem. To our knowledge no air brake hose in vehicle air brake systems are subjected to vacuum.

In the Anchor Swan Defect and Noncompliance report to NHTSA it was stated that "NHTSA had determined that low adhesion in brake hoses can result in the build up of air between plies. The trapped air can cause inward ballooning of the hose, resulting in slow reaction of the brake served, or complete malfunction due to the hose conduit being blocked altogether."

Navistar does not believe that an inward ballooning will occur. However, if it could occur, Navistar believes that the following would have to happen: Air would either have to escape (through) the end fitting and follow the reinforcement cord to a weak point or air would have to permeate the tube and build a pressure differential at the reinforcement.

It seems unlikely that once by the end fitting, the air would not vent to the atmosphere. For pressure to build at the reinforcement due to permeation, the permeation rates for the tube and cover would have to be significantly different with the tube having a much higher rate than the cover. An evaluation by Anchor Swan has shown that there is no significant difference in the permeation rate between the tube and the cover materials. Because the cover is thinner, any pressure in the reinforcement later would, in any event, result is a ballooning of the cover, not an internal ballooning of the tube.

Once the hose is made into an assembly and used in a typical air brake system, we project no reduction in life expectancy resulting from low layer adhesion as compared to an assembly containing hose meeting the specification.

Interested persons are invited to submit written data, views and arguments on the petition of Navistar, 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 six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 2, 1992.

(15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Dated: November 25, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-28735 Filed 11-29-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 22, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0239.
Form Number: IRS Form 5754.
Type Of Review: Extension.
Title: Statement by Person(s) Receiving Gambling Winnings.
Description: Section 3402(q)(6) of the Internal Revenue Code (IRC) requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group entitled to a share of the winnings. It enables the payer to properly apportion the winnings and withheld tax on Form W-2G. We use the information to ensure that recipients are properly reporting their income.
Respondents: Individuals or households, businesses or other for profit, non-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 306,000.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 60,625 hours.

OMB Number: 1545-0241.
Form Number: IRS Form 6177.
Type Of Review: Extension.
Title: General Assistant Program Determination.
Description: Internal Revenue Code (IRC) section 51 gives employers a jobs credit for hiring certain general assistance (welfare) program recipients. IRC section 51(d)(6)(B) requires that the state or local general assistance program be certified as a qualified program. The information on Form 6177 is used to determine if a program is qualified.
Respondents: State or local governments.
Estimated Number of Respondents: 1,500
Estimated Burden Hours Per Respondent: 10 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.
Clearance Officer: Garrick Shear (202) 535-4279, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-28784 Filed 11-29-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: November 22, 1991.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0025.

3Form Number: IRS Form 851.

Type of Review: Resubmission.

Title: Affiliations Schedule.

Description: Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to the 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.

Respondents: Farms, Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 4,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—8 hours, 51 minutes.

Learning about the law or the form—35 minutes.

Preparing and sending the form to IRS—46 minutes.

Frequency of Resonse: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 40,840 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 91-28789 Filed 11-29-91; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

Application for Recordation of Trade Name: "Grand Tea Company"

ACTION: Notice of Application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Grand Tea Company," used by Thomas Li Ka Cheung, a citizen of Hong Kong with an address at 363 Queen's Road Central, Hong Kong.

The application states that the trade name is used in connection with tea. The merchandise is manufactured in Hong Kong.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received on or before January 31, 1992.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Robert L. Knapp, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 566-6956.

Dated: November 26, 1991.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 91-28802 Filed 11-29-91; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name: M.T.R. Distributors (P) LTD

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "M.T.R. Distributors (P) Ltd.," used by MTR Imports, Inc., a corporation organized under the laws of the State of Illinois, located at 18 West 194 Holly Avenue, Westmont, Illinois 60559.

The application states that the trade name is used in connection with various Indian food product mixes and powers. The merchandise is manufactured in India.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**

DATES: Comments must be received on or before January 31, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-6956).

Dated: November 26, 1991.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 91-28803 Filed 11-29-91; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name: M.T.R. Food Products

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "M.T.R. Food Products.," used by MTR Imports, Inc., a corporation organized under the laws of the State of Illinois, located at 18 West 194 Holly Avenue, Westmont, Illinois 60559.

The application states that the trade name is used in connection with various Indian food product mixes and powers. The merchandise is manufactured in India.

Before final action is taken on the application, consideration will be given to any relevant data, views, or

arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATES: Comments must be received on or before January 31, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–6956).

Dated: November 26, 1991.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 91–28804 Filed 11–29–91; 8:45 am]

BILLING CODE 4820–02–M

U.S. Customs Service

Application for Recordation of Trade Name: "M.T.R. Condiments"

ACTION: Notice of Application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "M.T.R. Condiments," used by MTR Imports, Inc., a corporation organized under the laws of the State of Illinois, located at 18 West 194 Holly Avenue, Westmont, Illinois 60559.

The application states that the trade name is used in connection with various Indian food product mixes and powers. The merchandise is manufactured in India.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATES: Comments must be received on or before January 31, 1992.

ADDRESSES: Written comments should be addressed to U.S. Customer Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (room 2104), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–6956).

Dated: November 26, 1991.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 91–28801 Filed 11–29–91; 8:45 am]

BILLING CODE 4820–02–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–86]

Proposed Determinations Regarding the People's Republic of China's Intellectual Property Laws, Policies and Practices: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determinations pursuant to section 304(a)(1) of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2414))(1); and request for public comment on proposed action under section 301 of the Trade Act.

SUMMARY: The United States Trade Representative (USTR) is seeking public comment on a proposed determination that certain acts, policies and practices of the People's Republic of China (China) with respect to its protection and enforcement of intellectual property rights are unreasonable and constitute a burden or restriction on United States commerce. The USTR is also seeking public comment on appropriate action under section 301 in response to these acts, policies and practices.

DATES: Written comments from interested persons are due on or before January 2, 1992.

FOR FURTHER INFORMATION CONTACT: Emery Simon, Deputy Assistant USTR (202) 395–6864, Lee Sands, Director, China and Mongolian Affairs (202) 395–5050, or Catherine Field, Associate General Counsel (202) 395–3432, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: On May 26, 1991, pursuant to section 302(b)(A) of the Trade Act, the United States Trade Representative initiated an investigation of those acts policies and practices of the Government of China that were the basis for identification of China as a priority foreign country under section 182 of the Trade Act. These included: (1) Deficiencies in China's patent law, in particular, the failure to provide product patent protection for chemicals, including pharmaceuticals and agricultural chemicals, (2) lack of copyright protection for U.S. workers not first published in China, (3) deficient levels of protection under the copyright law and regulations, (4) inadequate protection of trade secrets, and (5) deficient enforcement of intellectual property rights, including rights in trademarks.

Although the USTR determined on November 26, to extend the investigation because the relevant issues are complex and complicated and require additional time to attempt to resolve, the serious effect that the acts, policies and practices of the Chinese government have on U.S. commerce indicate that USTR should be prepared to act swiftly if further progress is not made quickly to resolve all of the issues. Therefore, USTR is seeking comments on proposed determinations under section 304(a)(1) of the Trade Act.

Proposed Determinations and Action

Based on the failure to resolve all of these issues that are the basis of this investigation, the USTR proposes to determine pursuant to section 304(a)(1)(A)(ii) that acts, policies and practices of the Government of the People's Republic of China with respect to the protection and enforcement of intellectual property rights are unreasonable and constitute a burden or restriction on United States commerce.

In the event that the USTR makes such a determination, the USTR must determine what action to take under section 301 in response. Therefore, the USTR proposes to take the following action, pursuant to the authority provided under section 301(c)(1)(B) of the Trade Act: To impose increased duties on certain products of the People's Republic of China to be drawn from the list of products set forth in the Annex to this notice. The decision on what specific products could be subject to increased tariffs will take into consideration the comments provided.

Public Comment: In accordance with section 304(b) of the Trade Act, the USTR invites all interested persons to provide written comments on the proposed determinations. With respect to the issues of the proposed trade action under section 301, interested persons may provide comments on: (1) The appropriateness of subjecting the products listed in the Annex to this notice to an increase in duties; (2) the levels at which U.S. customs duties on particular products should be set; and (3) the degree to which increased duties might have an adverse effect on U.S. consumers of the products concerned. Comments will be considered in recommending any determination or action under section 301 to the USTR.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than January 2, 1992. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–86) open to public inspection pursuant to 15 CFR 2006.13, except for confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.

Joshua B. Bolten,

General Counsel.

Annex

HTS subheading	Article
	[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]
2203.00.00	Beer made from malt.
2606.00.00	Aluminium ores and concentrates.
	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations:
2710.00.15	Motor fuel.
	Lubricating oils and greases, with or without additivies:
2710.00.30	Oils.
	Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products:
	Natural uranium and its compounds; alloys, dispersions (including cermets), ceramic products and mixtures containing natural uranium or natural uranium compounds:
2844.10.20	Uranium compounds.
	Amine-function compounds:
	Aromatic monoamines and their derivatives; salts thereof:
	Aniline derivatives and their salts:
	[Articles provided for in subheading 2921.42.10 through 2921.42.23, inclusive]
2921.42.24	Metanilic acid; and Sulfanilic acid
	Other:
	[Fast color bases]
	Other:
	[Products described in additional U.S. note 3 to section VI of the HTS]
2921.42.70	Other.
	Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent:
	Vitamins and their derivatives, unmixed:
2936.27.00	Vitamin C (Ascorbic acid) and its derivatives.
	Antiotics:
2941.30.00	Tetracyclines and their derivatives; salts thereof.
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of plastic sheeting, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials:
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:
4202.11.00	With outer surface of leather, of composition leather or of patent leather.
	Articles of a kind normally carried in the pocket or in the handbag:
	With outer surface of leather, of composition leather or of patent leather:
	[Of reptile leather]
4202.31.60	Other.
	Articles of apparel and clothing accessories, of leather or of composition leather:
	Articles of apparel:
	[Of reptile leather]
4203.10.40	Other.
	Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103:
	Of other textile malerials:
6101.90.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6104:
	Of other textile materials:
6102-90-00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted:
	Suits:
	Of other textile materials:
6103.19.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	Suit-type jackets and blazers:
	Of other textile materials:
6103.39.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Trousers, bib and brace overalls, breeches and shorts:
	Of other textile materials:
6103.49.30pt.	Containing 70 percent or more by weight of silk or silk waste.

HTS subheading	Article
	Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted:
	Suits:
	Of other textile materials:
6104.19.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Ensembles:
	Of other textile materials:
6104.29.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Suit-type jackets and blazers:
	Of other textile materials:
6104.39.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Dresses:
	Of other textile materials:
6104.49.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Skirts and divided skirts:
	Of other textile materials:
6104.59.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Trousers, bib and brace overalls, breeches and shorts:
	Of other textile materials:
6104.69.30pt.	Containing 70 percent or more by weight of silk or silk waste.
	Men's or boys' shirts, knitted or crocheted:
	Of other textile materials:
6105.90.30pt.	Containing 70 percent or more by weight of silk or silk waste.
	Women's or girls' blouses and shirts, knitted or crocheted:
	Of other textile materials:
	Of silk or silk waste:
6106.90.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Men's or boys' underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles, knitted or crocheted:
	Underpants and briefs:
	Of other textile materials:
6107.19.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Nightshirts and pajamas:
	Of other textile materials:
6107.29.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other:
	Of other textile materials:
6107.99.40pt.	Containing 70 percent or more by weight of silk of silk waste.
	Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted:
	Slips and petticoats:
	Of other textile materials:
6108.19.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Briefs and panties:
	Of other textile materials:
6108.29.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Nightdresses and pajamas:
	Of other textile materials:
6108.39.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other:
	Of other textile materials:
6108.99.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	T-shirts, singlets, tank tops and similar garments, knitted or crocheted:
	Of other textile materials:
6109.90.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
	Of other textile materials:
6110.90.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Track suits, ski-suits and swimwear, knitted or crocheted:
	Track suits:
	Of other textile materials:
6112.19.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other garments, knitted or crocheted:
	Of other textile materials:
6114.90.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Panty hose, tights, stockings, socks and other hosiery, including stockings for varicose veins, and footwear without applied soles, knitted or crocheted:
	[Panty hose and tights; Women's full-length or knee-length hosiery, measuring per single yarn less than 67 decitex]
	Other:
	Of other textile materials:
6115.99.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Gloves, mittens and mitts, knitted or crocheted:
	[Gloves, mittens and mitts, impregnated, coated or covered with plastics or rubber]
	Other:
	Of other textile materials:
6116.99.80pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories:
	Shawls, scarves, mufflers, mantillas, veils and the like:
6117.10.40	Containing 70 percent or more by weight of silk or silk waste.
	Ties, bow ties and cravats:
6117.20.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other accessories:

HTS subheading	Article
6117.80.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Parts:
6117.90.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203:
	Overcoats, carcoats, capes, cloaks and similar coats:
	Of other textile materials:
6201.19.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets):
	Of other textile materials:
6201.99.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, (including padded, sleeveless jackets), other than those of heading 6204:
	Overcoats, carcoats, capes, cloaks and similar coats:
	Of other textile materials:
6202.19.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets):
	Of other textile materials:
6202.99.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear):
	Suits:
	Of other textile materials:
6203.19.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	Ensembles:
	Of other textile materials:
6203.29.30pt.	Containing 70 percent or more by weight of silk or silk waste.
	Suit-type jackets and blazers:
	Of other textile materials:
6203.39.40pt.	Containing 70 percent or more by weight or silk or silk waste.
	Trousers, bib and brace overalls, breeches and shorts:
	Of other textile materials:
6203.49.30pt.	Containing 70 percent or more by weight of silk or silk waste.
	Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):
	Suits:
	Of other textile materials:
6204.19.30pt	Containing 70 percent or more by weight of silk or silk waste.
	Ensembles:
	Of other textile materials:
6204.29.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	Suit-type jackets and blazers:
	Of other textile materials:
	Other:
6204.39.60	Containing 70 percent or more by weight of silk or silk waste.
	Dresses:
	Of other textile materials:
6204.49.10	Containing 70 percent or more by weight of silk or silk waste.
	Skirts and divided skirts:
	Of other textile materials:
6204.59.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	Trousers, bib and brace overalls, breeches and shorts:
	Of other textile materials:
	Of silk or silk waste:
6204.69.30pt.	Containing 70 percent or more by weight of silk or silk waste.
	Men's or boys' shirts:
	Of other textile materials:
	Of silk or silk waste:
6205.90.20pt	Containing 70 percent or more by weight of silk or silk waste.
	Women's or girls' blouses, shirts and shirt-blouses:
	Of silk or silk waste;
6206.10.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles:
	Underpants and briefs:
	Of other textile materials:
6207.19.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Nightshirts and pajamas:
	Of other textile materials:
6207.29.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other:
	Of other textile materials:
6207.99.60pt.	Containing 70 percent or more by weight of silk or silk waste.
	Women's or girls' singlets and other undershirts, slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles:
	Slips and petticoats:
	Of other textile materials:
6208.19.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	Nightdresses and pajamas:
	Of other textile materials:
6208.29.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other:
	Of other textile materials:

HTS subheading	Article
	Of silk or silk waste:
6208.99.60pt.	Containing 70 percent or more by weight of silk or silk waste.
	Babies' garments and clothing accessories:
	Of other textile materials:
6209.90.40pt.	Containing 70 percent or more by weight of silk or silk waste.
	Track suits, ski-suits and swimwear; other garments:
	Swimwear:
	Men's or boys':
6211.11.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	Women's or girls':
6211.12.30pt.	Containing 70 percent or more by weight of silk or silk waste.
	[Ski-suits]
	Other garments, men's or boys':
	Of other textile materials:
6211.39.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other garments, men's or boys':
	Of other textile materials:
6211.49.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted:
	Brassieres:
	Containing lace, net or embroidery:
6212.10.10pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other:
6212.10.20pt.	Containing 70 percent or more by weight of silk or silk waste.
	[Girdles and panty-girdles; Corsets]
	Other:
6212.90.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Handkerchiefs:
	Of silk or silk waste:
6213.10.10pt.	Containing 70 percent or more by weight of silk or silk waste.
	Shawls, scarves, mufflers, mantillas, veils and the like:
	Of silk or silk waste:
6214.10.10pt.	Containing 70 percent or more by weight of silk or silk waste.
	Ties, bow ties and cravats:
	Of silk or silk waste:
6215.10.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212:
	Accessories:
6217.10.00pt.	Containing 70 percent or more by weight of silk or silk waste.
	Parts:
6217.90.10pt.	Containing 70 percent or more by weight of silk or silk waste.
	Footwear, with outer soles of rubber, plastics, leather or composition leather and uppers of leather:
	[Articles provided for in subheading 6403.11.30 through 6403.59.90, inclusive]
	Other footwear:
	Covering the ankle:
	[Welt footwear]
	Other:
6403.91.60	For men, youths and boys.
6403.91.90	For other persons.
	Other:
	[Footwear made on a base or platform of wood]
	Other:
	[Welt footwear]
	Other:
6403.99.60	For men, youths and boys.
	Other footwear:
	With uppers of textile materials:
	[With uppers of vegetable fibers; With soles and uppers of wool felt]
6405.20.90	Other
	Imitation jewelry:
	[Of base metal, whether or not plated with precious metal]
	Other:
	[Articles provided for in subheading 7117.90.10 through 7117.90.30, inclusive]
	Other:
7117.90.50	Valued over cents per dozen pieces or parts.
	Coin:
	[Coin (other than gold coin), not being legal tender]
7118.90.00	Other
	Tube or pipe fittings (for example couplings, elbows, sleeves), of iron or steel:
	[Cast fittings; Other, of stainless steel]
	Other:
	Flanges:
	[Not machined, not tooled and not otherwise processed after forging]
7307.91.50	Other
	Butt welding fittings:
	With an inside diameter of less than 360 mm:
7307.93.30	Of iron or nonalloy steel
	Chain and parts thereof, of iron or steel:
	Articulated link chain and part thereof:
7315.11.00	Roller chain.

HTS subheading	Article
	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:
	Threaded articles:
	[Coach screws: Other wood screws; Screw hooks and screw rings; Self-tapping screws]
	Other screws and bolts, whether or not with their nuts or washers:
7318.15.20	Bolts and bolts and their nuts or washers entered or exported in the same shipment.
7318.16.00	Nuts.
	Non-threaded articles:
	[Spring washers and other lock washers]
7318.22.00	Other washers
	Unwrought tin:
8001.10.00	Tin, not alloyed.
8001.20.00	Tin alloys.
	Pulley tackle and hoists other than skip hoists; winches and capstans; jacks;
	Jacks; hoists of a kind used for raising vehicles:
	[Built-in jacking systems of a type used in garages; Other jacks and hoists, hydraulic]
8425.49.00	Other.
	Electromagnets: permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof:
	Permanent magnets and articles intended to become permanent magnets after magnetization:
8505.11.00	Of metal
	Electromechnaical domestic appliances, with self-contained electric motor; parts thereof:
	[Vacuum cleaners; Floor polishers; Kitchen waste disposers (disposals); Food grinders, processors and mixers; fruit or vegetable juice extractors]
8509.80.00	Other appliances.
	Electric instantaneous or storagewater heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair drivers, hair curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
	[Articles provided for in subheading 8516.10.00 through 8516.60.60, inclusive]
	Other electrothermic appliances:
8516.71.00	Coffee or tea makers.
	[Toasters]
8516.79.00	Other.
	Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device:
	[Coin- or token-operated record players; Other record players; Turntable; Transcribing machines]
	Other sound reproducing apparatus:
8519.91.00	Cassette type.
	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
	[Dictating machines not capable of operating without an external source of power]
8520.20.00	Telephone answering machines.
	Other magnetic tape records incorporating sound reproducing apparatus:
8520.31.00	Cassette type.
	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:
	Transmission apparatus incorporating reception apparatus:
	[Transceivers]
	Other:
8525.20.50	Cordless handset telephones.
	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Raiobroadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radiotephony or radioteleraph:
	Combined with sound recording or reproducing apparatus:
	[Combinations incorporating tape players which are incapable of recording]
	Other:
	[Radio-tape recorder combinations; Radio-phonograph combinations]
8527.11.60	Other
	Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
	Combined with sound recording or reproducing apparatus:
8527.21.10	Radio-tape player combinations
	Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
	Combined with sound recording or reproducing apparatus:
	[Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks]
	Other:
	[Combinations incorporating tape players which are incapable of recording]
8527.31.50	Other combinations incorporating tape recorders
	[Not combined with sound recording or reproducing apparatus but combined with a clock]
8527.39.00	Other
	Television receivers (including video monitors and video projection television receivers), whether or not combined, in the same housing, with radiobroadcast receivers or sound or video recording or reproducing apparatus:
8528.20.00	Black and white or other monochrome.
	Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101:
	Wrist watches, battery powered, whether or not incorporating a stop watch facility:
	With opto-electronic display only:
	[Articles provided for in subheading 9102.12.20 and 9102.12.40]
9102.12.80	Other.

[FR Doc. 91-28971 Filed 11-29-91; 8:45 am]
BILLING CODE 3190-01-M

Implementation of the Accelerated Tariff Elimination Provision in the United States-Canada Free-Trade Agreement; Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a third and final opportunity for filing petitions for accelerated tariff elimination under the United States-Canada Free-Trade Agreement (FTA), and a change in the procedure for filing; correction.

SUMMARY: In FR document 91-27686 appearing at page 58117 in the **Federal Register** of Friday, November 15, 1991, on page 58118, column 3, paragraph 3 (beginning with the number 6), line 4, the date which reads 1991 should read 1992.

Dated: November 22, 1991.

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 91-28782 Filed 11-29-91; 8:45 am]
BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee of the Readjustment of Vietnam and Other War Veterans; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) on October 6, 1972, that the Department of Veterans Affairs Advisory Committee on the Readjustment of Vietnam and other War Veterans has been renewed for a two year period beginning November 6, 1991, through November 6, 1993.

Dated: November 21, 1991.

By direction of the Secretary:

Diane H. Landis,

Committee Management Officer

[FR Doc. 91-28755 Filed 11-29-91; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 231
Monday, December 2, 1991

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).

FARM CREDIT ADMINISTATION

Farm Credit Administration Board: Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act [5 U.S.C. 552b(e)(3)], of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board was held at the offices of the Farm Credit Administration in McLean, Virginia, on November 26, 1991, from 1:30 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public. The matter to be considered at the meeting is:

** Closed Session*

A. New Business

1. Farm Credit Administration Budget Formulation
   Issues for Fiscal Year 1993.
   Dated: November 26, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91–28885 Filed 11–26–91; 4:51 pm]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, November 26, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Recommendation regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agency of those assets:

Case No. 47,763
Southeast Bank, National Association
Miami, Florida
Application for waiver of the cross-guaranty provisions of the Federal Deposit Insurance Act.

Personnel Matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Mr. Stephen R. Steinbrink, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 26, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–28941 Filed 11–27–91; 2:58 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, December 4, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed boundary change of the Louisville Branch of the Federal Reserve Bank of St. Louis.

Discussion Agenda:

2. Proposed 1992 Federal Reserve Bank budgets.
3. Cost of Federal Reserve notes in 1992.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–28953 Filed 11–27–91; 2:59 pm]

BILLING CODE 01–6210–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, December 4, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–28954 Filed 11–27–91; 2:59 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 4:00 p.m., Thursday, December 5, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance betwen 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 27, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–28955 Filed 11–27–91; 2:59 pm]

BILLING CODE 6210–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of The Board of Directors

TIME AND DATE: 8:30 a.m., Wednesday, December 11, 1991.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., 8th Floor Board Room, Washington, DC.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes: July 24, 1991, Regular Meeting
III. Personnel Committee Report, December 3, 1991, Closed Meeting
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Adjourn

Jeffrey T. Bryson,

General Counsel Secretary.

[FR Doc. 91–28902 Filed 11–27–91; 2:56 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 2, 9, 16, and 23, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 2

Friday, December 6

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 9—Tentative

Thursday, December 12

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
1:30 p.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

Week of December 16—Tentative

Monday, December 16

2:00 p.m.
Briefing on Regulatory Application of PRA (Public Meeting)

Tuesday, December 17

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Thursday, December 19

10:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing on Status of Technical Specifications Improvement Program (Public Meeting)

Week of December 23—Tentative

There are no Commission meetings scheduled for the Week of December 23.

ADDITIONAL INFORMATION:

By a vote of 4–0 on November 22, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of EPA MOU and a BRC Issue" (Closed—Ex. 9 and 10), be held on November 22 and on less than one week's notice to the public.

By a vote of 4–0 on November 26, the Commission determine pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Promulgation of a Final Rule Revoking the Vacated Attorney Exclusion Rule for NRC Investigations and Inspections and Promulgation of a Proposed Rule Replacing the Vacated Provisions" (Public Meeting), be held on November 26 and on less than one week's notice to the public.

Note.—Affirmative sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETING CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: November 26, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–28920 Filed 11–27–91; 2:57 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 56, No. 231
Monday, December 2, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-146]

Availability of Proposed Revision of Veterinary Biologics Memorandum No. 800.65 Concerning Eggs for Production of Animal Biological Products

Correction

In notice document 91-26805 beginning on page 56970 in the issue of Thursday, November 7, 1991, make the following correction:

On page 56971, in the first column, under **DATES:**, in the third line, "January 6, 1991" should read "January 6, 1992".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

Correction

In notice document 91-22361 appearing on page 47064, in the issue of Tuesday, September 17, 1991, in the second column, the file line was omitted, and should read "[FR Doc. 91-22361 Filed 9-16-91; 8:45 am]".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3868-8]

Drinking Water; National Primary Drinking Water Regulations; Total Coliforms

Correction

In rule document 91-935 beginning on page 1556 in the issue of Tuesday, January 15, 1991, make the following correction:

On page 1557, in the third column, in the file line at the end of the document, "FR Doc. 91-925" should read "FR Doc. 91-935".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

American President Lines, LTD., Agreements Filed

Correction

In notice document 91-26365, beginning on page 56222, in the issue of Friday, November 1, 1991, make the following correction:

On page 56223, in the first column, "Agreement No.:00224-2-585" should read "Agreement No.: 224-200585".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960-AC26

Supplemental Security Income for the Aged, Blind, and Disabled; Subpart P—Residence and Citizenship

Correction

In rule document 91-25526 beginning on page 55073, in the issue of Thursday, October 24, 1991, make the following correction:

§ 416.1618 [Corrected]

On page 55076, in the first column, in § 416.1618(d)(2), in the third line, "(l3)" should read "(13)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-120-02-4212-13; 62-029; OR-45444]

Exchange of Public Land, Coos County, Oregon

Correction

In notice document 91-26248 appearing on page 56085 in the issue of Thursday, October 31, 1991, make the following corrections:

In the first land description for Willamette Meridian, Oregon, T. 25 S., R. 13 W., Sec. 7 should read "Lots 5, 6, 8, SE¼SE¼SW¼, S½SE¼SE¼NE¼;"; and Sec. 18 should read "Lot 7, E½E½N W¼.".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[G-010-G1-0125-4212-13; NMNM 65196]

Issuance of Exchange Conveyance Document and Order Providing for Opening of Public Land in San Juan Co.; NM

Correction

In notice document 91-25732 beginning on page 55334 in the issue of Friday, October 25, 1991, make the following correction:

On page 55335, in the first column, in the second land description for New Mexico Principal Meridian, T. 31 N., R. 10 W., in sec. 10, "NE¼SE¼" should read "NE¼SW¼".

BILLING CODE 1505-01-D

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

President's Committee on the Arts and the Humanities; Meeting

Correction

In notice document 91-22277 appearing on page 47108 in the issue of

Tuesday, September 17, 1991, in the second column, in the file line, at the end of the document, "FR Doc. 2227" should read "FR Doc. 91-22277".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29851; File No. SR-Amex-91-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to New Listing Standards for Emerging Growth Companies

Correction

In notice document 91-26074 beginning on page 55958, in the issue of Wednesday, October 30, 1991, make the following correction:

The table on page 55959 should have appeared as set forth below:

NUMERICAL CRITERIA

	Original				Maintenance (All)	
	Companies not presently traded in NASDAQ		Companies presently traded in NASDAQ		Regular	Alternate
	Regular	Alternate	Regular	Alternate		
Total Assets	$4M	$3M	$2M	$2M	$2M	$2M
Capital & Surplus	$2M	$2M	$1M	$2M	$1M	$2M
Total Mkt Value	$2.5M	Over $10M	$2.5M	$2.5M	$500,000	$1M
Public Float	250,000 shs	400,000 shs	250,000 shs	250,000 shs	250,000 shs	250,000 shs
Public Shareholders	300	300	300	300	300	300
Minimum Price	$3	$2	$1	Below $1	$1	Below $1

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-12]

Proposed Alteration of Transition Area; Austin, Minnesota

Correction

In proposed rule document 91-27385 beginning on page 57866 in the issue of Thursday, November 14, 1991, make the following corrections:

On page 57867, in the third column, under **The Proposed Amendment**, in the last line, "(24 CFR ***" should read "(14 CFR ***".; and two lines above the signature, "Des Plains" should read "Des Plaines".

BILLING CODE 1505-01-D

federal register

Monday
December 2, 1991

Part II

Department of Agriculture

Cooperative State Research Service

Grants and Cooperative Agreements; Availability, etc.: Competitive Research Program

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Competitive Research Initiative Grants Program (Competitive Research Grants Program); Fiscal Year 1992: Solicitation for Applications

Applications are invited for competitive grant awards in agricultural, forestry and related environmental sciences under the National Competitive Research Initiative Grants Program (NCRIGP) administered by the Office of Grants and Program Systems, Cooperative State Research Service (CSRS), for fiscal year 1992.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act) (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Section 734 of Public Law No. 102–142 an Act Making Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 1992, and for other purposes, prohibits CSRS from using the funds available for the NCRIGP for fiscal year 1992 to pay indirect costs on competitively-awarded research grants that exceed 14 per centum of the total direct costs under each award.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulations governing the NCRIGP, 7 CFR part 3200, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; and (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016.

Section 1402 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by section 1602 of the FACT Act requires that research supported by the NCRIGP address, among other things, one or more of the following purposes of agricultural research and extension: (1) Continue to satisfy human food and fiber needs; (2) enhance the long-term viability and competitiveness of the food production and agricultural system of the United States within the global economy; (3) expand economic opportunities in rural America and enhance the quality of life for farmers, rural citizens, and society as a whole; (4) improve the productivity of the American agricultural system and develop new agricultural crops and new uses for agricultural commodities; (5) develop information and systems to enhance the environment and the natural resource base upon which a sustainable agricultural economy depends; or (6) enhance human health by fostering the availability and affordability of a safe, wholesome, and nutritious food supply that meets the needs and preferences of the consumer and by assisting farmers and other rural residents in the detection and prevention of health and safety concerns.

The Secretary of Agriculture has identified several specific areas to support American agriculture in the 1990s including: alternative fuels, new products and processes, mechanisms for expanding markets abroad, providing the public with a safe and wholesome food supply, and protecting the land and water for future generations, while ensuring the farmers the best return on their efforts. Furthermore, the Secretary has identified, global change, information technology systems, rural development and biotechnology, and strengthening of the Nation's agricultural research capabilities as key parts of the Department's agenda.

Specific Research Divisions To Be Supported in Fiscal Year 1992

CSRS is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry and related environmental sciences, in the following Research Divisions:

Natural Resources and Environment ($17.039 M)
Nutrition, Food Quality, and Health ($6.153 M)
Animal Systems ($23.666 M)
Plant Systems ($37.866 M)
Markets, Trade, and Policy ($3.787 M)
Processing Antecedent to Adding Value or Developing New Products ($3.787 M)

Pursuant to the provisions of section 2(b)(10) of the Act of August 4, 1965, as amended by section 1615 of the FACT Act (1965 Act, as amended) no less than 10 percent ($9.230 M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent ($1.846 M) of the available funds listed above will be made available for equipment grants. Further, no less than 20 percent ($18.460 M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 20 percent ($18.460 M) of the funds listed above shall be made available for grants for mission-linked research grants. (See below).

The opportunities for research in the above areas have been underscored as a means of providing the scientific and technological advances urgently needed for meeting major challenges now facing agriculture in the United States. Many agricultural and scientific communities, among them the Board on Agriculture of the National Research Council, the State Experiment Station Committee on Organization and Policy, the Joint Council on Food and Agricultural Sciences, the National Agricultural Research and Extension Users Advisory Board, users communities, USDA agencies, and professional and scientific groups have called for an increased investment in competitively awarded research as a means of providing new knowledge for improved national agricultural competitiveness, sustainability, and economic performance; for credible environmental stewardship; for improved human health; and for the revitalization of rural communities.

Research is needed which will form a broad base of knowledge for addressing cost-effective prevention and solution of problems associated with agricultural production, particularly for generating production systems that are sustainable both environmentally and economically; for developing means to protect natural resources and wildlife; for optimizing national and international economic factors; for optimizing livestock and crop quality and productivity; for protecting human health and food safety; for finding new uses of agricultural products, including use as fuel; and for adding value to all stages of agricultural products. To provide this knowledge, research in the following six

specific research divisions will be supported:

Natural Resources and the Environment

Increased knowledge is necessary to develop innovative techniques for prudent management of our nation's natural resources and for addressing potential environmental problems such as UV-B radiation and global climate change. Accordingly, in the area of Natural Resources and the Environment, research programs will include: Water Quality, Plant Responses to the Environment, Forest/Rangeland/Crop Ecosystems, and Improved Utilization of Wood and Wood Fiber. Research opportunities in forest biology will be provided in the above four program areas, as well as in all programs in the Plant Systems research area.

Nutrition, Food Quality, and Health

In response to the increased awareness of the dependency of optimal human health on optimum nutrition and food quality, research opportunities on nutritional requirements for optimal health will be continued. Research proposals will be supported in food safety, specifically focused on microbial agents responsible for food-borne illness.

Animal Systems

Research across a broad range of animal science areas is needed to enhance animal production efficiency, to improve animal products, and to better protect the health and well-being of animals of agricultural importance including aquaculture species. Accordingly, research areas will include: Reproductive Biology of Animals, Cellular Growth and Developmental Biology of Animals, Animal Molecular Genetics, and Mechanisms of Animal Disease.

Plant Systems

The Plant Genome program will continue to provide opportunity in mission-oriented research targeted for the identification, characterization, alteration, and manipulation of genes controlling traits of agricultural importance. This program area is part of the larger USDA Plant Genome Research Program. The Photosynthesis Program has been expanded to cover proposals in plant respiration and metabolism in chloroplasts and mitochondria and is now named Photosynthesis/Respiration. Other NCRIGP programs in the FY 91 Plant Systems (Nitrogen Fixation and Metabolism; Plant Genetic Mechanisms and Molecular Biology; Plant Growth and Development; Plant Pest Interactions; and Alcohol Fuels) will continue in FY 1992.

Markets, Trade, and Policy

In the increasingly competitive global market environment, exports of commodities and value-added products need to be increased in ways that can revitalize rural economies. Accordingly, the new area of Markets, Trade, and Policy has been established as an important component of the NCRIGP. Research will be supported in two areas: (1) Market Assessments, Competitiveness and Technology Assessments, and (2) Rural Development.

Processing Antecedent to Adding Value or Developing New Products

In response to a growing awareness of the need to enhance the competitive value and quality of U.S. agricultural and forestry products, the area of Processing Antecedent to Adding Value or Developing New Products has been developed as a second new program of the NCRIGP. Research will be supported in the area of Processing for Development of New Value-Added Products and should focus on developing new uses for agricultural materials by improving efficiencies in the processing of raw products as well as on processing and preservation methods for converting agricultural materials into value-added food and non-food products.

While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to describe areas where new information is vitally needed, the guidelines are not meant to establish boundaries or to discourage the creativity of potential applicants. The USDA encourages submission of innovative projects that are "high-risk", as well as innovative proposals with potential for more immediate application. In all instances, innovative research will be given high priority.

For research addressing biological issues, agriculturally important organism(s) should be used to accomplish the research objectives. The use of other organisms as experimental model systems must be justified relative to the goals of the appropriate research program areas and to the long-term objectives of USDA.

Types of Proposals

Under the NCRIGP, CSRS may make project grants, including renewals to existing NCRIGP-funded projects, to support research, including research conferences, and to improve research capabilities in selected areas related to the food and agricultural sciences. 7 CFR 3200.1 (a) states that each year CSRS will announce through publication of a Notice the high priority research areas and categories to improve research capabilities for which proposals will be solicited and the extent that funds are available therefor. The NCRIGP solicits proposals that are single or multidisciplinary, fundamental or mission-linked. The following definitions apply:

- Fundamental Research: Research that tests scientific hypotheses and provides basic foundation knowledge that supports applied research and from which major conceptual breakthroughs are expected to occur.
- Mission-linked Research: Research on specifically identified agricultural problems which, through a continuum of efforts, provides information and technology that may be transferred to users and may relate to a product or process.
- Multidisciplinary Research: Research in which scientists from two or more disciplines are collaborating closely for a common goal.

Note to Multidisciplinary Research Teams: The NCRIGP recognizes the value of research performed as a team effort and recommends the following be taken into consideration when assembling a research team and constructing a proposal:

In order to be competitive the number of objectives and the level of personnel involved in the proposal should be appropriate to the NCRIGP program area and to the research proposed. A clear management strategy should be provided which identifies the effort of each member of the team. Participation should be limited to those investigators integral to the proposed research and should not include investigators or objectives peripheral to the hypothesis being tested. It is unlikely that requests for more than three years of funding will be supported.

The project types for which proposals are solicited are:

I. Conventional Projects

(a) Standard Research Grants

Research will be supported that is fundamental or mission-linked performed by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation or individual may apply. The research proposed must be solicited

specifically in the research program areas described herein.

(b) Conferences

Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this solicitation will be considered for partial or, if modest, total support. These proposals should be submitted to the appropriate research program areas described in this solicitation. Applicants considering submission under this category are strongly advised to consult the appropriate NCRIGP staff before preparation and submission of the proposal. Any State agricultural experiment station, college or university, other research institution or organization, Federal agency, private organization, corporation, or individual is an eligible applicant in this area.

II. Agricultural Research Enhancement Awards

In order to contribute to the enhancement of research capabilities in the research program areas described herein, the second part of this solicitation solicits applications for competitive grants to be awarded in the following categories:

(a) Postdoctoral Fellowships

In accordance with section 2(b)(3)(D) of the 1965 Act, as amended, individuals who have recently received or will soon receive their doctoral degree are encouraged to submit proposals. These proposals can be submitted directly by the individual or through an institution. The following requirements apply: (1) The doctoral degree must be received after January 1, 1989 and no later than June 15, 1992; (2) the individual must be a citizen of the United States; (3) the proposal must contain documentation that (a) arrangements have been made with an established investigator with regard to all necessary facilities and space for conduct of the research and (b) that the host institution has been informed of these arrangements; and (4) the research proposed must be solicited in and directly submitted to one of the program areas described in this document. The proposal should initiate the individual's independent program, rather than supplement or augment research programs in the laboratory of the established investigator. Postdoctoral awards are limited to two year's duration and are not renewable. A separate peer review panel will not be assembled for the purpose of reviewing these proposals. Proposals should be submitted to the appropriate research program area described in this solicitation by the designated deadline for that particular program area.

(b) New Investigator Awards

Pursuant to section 2(b)(3)(E) of the 1965 Act, as amended, investigators or coinvestigators who have completed graduate or postdoctoral training, are beginning their independent research careers and do not have an extensive research publication record are encouraged to submit proposals. All individuals who have not received competitively-awarded Federal research funds beyond the level of pre- or postdoctoral research awards, and who have less than five years of post-graduate (terminal degree) research experience, are eligible for this award. The proposal must contain documentation which lists all prior Federal research support. The research proposed shall be appropriate to one of the program areas described in this document, and the proposal must be submitted directly to that program area. A separate peer review panel will not be assembled for the purpose of reviewing these proposals. Proposals should be submitted to the appropriate research program area described in this solicitation by the designated deadline for that particular program area.

(c) Strengthening Awards

Pursuant to sections 2(b)(3) (D) and (F) of the 1965 Act, as amended, proposals are solicited that request funds for Research Career Enhancement Awards, Equipment Grants, Seed Grants or Strengthening Standard Research Project Awards. Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards will be available to ensure that faculty of small and mid-sized institutions who have not previously been successful in obtaining competitive grants under section 2(b) of the 1965 Act, as amended (Competitive Research Grants Program) receive a portion of the grants. See program area 80.0 for eligibility requirements.

The project subject for any Strengthening Award shall be appropriate to one of the research program areas described in this document. More specific description of the Strengthening Awards Program is found under Program Area 80.0.

Specific Research Divisions

The following specific Research Divisions and the program areas therein and guidelines are provided as a base from which proposals for both Conventional Projects and Agricultural Research Enhancement Awards shall be developed:

Natural Resources and the Environment

Research in the area of natural resources and the environment is needed to address contemporary issues of importance not only for agriculture but for society as a whole. Biological systems are influenced markedly by the environment. Further, the impact of possible environmental changes on sustainability and economic viability of agriculture and forestry, and the need to enhance the stewardship of natural resources to minimize negative environmental consequences require expanded knowledge in diverse scientific disciplines. To garner such knowledge, research will be supported in the following topic and program areas:

21.0 Water Quality

Non-point runoff of water contaminants and pollutants, including pesticides and other organics, inorganic nutrients, animal wastes, excess salts and metals is a major landscape problem. The goal of this program area is to support innovative research that tests hypotheses regarding basic underlying mechanisms that affect water quality. It is anticipated that results from this research will be readily transferable to development of methods for enhancement of water quality within and exiting from specific agricultural and forest ecosystems. Studies are needed in the disciplines of soil chemistry and physics; uptake, transport, degradation, and fate of water-borne contaminants of agricultural origin; and, ecology of landscape elements affecting water quality, including interactions of wetland, riparian, or buffer ecosystems with agricultural and forest ecosystems. Proposals may be developed from the following specific research areas and guidelines:

Soils/Microorganisms

This area will support research on soil and microbial processes that affect accumulation, persistence, degradation, disappearance and transport of water contaminants and pollutants, including pesticides and other organics, inorganic nutrients (including nitrogen and phosphorus), excess salts, and metals. Proposals should emphasize studies that will enhance basic knowledge of the biological and physicochemical mechanisms affecting these phenomena specifically relating to water quality. The problem areas include, but are not

limited to: (a) Physical properties and processes of soils (including litter or surface sediments) under both aerobic and anaerobic conditions, including surface chemistry of soil components, adsorption, diffusion and mass flow of contaminants and their accessibility to microorganisms and plant roots; (b) basic biochemical, genetic, and molecular mechanisms of microbial uptake, transformation, sequestration, and detoxification of pesticides and other organics, nutrients, and metals; and (c) ecology of microbes involved in the above processes.

Plant/Water Contaminant Interaction

This area will support research on: (a) Basic biochemical, genetic, and molecular mechanisms of whole plant uptake, transport, transformation, sequestration, and detoxification of water contaminants; (b) cellular, morphological, and developmental adaptations of plants as related to water contaminants (i.e., anatomy, physiology, biochemistry, root morphology and rhizosphere interactions); and (c) basic studies involving tolerant species that accumulate or modify contaminants. (See also Plant Responses to the Environment, 22.1).

Wetland, Riparian, and Forest Ecosystems

This area will support research on biogeochemical, physiological, and/or ecological processes and mechanisms in wetland, riparian, or buffer ecosystems (natural or constructed) related to disposal, treatment, storage and/or reduction of contaminated non-point source run-off from agricultural or forest systems. Proposals are encouraged which study mechanisms related to reduction, interception and processing, and interactions of source and receiving sites, rather than solely with impact at receiving sites. Nutrient budget studies and estimates of contaminant retention and treatment capacity should be included and should be presented in the context of hypotheses regarding mechanisms affecting such parameters. Statistically-based studies that emphasize spatial variability are encouraged. Although proposals that deal with questions at the landscape level, as well as those that deal with interactions of components of ecosystems, are encouraged, the questions should be unique, hypothesis-driven and discrete from other on-going studies in these landscapes and at a scale appropriate to this program. Proposals in which agricultural lands, forests, or rangelands are part of the hydrological unit are encouraged.

Further guidelines for proposal development: The three research areas presented above are not mutually exclusive. Investigators may elect to study a question which considers a soil/microorganism and or plant/contaminant problem in an ecosystem context. Questions that span two or more research areas and/or two or more scientific disciplines may require a multicollaborator, multidisciplinary approach. The scientific question to be studied should be justified for this program by relating it to a specific problem in water quality.

Support will not be provided for research applications that propose screening, monitoring or survey projects; nor for studies in: technology or instrument development; policy and economic decisions; genetic engineering for water quality enhancement; municipal, urban, or industrial wastewater treatment, including studies of natural or constructed ecosystems for such treatment; bioremediation; animal and human health issues or development of models without strong experimental and field validation components.

Investigators should note that a complementary Water Quality Program exists within the CSRS Special Grants Program. For further information about the Special Grants Program, contact the Proposal Services Branch at the address listed under "How to Obtain Application Materials." Applicants should select the most appropriate program for submission. Submission of duplicate proposals or proposals with substantial overlap to both programs is discouraged.

22.0 Atmosphere and Global Climate Change

A strong scientific basis is needed for understanding the impact of potential atmospheric and global climate change. The objective of this program area, which is a part of the U.S. Global Change Research program, is to support research which provides an understanding of plant responses to the environment. Such knowledge can provide the basis for developing strategies for adapting to possible changes accompanying projected global climate fluctuations, and for decreasing the impact of environmental stress on agricultural and forest productivity.

22.1 Plant Responses to the Environment

The goal of this program is to understand the fundamental mechanisms of the plant's response to environmental factors, both natural and anthropogenically perturbed. Environmental factors may include: water, temperature, light (including UV-B), nutrient, and atmospheric chemical composition (including carbon dioxide, ozone, sulfur dioxide, and other greenhouse gases). Mechanisms may be studied at the ecophysiological, whole plant, cellular, or molecular levels. It is recommended, however, that studies at the cellular and molecular levels be considered in relation to the response at the level of the whole plant. Proposals are encouraged that are based on testable hypotheses and that go beyond descriptive levels of experimentation. Hypotheses that consider single or multiple factors are appropriate. Examples of research to be supported include: (a) Expression and regulation of genes and gene products that are relevant in plant response to environmental factors; (b) identification of biochemical, cellular, morphological, and phenological changes that take place in plants in response to environmental signals; and (c) the interactions of multiple factors and how they affect plant physiological processes.

Ecosystem studies specifically directed toward understanding the physiological response to the environmental factors listed above are also appropriate for this program; other ecosystem studies should be submitted to the Forest/Rangeland/Crop Ecosystem program (23.0). Program areas that support studies directed toward understanding aspects of plant biology that do not emphasize an environmental component are described in Plant Systems (51.054.0). For plant-water interactions, see also the Water Quality Program (21.0).

23.0 Forest/Rangeland/Crop Ecosystems

The goal of this program area is to further the understanding of underlying biological and ecological processes in ecosystems that can contribute to enhanced plant productivity and to the well-being and sustainability of plant communities. Structure and function of ecosystems reflect the many complex interactions and interdependencies among plant species, other organisms, and the physical factors operating within these systems. Human influence contributes to complex perturbations of these systems; yet, a lack of understanding of the intricacies of ecosystems is a barrier to obtaining sustainable agricultural and forest production. Therefore, investigations on how major landscapes function at ecophysiological, population, community, and biogeochemical levels

will provide knowledge essential for improving long-term agricultural and forestry practices.

Within this context, studies that examine the developmental, structural, or functional attributes controlling component ecosystem processes, as well as whole ecosystem responses, will be considered. Proposals that explore the implications of alternative management systems on ecosystem processes also are encouraged. Simulation modeling may be useful for integration of research results. Studies are encouraged in, but not limited to, the following areas: (a) Influence of abiotic and biotic factors on carbon, nutrient, water, and energy flow in ecosystems and on the mechanisms that control such fluxes; (b) soil physical and chemical properties and processes that affect water and nutrient availability; (c) responses of plant communities and soil food webs to management practices, disturbance, and environmental change (includes successional and mycorrhizal studies); and (d) interspecific antagonisms and interactions among plants in relationship to management practices.

Because of limited funding, large whole ecosystem manipulations are not expected to receive support. Applicants who propose studies of wetland or riparian ecosystems, or those interested in the ecosystem as it relates to water or soil contamination or water quality, should apply to the Water Quality program area (21.0). Studies that focus only on the mechanisms of plant physiological response to abiotic or biotic factors should apply to the Plant Responses to the Environment program area (22.1) or the Plant Pest Interactions topic area (51.0).

24.0 Improved Utilization of Wood and Wood Fiber

This program area encourages research on those critical barriers to improved wood utilization, providing the scientific base from which new research and development can proceed. The program area will place emphasis on the following:

Wood chemistry and biochemistry represent important areas where new basic information is vitally needed and that have great potential for expanding efficient wood utilization. Basic questions that need to be addressed include principles governing the biological, physical, or chemical reactions in wood and woodbase materials. Examples of research subjects of interest include: Conversion to products; deterioration mechanisms; new wood treatment chemistry; lignocellulosic polymer modification; surface chemistry; and fundamental studies in adhesives.

Physical/mechanical properties of wood and basic wood processing technology constitutes an area of investigation in which an improved base of scientific knowledge can ensure future development of new materials, products, and processes. Research is encouraged that advances an understanding of the structure, physical properties, and basic processing characteristics of wood and wood-base materials. Examples of such research include, but are not limited to: Anatomy and ultrastructure; wood formation; viscoelasticity; heat and mass transfer phenomena; lignocellulosic modification; particle/fiber consolidation; surface and defect evaluation methods; non-destructive property evaluation; and materials science principles.

Structural wood engineering relates to the structural performance of wood and wood-base materials as individual components and in systems. Significant improvements in the use of wood will depend on the development of an expanded scientific base of knowledge. The goal of research in this area is to stimulate innovative approaches in the structural use of wood. Examples of relevant research include: Reliability-based design; performance modeling and behavior of wood/non-wood composites; new approaches in fasteners and connectors; moisture and environmental effects; and basic failure mechanisms.

Forest engineering research that emphasizes the impact of engineering practices upon the safety of forest operation and the ergonomics of forest system components also will be considered in this program area. Examples of such research include: Studies of engineering-system-related stand regeneration; engineering characteristics of trees, stand, and soils; and systems for controlling and monitoring equipment. Research on the development of equipment, instrumentation, and control systems should contain a significant portion of work involving effects of equipment and instrumentation on wood quality or wood products.

Nutrition, Food Quality, and Health

The health of the U.S. citizen significantly depends on the quality and quantity of the country's food supply and the nutrients consumed by individuals. Research will be supported which will contribute to the improvement of human nutritional status by increasing our understanding of requirements of nutrients. Data generated from these studies will form the scientific basis for dietary recommendations, as well as for new developments by the food industry in response to the needs engendered by those recommendations. Safety of food products is of paramount importance to the producer, processor, distributor, and consumer. In response to this need, research in food safety, particularly focusing on the pathogenesis, prevention and control of food-borne disease-causing microorganisms, is in place.

31.0 Human Nutrient Requirements for Optimal Health.

Our need to understand the interplay between optimal nutrition and optimal health serves as an impetus for research which will improve our understanding of nutrient requirements in the normal healthy human population. The primary objective of this program is to support research that will help to fill gaps in our knowledge of human nutrient requirements and factors influencing them.

Examples of research that will be emphasized include: (a) Bioavailability of nutrients; (b) the interrelationship of nutrients; (c) nutrient requirements of healthy individuals across all age groups; (d) mechanisms underlying the relationship between diet and health maintenance, such as the effect of nutrients on the immune system; (e) the cellular and molecular mechanisms underlying nutrient requirements, including the modulation of gene expression by nutrients. A better understanding of human nutrient requirements contributes to the USDA's emphasis on nutrition education.

Support will not be provided for research addressing nutrient requirements and disease states, demonstration or action projects, or for surveys of the nutritional status of population groups. In addition, the use of animals as model systems must be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determining effects on human nutrient bioavailability or metabolism.

Proposals that concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements.

32.0 Food Safety.

The primary objective of this program is to increase our understanding of the disease-causing microorganisms that contaminate food with the goal of decreasing food-borne illnesses. Proposals are solicited for research on the mechanisms of microbial

pathogenesis in humans and control of food-borne microorganisms with an emphasis on those growing at refrigeration temperatures. Proposals may address either pre- or post harvest (slaughter) origin of the microbial agent. Such proposals should clearly address areas of microbial food safety and not plant or animal health issues. Model systems must clearly address microbial food safety concerns and be justified along program guidelines.

Animal Systems

Research across a broad range of animal science areas is needed urgently for the future enhancement of animal production efficiency as well as to address such areas as the modification of animal products. The critical need for a better understanding of the biology of animal production performance necessitates this broad approach. To accomplish this, research will be supported under the following categories: (a) Animal reproductive biology; (b) cellular growth and developmental biology of animals; (c) animal molecular genetics; and (d) mechanisms of animal disease. Emphasis should be given to innovative approaches to research questions related to animals primarily raised for food or fiber, including aquaculture species, or that otherwise contribute significantly to the agricultural enterprise of the country. The use of experimental model systems should be justified relative to the objectives of the specific research program area.

41.0 Reproductive Biology of Animals

Suboptimal reproductive performance in animals of agricultural importance is a major factor limiting more efficient production of animal food products. New knowledge in this area is required to solve the problem of increased costs of animal production and to decrease the impact of consequent high costs of animal food products to the consumer. Therefore, the primary objective of this program area is to increase our knowledge of reproductive biology in animals of agricultural importance with the goal of increasing reproductive efficiency.

This program will consider for support innovative research on: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryo-maternal interactions, and embryo-implantation; (b) factors controlling ovarian function including follicular development, ovulation, and corpus luteum formation and function; (c) factors controlling male reproductive function; (d) gamete physiology, including oogenesis and spermatogenesis, gamete maturation, mechanisms regulating gamete survival *in vivo* or *in vitro;* (e) parturition, postpartum interval to conception, and neonatal survival.

Because alterations in animal behavior and animal well-being may impair fecundity, this program also encourages research on the mechanisms controlling animal responses to physical and biological stresses that impinge upon reproductive efficiency. Research should contribute to an understanding of the causes, consequences, and avoidance of stress, rather than merely describing the physiological effects of stress on reproductive efficiency.

Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged.

42.0 Cellular Growth and Developmental Biology of Animals

Suboptimal growth and development are limiting factors in animal productivity, and basic information regarding developmental processes in animals of agriculture importance, including aquaculture species, is largely lacking. The primary objective of the program is to increase our understanding of the biological mechanisms underlying animal growth, development, and lactation. Increased knowledge in these areas would be useful in increasing protein and decreasing fat in food products of animal origin, improving production, and improving control and manipulation of muscling, growth, metabolism, tissue partitioning, and mammary function.

The following categories of research should be emphasized: (a) Cell proliferation and differentiation; (b) genetic mechanisms underlying growth and development; (c) metabolic regulators such as growth factors; (d) synthesis and degradation of protein and lipid at the cellular or tissue level; (e) metabolic and nutritional aspects of growth and development including rumen microfloral development; (f) developmental biology of the immune system; and (g) cellular and molecular aspects of the effect of environmental stress on growth and development. Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged.

Proposals dealing essentially with aspects of reproduction should be submitted to Reproductive Biology of Animals (41.0). Proposals addressing research on disease agents (biotic or abiotic) should be submitted to the Mechanisms of Animal Disease program (44.0).

43.0 Animal Molecular Genetics

A lack of basic information about the genes and gene products of traditional food and fiber animals and aquaculture species currently exists. The primary objective of this program is to increase our understanding of the structure, organization, function, regulation, and expression of genes in agriculturally important animals. Increased knowledge in this area would aid in improving animal productivity and efficiency, genetic localization of economically important production traits, marker assisted selection, and use of transgenic methodology.

The following areas of research should be emphasized: (a) Identification, isolation, characterization of genes, gene products, and their regulatory mechanisms; (b) identification of DNA segregation markers; (c) interactions between nuclear and organellar genes and the molecular basis of genetic replication; and (d) development and application of methods to modify the animal genome. Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged.

44.0 Mechanisms of Animal Disease

A major limiting factor in agriculture is the lack of basic information about both infectious and noninfectious causes of disease in traditional food and fiber animals and aquaculture species. In order to sustain animal health and well-being and to prevent animal disease, the primary objective of this program is to increase our understanding of pathogenesis and disease mechanisms. Host-agent interactions and defense mechanisms of the host animal are also of interest. Increased knowledge in this area would result in decreased contamination of food products of animal origin, decreased use of antimicrobial agents and more effective immunizations and diagnostic methods to provide assistance with preventive herd health management schemes with the outcome of improved efficiency and sustainability of the animal production unit and its environmental setting.

The following categories of research represent areas of emphasis of the program: (a) Mechanisms that alter the normal physiologic state at the molecular, cellular or organ level to produce disease resulting from both biotic and abiotic causes; (b) genetic and cellular mechanisms of disease resistance, e.g. molecular immunology and immunogenetics; (c) pathogenesis;

(d) both host and microbial factors influencing colonization of mucosal surfaces; and (e) host-environment interactions that compromise the host defense systems or cause predisposition to disease. Epidemiologic studies on animal diseases that provide insight to etiologic factors and/or control also will be considered.

Because alterations in animal behavior and animal well-being may impair animal health, this program also encourages research on the mechanisms controlling animal responses to physical and biological stresses that impinge upon animal health and well being. Proposals which address this relationship in an attempt to more clearly define the condition of the well-being of animals are encouraged.

Model systems should be justified in terms of the program guidelines. Multidisciplinary research is encouraged.

Proposals involving reagent development *per se* will not be considered for support. In addition, proposals involving free-living insects that are not intermediate hosts or vectors of animal diseases will not be considered.

Plant Systems

Additional knowledge in a broad range of plant sciences is critical for improvement of crop and forest quality, productivity, sustainability, and for addressing the environmental impact of certain agricultural practices. Innovative research on plant systems will be supported in the following areas: (a) Plant pest interactions; (b) genomes, genetics, and diversity; (c) plant growth and development; (d) energy and metabolism; (e) alcohol fuels; and (f) ecosystems.

51.0 Plant Pest Interactions

Damage resulting from plant pests is a major factor in reducing crop and forest productivity. In some situations, plant pests can be controlled by chemical pesticides, but chemical application may result in negative environmental consequences. It is acknowledged widely that understanding plant pest interactions significantly improves our ability to develop successful and environmentally safe control strategies, and thus leads to a more sustainable agricultural or forest system. But despite considerable successful research on plant responses to pests, there is still great opportunity and need to further our understanding of plant defenses, and the basic biology of stress-causing organisms and biotic agents that suppress pests.

The goal of this topic area is to support research on biotic stresses encountered by plants during interactions with other plants, including weeds; with pathogens such as fungi, viruses, bacteria, and nematodes; and with arthropods such as insects and mites. The research supported in this topic area will focus on the identification of novel strategies that are both effective and compatible with social and environmental concerns and also enhance the sustainability of managed and non-managed ecosystems. Within this context, research which emphasizes the following is encouraged: (a) How plant-pest interactions are established; (b) mechanisms of plant response to biotic stresses; (c) mechanisms of pest response to host defenses; and (d) genetics of these interactions. Applications using molecular genetics as a tool to clarify plant-pest relations are appropriate to this program area. Proposals focused on mapping of plant resistance genes or traits should be directed to the Plant Genome program area, 52.1.

Additionally, the program recognizes that fundamental research in the area of biological control will provide critical information leading to sustainable agricultural and forest production systems and for the development of alternatives to pesticides. Therefore, research which emphasizes how damage from pests can be reduced, including basic studies on biological control organisms, is encouraged.

Host plants, pests, or components of natural control may be studied separately or as an interactive unit. However, all proposals should indicate how the anticipated information will further our understanding of plant-pest interactions and the cause, consequence or mechanism of stress avoidance in crop plants and forest species.

Research at the molecular, cellular, organismal or population level will be considered for those program areas described below.

51.1 Pathology

Emphasis will be placed on crop and forest stresses arising from interactions with biological agents such as fungi, bacteria, viruses, viroids, and mycoplasma-like organisms. Studies focusing on the three-way interactions of a pathogen, its host, and other host-associated microorganisms also are appropriate.

51.2 Entomology (includes Mites)

In addition to the aforementioned subject areas related directly to insect-plant relations, studies of the basic biology of insects in the following areas are encouraged: (a) Behavioral physiology; (b) chemical ecology; (c) endocrinology; (d) population dynamics; (e) genetics; (f) behavioral ecology; (g) pathology; (h) predator/parasite-insect relationships; and (i) toxicology including basic pesticide resistance studies. Proposed studies in these areas must include a justification for how anticipated results will be relevant to a reduction in plant stress.

51.3 Nematology

Emphasis will be placed on understanding the basic biology of plant parasitic and entomophagous nematodes and their interactions with host organisms. Applicants may propose to study the nematode away from the host if there is significant justification.

51.4 Weed Science

Emphasis will be placed on crop and forest stresses arising from interactions with other plants, particularly weedy species. This program area will emphasize studies on how stressful interactions are established between plants, how plants react to stresses generated by such interactions, how such interactions are influenced by environmental and other factors inherent to the interacting organisms, and how the interactions reduce plant productivity and usefulness.

To provide adequate scientific evaluation of applications, proposals submitted under these program areas will be reviewed by the peer review panel whose collective expertise is most appropriate to the scientific content of each proposal.

52.0 Genomes Genetics and Diversity

Significant impact on agricultural productivity can be achieved by understanding the molecular and cellular processes of plants and their inheritance, and translating these processes into desirable plant performance. In the topic area of Genomes, Genetics and Diversity, research which will promote the genetic improvement of crop plants and forest species is encouraged. Research on agriculturally important genes will be encouraged in two program areas. The Plant Genome program area will support mission-oriented studies to produce low density maps, localized high density maps, and development of methods with high potential applicability to crop improvement. The Genetic Mechanisms and Molecular Biology program area will focus on obtaining basic information about plant genes and genetic processes. Specific information about the two program areas follows:

52.1 Plant Genome

Grants will be awarded to support mission-oriented research in the area of plant genome. This grant program area is part of the USDA Plant Genome Research Program. The Plant Genome Research Program was established to facilitate development of new or improved crop plants and forest species and to maintain germplasm resources, thereby promoting stability and profitability of plant production and improvement of the quality of food, fiber, feed, and non-food products, including biofuels. To accomplish these goals, the Plant Genome program will foster and coordinate research related to identification, characterization, alteration, and rapid and precise manipulation of genes controlling traits of agricultural importance.

Following the discovery of scientific principles of heredity, application of genetic principles enabled the rapid improvement of many useful crop varieties. In conventional plant breeding, sexual hybridization and selection techniques have offered the chief means of genetic improvement, leading to substantial increases in yield, acquisition of pest resistance, and exploitation of other genetic traits of economic importance. However, many traits are controlled by multiple genes, limiting the rate at which improved varieties can be bred. Linkage maps carrying molecular markers are needed to facilitate breeding of traits controlled by multiple loci. Furthermore, in some commodities the application of current plant breeding methods may be approaching the point of diminishing returns because the desired genes do not exist within plant populations that can be hybridized. Genes that encode traits of potential economic importance are present in the plant population as a whole, but efficient means need to be developed to identify and isolate the responsible genes and transfer them to agriculturally important crop plants. The objective of the USDA Plant Genome Research Program is to facilitate full exploitation of the available gene pool for crop improvement. This will be accomplished by supporting high quality research designed to develop information and research tools that will equip the plant breeder and other plant scientists to meet and/or overcome present and future challenges.

Potential applicants to the NCRIGP Plant Genome Program area are advised that this is a mission-oriented, targeted program area. As such, the program is seeking proposals that are not only of high scientific quality but also are of high potential applicability to crop improvement as well. The use of non-cultivated plants as experimental model systems must be justified with regard to applicability to agriculture and forestry. Priority will be given to proposals that plan timely dissemination of information, mapping data, and materials to a clearly identified community of users, as well as to the scientific community as a whole. Coordinated proposals designed to bring complementary talents to bear on mapping needs are encouraged but proposals from single investigators will also be appropriate for submission. The specific areas of emphasis listed below offer exceptional opportunities for advancing agriculture and forestry.

(a) *Construction of genetic and/or physical maps.* Application of genomic strategies to problems in agriculture requires the development of tools. Accordingly, the objective of this section of the program is to construct maps for crop and forest species that are directly useful to breeders for crop improvement and to other biologists for fundamental plant science research. There are no prescribed priorities for specific commodities or for any particular types of maps to be constructed. The applicant should determine the nature of the map to be constructed (e.g., genetic or physical, high density or low density) for the particular species of interest. An assessment of the present state of the species' genome map, available genetic materials, the rationale for choice of the mapping population, and the future applications of the map for plant breeding or other research should be described in the proposal. It is not anticipated that any complete plant nuclear genome sequencing project will be supported under this program.

Construction of low resolution maps (i.e., those with a goal of containing gaps no larger than 25 centimorgans) will suffice for many plant breeding and research applications. High resolution maps (i.e., with gaps no larger than 5 centimorgans) likely will be limited in the number that will be funded, depending on the relationship of physical and genetic distances in the particular species. Strong justification will be needed in terms of a high density map's immediate and future scientific impact. For construction of genome maps with molecular markers at low or high density, a time frame of three years will usually be appropriate, unless unusual aspects of the particular species' genome produce difficulties that justify a longer-term effort.

Proposals for mapping should clearly describe communication or involvement with scientists (such as plant breeders, geneticists, physiologists, or biochemists) who will use the mapping tools that are to be created. Interaction of laboratories engaged in mapping with the users of the technology is essential to ensure early and efficient application of the tools developed.

(b) *Detailed mapping and sequencing of specific regions of the genome.* The identification and isolation of genes involved in specific genetic traits of economic significance is an important application of genome mapping. The goal is to provide support for investigators to use the available tools, such as existing physical and genetic maps, cytogenetic stocks, alien addition lines, near-isogenic lines, mutants, transposons, and molecular markers to locate, identify, and isolate specific genes that are important to agriculture and forestry. Economically important traits are complex and likely will require experimental approaches drawn from many disciplines.

No priorities for specific commodities or genetic traits to be addressed have been established. The applicants should identify genes that affect the economic value of a specific commodity or are relevant to yield and agricultural productivity. In order to justify the project duration, investigators should describe the genetic tools presently available and the biological properties of the particular species of interest with respect to their impact on the length of time required to identify, locate, and isolate a gene of interest.

(c) *Development of new mapping and cloning strategies.* Research to produce new methods and materials that can be applied to genome mapping, genome manipulation, gene isolation, or gene transfer is encouraged. The biology of the plant and its genome exhibits some fundamental differences from other eukaryotic systems and may require unique technical strategies. These differences include, but are not limited to, the polyploid nature of many plant genomes, the existence of the chloroplast genome and a large mitochondrial genome, the presence of the cell wall, the meristematic control of plant growth, and additional complex biosynthetic pathways. At the same time, plant systems offer unique advantages because of the ability to produce inbreds and interspecific sexual and somatic hybrids, the relative simplicity of introducing genes into many plant species, the possibility of regenerating plants from single cells, and the ease of cultivating large segregating populations. Research leading to the development of mapping, gene cloning, gene introduction, and

sequencing technologies that are designed to overcome technical obstacles due to the complexity of plant systems, or research that is designed to take advantage of unique features of the plant systems will be supported. Proposals that present innovative approaches to technology development are encouraged.

52.2 Plant Genetic Mechanisms and Molecular Biology

The goal of this program area is to encourage new approaches for the development of genetically superior varieties of crop and forest species. One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. Studies addressing the basic cellular, molecular, and genetic processes that contribute new information required for the development of novel approaches to crop and forest improvement will be given high priority. This program area will emphasize, but is not limited to, research in the following categories: (a) Identification, isolation, and characterization of agriculturally important genes and gene products; (b) relationships between gene structure and function; (c) regulatory mechanisms of expression of nuclear and organellar genes, including all stages from transcription to post-translational modification; (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes (for nuclear-chloroplast genome interactions, see also the Photosynthesis and Respiration Program (54.1)); (e) mechanisms of recombination, transposition, replication and repair; (f) molecular, biochemical, and cellular processes controlling regeneration of whole plants from single cells; (g) alteration and use of germplasm resources; and (h) development of molecular, cellular, genetic or cytogenetic methods for identifying or altering plant characteristics or genes that are important targets for genetic manipulation.

53.0 Plant Growth and Development

Optimal growth and development are essential for optimal productivity of agriculturally important crop plants and forest species. A basic understanding of developmental processes in these plants is largely lacking, but new experimental approaches are being developed through advances in molecular and cellular biology. The goal of this program area is to further the understanding of the fundamental mechanisms that underlie the regulation of the plant life cycle, including seed germination, differentiation, organogenesis, flowering, fertilization, embryogenesis, fruit development, seed development, senescence, and dormancy. This program area will emphasize, but is not limited to, studies on: (a) Developmental regulation of gene expression; (b) mechanisms of cell division, expansion, and differentiation; (c) development and organization of meristems; (d) photomorphogenesis; (e) cell biology including cytoskeleton, membrane biology, organelle development, and cell wall structure and properties (for photosynthetic membranes and chloroplast development, see also the Photosynthesis Program (54.1)); (f) biochemistry of primary and secondary metabolism related to plant growth and development; (g) hormonal regulation of growth and development, including biosynthesis, metabolism, perception, and mode of action of hormones; and (h) analysis and control of growth patterns. Proposals emphasizing the use of emerging experimental techniques for the investigation of these processes are encouraged.

54.0 Energy and Metabolism

54.1 Photosynthesis and Respiration.

Central to crop and timber production are the plant processes by which solar energy is captured and transformed into the forms of energy found in food and fiber. Many of the complexities of these unique processes are still poorly understood, and thus, cannot be subjected to molecular, genetic and managerial manipulations designed to solve agricultural problems such as sustainability, yield, efficiency, and resource utilization.

The objectives of this program area are to encourage research that will elucidate underlying mechanisms of energy capture, transduction, and utilization in crop and forest plants.

Categories of innovative research sought in this area will include, but not be limited to, studies of the following processes: (a) Photosynthetic energy conversion, including early events of photon capture and charge separation; (b) electron transport and energy transduction, including studies of biosynthesis, organization, and function of components of electron transport in photosynthesis and respiration (see also 52.2 and 53.0); (c) carbon dioxide transport and concentration; (d) biochemistry of carbon fixation, carbon assimilation and respiration; (e) control of photosynthate partitioning, translocation and utilization; (f) mechanisms controlling photosynthetic and respiratory processes in leaves, plants and canopies (see also 22.1 and 23.0); (g) metabolism and interactions (see also 52.2 and 53.0) of nucleus, cytoplasm, chloroplasts, mitochondria and other cellular compartments that are involved in photosynthesis or respiration; and, (h) metabolism unique to chloroplasts and mitochondria. Investigators proposing studies that focus primarily on mechanisms regulating expression of genes involved in photosynthesis and respiration should consider whether submission to the Plant Genetic Mechanisms program is more appropriate. Those investigators focusing on development of photosynthetic and respiratory structures should consider whether submission to the Plant Growth and Development program (53.0) is more appropriate.

It is expected that experimental approaches to the study of the processes outlined above will be drawn from many disciplines, including biochemistry, biophysics, chemistry, microbiology, genetics, physiology, and cellular, developmental and molecular biology. Multidisciplinary approaches are encouraged.

54.2 Nitrogen Fixation/Metabolism

The high levels of nitrogen required by crops must be supplied to soils in the form of compounds usable to plants, such as ammonia and nitrate which are then assimilated by plants. These compounds are supplied, for the most part, either by application of fertilizers or by the action of microorganisms that "fix" atmospheric nitrogen. Fertilizer application can be costly in terms of energy costs and effects on the quality of surface and ground water. Only certain groups of crop and forest plants are capable of forming the bacterial plant symbioses capable of the more cost-effective, environmentally-sound biological nitrogen fixation. Development of alternative crop production methods for supplying nitrogen is desired. As a basis for developing such alternatives, a broad understanding is sought of the fate of nitrates and ammonia in the soil, as well as how nitrogen is fixed biologically. Furthermore, enhancement of crop yield, quality, nutritive value, and development of novel plant products, will depend upon elucidation of mechanisms by which plants take up, transport and metabolize nitrogen compounds.

Innovative research is solicited which uses disciplinary approaches of biochemistry, molecular biology, microbiology, genetics, physiology, cellular and developmental biology, and

ecology. Multidisciplinary approaches are encouraged. Problem areas include, but are not limited to: (a) Nitrification and denitrification; (b) ecology and competitive interactions of nitrogen-fixing organisms; (c) factors controlling symbiont specificity; (d) mechanisms regulating infection and nodulation of the root by symbiotic nitrogen-fixing organisms; (e) mechanisms of nitrogen-fixation in free-living, associative, and symbiotic organisms; (f) mechanisms of and influencing uptake and transport of nitrogen in the plant; and (g) plant metabolism of nitrogenous compounds, related to problems (a-g) listed above.

55.0 Alcohol Fuels Research

Proposals will be considered for research relating to the physiological, microbiological, biochemical, and genetic processes controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. The scope of this program area includes studies on factors that limit efficiency of biological production of alcohol fuels and the means for overcoming these limitations.

Forest/Rangeland/Crop Ecosystems

The goal of the program area is to further the understanding of underlying biological and ecological processes in ecosystems that have the potential to contribute to enhanced plant productivity and to the sustainability of plant communities. Interested applicants are directed to the complete program area description under the Natural Resources and the Environment Research Division (23.0).

Markets, Trade, and Policy

The United States agricultural and forest product sectors need to increase exports of commodities and value-added goods in an increasingly competitive global market environment. Further, increased output for export is expected to be produced by sustainable production practices and contribute to revitalization of rural economies through employment and income growth. This challenge requires research to provide knowledge on environmentally compatible, cost-reducing technologies to enhance producer and processor competitiveness in the marketplace. Rural area leaders need knowledge about the implications of these new technologies and export market growth prospects in order to assess employment and income opportunities and to determine supplemental infrastructure and organizational needs.

Two new program areas are being introduced to begin to fulfill these research needs. They are: (1) Market Assessments, Competitiveness, and Technology Assessments and (2) Rural Development. The former is to assess market preferences, demand, utilization, and provide forecasts for various agricultural and forest products and commodities; determine the ability of the U.S. to compete for these markets; and assess the impacts of new product and production technologies on U.S. competitiveness, the environment, and rural economies. The Rural Development program has three objectives: (1) To develop new theoretical, conceptual, and methodological techniques to apply to rural revitalization issues; (2) to determine the forces impacting rural areas; and (3) to evaluate methods for revitalizing rural areas. To the extent that investigations in Market Assessments, Competitiveness, and Technology Assessment described above have implications for Rural Development, integrated interdisciplinary studies are encouraged, but investigators must indicate only one program area to which the proposal is submitted.

61.0 Market Assessments, Competitiveness, and Technology Assessments

This Program Area will support research in three broad categories:

(1) Market Assessments.

The purpose of market assessment studies is to identify, describe, and quantify the size of potential international markets for agricultural and forest commodities and value-added products that may be supplied by the U.S. Information is needed on the demographic, cultural, social, ethnic, religious, and other factors that influence consumer preferences for and use of foods, fibers, and forest products. These factors may include sensory properties, preservation method, form, packaging, labeling, and other characteristics. Empirical estimates are needed on the sensitivity of quantities purchased to changes in own price, income, and the prices of substitute foods, along with forecasts of future use. Similar economic information is needed for semiprocessed food and non-food items of agricultural origin that are exported by the U.S. for further processing into finished products for local consumption or export.

Research proposals are requested that will assess international markets for manufactured dairy products; beef, pork, broiler, and turkey products; fresh and processed fruits and vegetables; oilseeds and oilseed products; wheat and milled wheat products; corn products; and forest products, including lumber, composite materials, veneer, furniture, chips, and pulp. Market assessments are limited to the Pacific-Rim countries of Asia and Oceania, the European Community, Eastern Europe, Canada, Mexico, Argentina, Brazil, and Chile. Interdisciplinary proposals are encouraged. Future requests for proposals will include other commodities and products as well as other countries.

(2) Competitiveness.

The purpose of competitiveness studies is to ascertain the ability of the U.S. to compete in particular global markets for agricultural and forest products and determine the public and private strategies that can be employed to enhance U.S. competitiveness. Global is defined as any marketplace, including the U.S. Research is needed to provide empirical analyses and assessments of U.S. competitiveness in global markets relative to its principal competitors for raw and processed agricultural and forest products. The research should estimate the sensitivity of U.S. exports to changes in costs of factors used for production and marketing, fiscal policies, trade policies, monetary exchange rates, geopolitical restructuring, and other factors that affect competitiveness. This research should determine the conditions under which agricultural and forest product value-adding industries can locate in the U.S. and compete effectively for the domestic and export markets.

Competitiveness research proposals are requested for fiscal year 1992 that address the same commodities, products, and markets as listed above under market assessment studies plus the ability of the U.S. to compete for and retain its domestic market for the indicated commodities and products.

(3) Technology Assessment.

Technology assessment studies are to determine the benefits and costs of adopting new products and/or production methods. Research is needed to assess the socioeconomic and ecological impacts of adopting sustainable systems and practices applied to agricultural and forestry production. Proposals are requested that will provide empirical estimates of the impacts of sustainable practices on the competitiveness of U.S. produced agricultural commodities and forest products in global markets and the ecology, employment levels, and economic diversity of production areas utilizing the selected practices.

Interdisciplinary research proposals are encouraged.

62.0 Rural Development

In recent years, rural areas dependent on agriculture, forestry, and other natural resource extraction industries have been subjected to various forces that are reducing their economic vitality. Symptoms include outmigration, loss and degradation of essential services, and multiple job holding.

The action and interaction of these forces are poorly understood, hindering the development of effective public policies to revitalize depressed rural areas. Theoretical and empirical research is needed that will provide a better understanding of the processes by which these forces reduce economic vitality and the policies that can restore vitality. Exploratory research also is needed to provide new theories, concepts, and methodological techniques for developing rural revitalization policies.

Proposals are being requested in three areas:

(1) To Develop New Theoretical, Conceptual, and Methodological Techniques to Apply to Rural Revitalization Issues.

Proposals are requested for exploratory research to focus on new ways to improve the social and economic well-being of rural families and communities at the national, regional, and community levels. These may be abstract studies based entirely on theory and concepts.

(2) To Determine the Forces Impacting Rural Areas.

Empirical studies are needed to identify the forces that impact population change, employment, wage levels, and other indicators of social and economic viability These studies may assess the influence of various agricultural, fiscal, monetary, trade, labor, and environmental policies and programs. Other elements for study may include the influence of changing demand for agricultural and forest products, industry restructuring, growth in labor productivity, and factors causing outmigration of young adults.

(3) To Evaluate Methods for Revitalizing Rural Areas.

Empirical research proposals are requested to address the issue of how to diversify the economies of rural areas highly dependent on agriculture, forestry, and other natural resource extractive industries. These proposals may involve case studies, sectorial analyses, or regional comparisons. Examples of these studies include assessment of the structure of labor and capital markets, availability of support services, and investigations of sustainable agricultural systems as they affect employment diversification and entrepreneurial opportunity. Multidisciplinary approaches are encouraged.

Processing Antecedent To Adding Value or Developing New Products

Research in the area of processing antecedent to adding value or developing new products is needed to enhance the competitive value and quality of U.S. agricultural and forestry products. European countries sell about 75% of their agricultural output as value-added consumer products, while only one-third of U.S. agricultural exports are high value-added products. Instead, the U.S. sells over 50% of its agricultural output as bulk commodities such as corn, wheat and logs. In the U.S., the food processing and distribution system accounts for about 75% of the retail price of food and fiber products. Less than 30% of U.S. food exports are considered high value-added products.

Research will be supported in the area of Processing for Value-Added Products. Proposals dealing with forest products should be directed to the Improved Utilization of Wood and Wood Fiber program area (24.0).

71.0 Processing For Value-Added Products

Developing new uses for agricultural materials by enhancing process efficiencies and developing the knowledge base to support quantifiable and innovative processing/preservation methods for conversion of agricultural materials into new value-added food and non-food products is a top priority for U.S. agriculture. Research should emphasize processes that are environmentally acceptable and energy-efficient. Proposals should identify potential applications of the research or address an identified market need.

Proposals are encouraged in two general areas: (1) To increase the understanding of the physical, chemical and biological properties of agricultural materials and food products that are important for quantifying, predicting, and controlling the quality of food and nonfood products, and (2) to develop innovative processes for better utilization and more efficient conversion of agricultural materials and co-products to high value-added food and non-food products.

Examples of research to be supported in the food area include: (1) Methods for rapid monitoring of quality during processing and distribution; (2) new uses for food components in further processed foods; (3) innovative methods of extending shelf life and maintaining quality; and (4) innovative processing as a substitute for food additives in food preservation. Proposals dealing with issues of microbiological safety of foods should be directed to the Food Safety program area (32.0).

Examples of research to be supported in the non-food area include: (1) Development of superior lubricating products and other uses of industrial oilseeds; (2) development of specialty fibers such as for garment and bedding insulation, yarn, and facial tissue; (3) development of polymers such as higher nylons and interpenetrating polymer networks, strippable coatings, and flexible coatings; and (4) improved leather tanning techniques. Proposals dealing with alcohol fuels should be directed to the Alcohol Fuels Research program area (55.0).

II. Agricultural Research Enhancement Awards Program

The NCRIGP announces the implementation of a new strengthening program to help institutions develop competitive research programs and to attract new scientists into careers in high priority areas of national need in agriculture, food and environmental sciences. In addition to providing support for postdoctoral fellowships and for research awards for new investigators as described earlier, this program will include Strengthening Awards. All proposals submitted under this part of the solicitation of applications, in addition to fulfilling the requirements in this part, also shall be appropriate to one of the research program areas described under the Specific Research Divisions part of this solicitation.

80.0 Strengthening Awards

Strengthening Awards are available to ensure that faculty of small and mid-sized institutions who have not previously been successful in obtaining competitive research grants under section 2(b) of the 1965 Act, as amended, receive a portion of the grants. In addition, in order to ensure that such grants shall have the maximum strengthening effect, strengthening awards will be limited to faculty at small and mid-sized institutions that previously have had limited institutional success in obtaining grants under any Federal competitive research grants program. Further, institutions located in States that have had an average funding level from the USDA NCRIGP no higher

than the 33rd percentile, based on a three year rolling average of funding by the USDA NCRIGP and the Competitive Research Grants Office, which was subsumed by the NCRIGP, are particularly encouraged to apply for Strengthening Awards. The following States (USDA-EPSCoR States) fall into this category:

Alaska	Mississippi	South Carolina
Arkansas	Montana	South Dakota
Connecticut	North Dakota	Vermont
Hawaii	New Hampshire	West Virginia
Idaho	New Mexico	Wyoming
Maine	Rhode Island	

However, all applicants for strengthening awards must meet the criteria described herein for the type of award for which the applicant applies. An individual applicant may apply for only one of the following types of awards this fiscal year. A separate peer review panel, aside from the peer review panels assembled for review of Standard Research Grant applications, will be assembled for the evaluation of Research Career Enhancement Awards, Equipment and Seed Grants. Strengthening Standard Research Project Award applications will be reviewed by the peer review panel in the appropriate research program area along with Standard Research Grant applications.

In addition to being appropriate to one of the research program areas described under the Research Divisions described in this solicitation, proposals for Strengthening Awards also should fit within one of the following specified program areas:

80.1 Research Career Enhancement Awards

Grants within this program area are authorized by section 2(b)(3)(F) of the 1965 Act, as amended. The purpose of these awards is to provide an opportunity for faculty to enhance their research capabilities by funding sabbatical leaves. Funds will be designated for faculty at small and mid-sized institutions who have not received a competitive grant under section 2(b) of the 1965 Act within the past five years. These awards will be limited to faculty at small and mid-sized institutions that previously have had limited institutional success in obtaining grants under any Federal competitive research grants program. This Sabbatical leave shall be conducted in a Federal research laboratory or a research laboratory at an institution which confers doctoral degrees in the topic area.

Documentation that arrangements have been made with an established investigator with regard to all facilities and space necessary for conduct of the research must be provided in the proposal. Awards will be limited to one year's salary and funds for supplies. These awards are not renewable. Proposals should be submitted by the deadline date indicated in this solicitation.

80.2 Equipment Grants

Grants within this program area are authorized by section 2(b)(3)(D) of the 1965 Act, as amended. Funds will be designated for equipment grants to strengthen the research capacity of institutions. Institutions that previously have had limited success in obtaining grants under any Federal competitive research grants program may apply. Each request shall be limited to one major piece of equipment within the cost range of $10,000–$100,000. The amount requested shall not exceed 50 percent of this cost. Documentation that the remaining 50 percent will be matched by the applicant. Although arrangements for sharing equipment among faculty are encouraged, it must be evident that the principal investigator is a principal user of the requested equipment. This program is not intended to replace requests for equipment in individual research projects. Rather, it is intended to help fund items of equipment that will upgrade the research infrastructure. Proposals should be submitted by the deadline date indicated in this solicitation.

80.3 Seed Grants

Grants within this program area are authorized by section 2(b)(3)(F) of the 1965 Act, as amended. The purpose of these awards is to provide funds to enable investigators at small and mid-sized institutions to collect preliminary data in preparation for applying for a research project grant. Faculty who have not been successful in obtaining a competitive grant under section 2(b) of the 1965 Act, as amended (Competitive Research Grants Program) with the past five years are eligible. These awards will be limited to faculty at small and mid-sized institutions that have had limited institutional success in obtaining grants under any Federal competitive research grants program. These awards will be $50,000 (including indirect costs) for two years and are not renewable. Proposals should be submitted by the deadline date indicated in this solicitation.

Strengthening Standard Research Project Awards

Grants within this program area are authorized by section 2(b)(3)(F) of the 1965 Act, as amended. Investigators at small and mid-sized institutions may wish to apply for a Standard Research Project Grant. Faculty who have not been successful in obtaining a competitive grant under section 2(b) of the 1965 Act, as amended (Competitive Research Grants Program) with the past five years are eligible. These awards will be limited to faculty at small and mid-sized institutions that have had limited institutional success in obtaining grants under any Federal competitive research grants program. Proposals should be submitted to the appropriate research program area described in this solicitation by the designated deadline for that particular program area. A separate peer review panel will not be assembled for the purpose of reviewing these proposals.

How to Obtain Application Materials

Please note that potential applicants who are on the Competitive Research Grants mailing list, who sent applications in fiscal year 1991, or who recently requested placement on the list for fiscal year 1992, will automatically receive copies of this solicitation and the Grant Application Kit. All others may request copies from: Proposal Services Branch, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200; telephone: (202) 401–5049.

Specific Guidelines for Proposal Preparation and Submission

Section I. Overview

The following are specific guidelines presented to provide direction in proposal preparation and submission. Pursuant to 7 CFR 3200.4(c), the following guidelines for proposal format and content supplement those guidelines set out by that section. If the section and the supplemental guidelines herein conflict, the supplemental guidelines take precedence, in accordance with 7 CFR 3200.4(c).

Eligibility

The eligibility requirements for grants under section 2(b) of the 1965 Act, as amended, are listed in 7 CFR 3200.3. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Unsolicited proposals will not be considered and proposals from scientists at non-United States organizations will not be accepted.

The same investigator is not likely to receive more than one grant award under the NCRICP in any one fiscal year. To minimize the time and effort

expended in preparing and reviewing proposals, the submission of more than one proposal from the same principal investigator (or team of investigators) therefore is discouraged strongly. In addition, in any one fiscal year applicants may not submit the same research proposal to more than one research program area within the NCRIGP or to any of the other programs sponsored by CSRS. Duplicate proposals, essentially duplicate proposals, or predominantly overlapping proposals will be returned to the proposing scientist without review.

In preparing the proposal, applicants are urged to ensure that the name of the principal investigator (or project director) and, where applicable, the name of the submitting institution are typed at the top of each page. This will permit easy identification in the event that the application becomes disassembled during the review process.

Format and Contents for Applications

Pursuant to 7 CFR 3200.4(c), the following guidelines for proposal format and content supplement those guidelines set out by that section. If the section and the supplemental guidelines herein conflict, the supplemental guidelines take precedence, in accordance with 7 CFR 3200.4(c). For purposes of in-depth evaluation as well as for consistency, organization, and clarity, it is important that proposals contain certain information and that they be of similar format. Therefore, all applications submitted should follow the guidelines listed below and be assembled in the indicated order.

I. Conventional Projects

(a) Standard research grants. Grant Application Cover Page (Form CSRS–661).

Each copy of the proposal must contain a Grant Application Cover Page, which should be assembled as the first page of the application. At least one copy of this form must contain pen-and-ink signatures as outlined below. A copy of this form is located in the Grant Application Kit and may be duplicated as necessary. In completing the Cover Page, please note the following:

• Title of Proposal (Block 6). Choose an appropriate project title and place it in this block. The other guidelines for this component are listed in 7 CFR 3200.4(c)(1).

• Program Area and Number (Block 8). From among the announced research program areas, choose the program area that is most appropriate to the effort being proposed and insert the name and number in this block. It is important that only one program area be selected. In instances where the appropriateness of the chosen program area may be in question, the final program area assignment will be made by the NCRIGP scientific staff. The principal investigator will be informed of any changes in assigned program areas.

• Principal investigator(s)/Project Director(s)—Block 15. List the name(s) of the proposing principal investigator(s) in this block. If there is more than one investigator, all must be listed and all must sign the Grant Application Cover Page. Co-principal Investigators should be limited to those required for genuine scientific collaboration; minor collaborators or consultants should not be designated as co-principal investigators. Only the principal investigator listed in Block 15.a. will receive direct correspondence from the NCRIGP.

• Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA, to whom the application, or a substantially similar application, has been or will be sent. In addition, if the application is submitted to another organization after it has been submitted to the NCRIGP, you must inform the NCRIGP program officer immediately. Failure to accurately and completely identify other possible sponsors will delay the processing of the application and may result in its being returned without review. The identification of other sponsors must include the name(s) of the program(s) within the sponsoring organization to which you have applied or will apply.

• Signatures. Sign and date the Grant Application Cover Page in the places indicated at the bottom of the page. The other guidelines for this component are listed in 7 CFR 3200.4(c)(1). Applications that do not contain the signature of the authorized organizational representative cannot be considered for support. Proposals submitted by individuals who lack organizational affiliation need only be signed by the proposing principal investigator.

Table of Contents

To facilitate the location of information, each proposal must contain a table of contents, which should be assembled as page 2.

Project Summary

The proposal must contain a project summary. The other guidelines for the project summary are listed in 7 CFR 3200.4(c)(2).

Project Description

All proposals should be submitted on standard 8½" x 11" paper with typing on one side of the page only. In addition, margins must be at least 1", type size should be 12 characters per inch or larger, and there should be no page reductions. Applicants are encouraged to include original illustrations (photographs, color prints, etc.) to all copies of the proposal. Reviewers are not required to read beyond the 15-page limit. Other guidelines for the project description are listed in 7 CFR 3200.4(c)(3).

The project description must contain the following components:

• *Introduction.* The guidelines for this component are listed in 7 CFR 3200.4(c)(3)(i).

• *Progress Report.* The guidelines for this component are listed in 7 CFR 3200.4(c)(3)(ii). In addition, the progress report must be limited to three pages (within the 15–page limit).

• *Rationale and Significance.* The guidelines for this component are set out in 7 CFR 3200.4(c)(3)(iii).

• *Experimental Plan.* The guidelines for this component are set out in 7 CFR 3200.4(c)(3)(iv).

Facilities and Equipment

The guidelines for facilities and equipment are set out in 7 CFR 3200.4(c)(4).

Collaborative Arrangements

The guidelines for this area are set out in 7 CFR 3200.4(c)(5).

References to Project Description

The guidelines for this area are set out in 7 CFR 3200.4(c)(6).

Vitae and Publication List(s)

The guidelines for this area are set out in 7 CFR 3200.4(c)(7).

Conflict of Interest List

To assist program staff in excluding from proposal review those individuals who have conflicts of interest with the project personnel, a list of such persons should be appended for each investigator for whom a curriculum vitae is provided. List the following individuals:

• Collaborators on research projects within the past five years

• Co-authors on publications published within the past five years

• Thesis or postdoctoral advisors within the past five years

• Graduate students or postdoctoral associates within the past five years

Budget (Form CSRS–55)

In addition to the following, the guidelines for this area are set out in 7 CFR 3200.4(c)(8).

Salaries of faculty members and other personnel who will be working on the project may be requested in proportion to the effort they will devote to the project. However, grant funds may not be requested to augment the salary or rate of salary for project personnel or to reimburse them for consulting or other activities that constitute a part of their normal assignment. In addition, the recovery of indirect costs under grant awards made to institutional recipients may not exceed the lesser of the institution's applicable negotiated indirect cost rate or the equivalent of 14% of total direct costs.

Budget Justification

All salaries and wages, nonexpendable equipment, foreign travel, and "All Other Direct Costs" for which support is requested must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind Form CSRS–55.

Current and Pending Support (Form CSRS–663)

The guidelines for this area are set out in 7 CFR 3200.4(c)(10).

Addenda to Project Description

The guidelines for this subject are set out in 7 CFR 3200.4(c)(11).

Assurance Statements (Form CSRS–662)

In addition to the following, the guidelines for this subject are set out in 7 CFR 3200.4(c)(9).

With regard to compliance with the regulations set out in 7 CFR 3200.4(c)(9) for research involving special considerations, proposing scientists who lack organizational affiliation or whose organization finds it impractical to maintain the required Institutional Review Board or Institutional Animal Care and Use Committee may wish to negotiate with a local university or other research organization to have this service performed for them.

Certifications Regarding Debarment and Suspension, Drug-Free Work Place, and Lobbying

In addition to the following, the guidelines for this subject are set out in 7 CFR 3200.4(c)(12). By signing the Grant Application Cover Page, applicants are providing the certifications required by Departmental regulations. Submission of the individual forms found in the Grant Application Kit is no longer required. For additional information, refer to the certification at the bottom of Form CSRS–661, Grant Application Cover Page.

(b) Research conference applications. Proposals requesting support for research conferences should be submitted under the appropriate research program area described herein by the designated deadline for that particular program area. Applicants considering submission under this category are strongly advised to consult the appropriate NCRIGP staff before preparation and submission of the proposal. In addition to the following, the guidelines set forth in 7 CFR 3200.4(c), not in conflict with the following guidelines, apply to this category:

- A Grant Application Cover Page (Form CSRS–661) appropriately completed and signed;
- The project summary page stating the objectives of the research conference, symposium, or workshop, as well as the proposed location and probable inclusive date(s) of the conference;
- A justification for the meeting;
- Names and organizational affiliations of the chairperson and other members of the organizing committee;
- A proposed program (or agenda) for the conference, including a listing of scheduled participants and their institutional affiliations;
- The method of announcement or invitation that will be used;
- A curriculum vitae for the submitting project director(s) and a brief listing of relevant publications (each vitae and publications listing, combined, should not exceed three (3) pages); and
- An estimated total budget (Form CSRS–55) for the conference, together with an itemized breakdown of all support requested from the NCRIGP. The budget for the conference may include an appropriate amount for transportation and subsistence costs for participants and for other conference-related costs.
- A Current and Pending Support statement (Form CSRS–663) as described in 7 CFR 3200.4(c)(11).

II. Agricultural Research Enhancement Awards Applications

(a) *Postdoctoral fellowships.* Proposals requesting support for postdoctoral fellowships should be submitted under the appropriate research program area described herein by the designated deadline for that particular program area. Such proposals can be submitted directly by the individual or through an institution. In either case, applications should contain the specified information and be assembled in the order indicated in 7 CFR 3200.4(c) and the supplemental guidelines under "Format and Content" for Standard Research Grants herein. Indicate on the Project Summary Page that this is a Postdoctoral Fellowship Application.

Applications also should include:

- A letter of support from the scientific host stating his or her willingness to serve in this capacity and to allow the use of all facilities and space necessary for conduct of the research. The letter also must provide assurance that the project is not simply an extension of the host's ongoing research.
- Documentation that the host investigator's institution has been informed of these arrangements. Postdoctoral applicants from Federal laboratories must notify the appropriate regional office.

The grant application cover sheet (Form CSRS–661) of proposals submitted by individuals who lack organizational affiliation need only be signed by the proposing principal investigator. Proposals submitted through an institution must be signed by the proposing principal investigator and endorsed by the authorized organizational representative.

(b) *New investigator awards.* Research proposal applications from new investigators should be submitted under the appropriate research program area described herein by the designated deadline for that particular program area. Applications should contain the specified information and be assembled in the order indicated in 7CFR 3200.4(c) and the supplemental guidelines under "Format and Content" for Standard Research Grants herein. Indicate on the Project Summary Page that this is a New Investigator Application.

(c) *Strengthening awards.* See Program Description contained under section 80.0, Strengthening Awards, for eligibility requirements.

(1) Research career enhancement awards—Applications from faculty wishing to enhance their research capabilities through sabbatical leaves should be submitted under the Research Career Enhancement Program. Proposals should originate through the applicant's home institution and be submitted by the Research Career Enhancement Awards deadline date found in the program announcement. In addition to following the guidelines set forth in 7 CFR 3200.4(c), the following guidelines also apply:

- A grant application cover sheet (CSRS–661) completed as described in the supplemental guidelines under

"Format and Contents" for Standard Research Grants herein. Indicate Program Area 80.1 in Block 8.

• Project Summary page indicating overall project goals and supporting objectives. Indicate on the Project Summary page that this is a Research Career Enhancement Award application.

• A general description of the research interests and goals of the applicant in order to provide perspective for the proposal (one page).

• A statement of how the proposed activities will serve to enhance the scientific research capabilities of the applicant (one page).

• Curriculum vitae and a list of publications. Guidelines for this component are contained in 7 CFR 3200.4(c)(7).

• A letter from the scientific host indicating willingness to serve in this capacity, and a description of the host's contribution to the proposed activities both scientifically and with regard to use of facilities and equipment.

• A statement signed by the Department Head or equivalent official at the host institution indicating a commitment to provide research space and facilities for the period of the applicant's presence.

• Budget (Form CSRS–55), Budget Justification, and Current and Pending Support (CSRS–663) as outlined in the supplemental guidelines under "Format and Contents" for Standard Research Grants herein. (Note that the budget should be limited to one year's salary and funds for supplies.)

(2) Equipment grants—Applications requesting assistance in purchasing equipment should be submitted to the Equipment Grant Program. Proposals should be submitted by the Equipment Grants deadline date found in this program announcement. In addition to following the guidelines set forth in 7 CFR 3200.4(c), the following guidelines also apply. Proposals for Equipment Grants should include the following:

• A grant application cover sheet (CSRS–661) completed as described in the supplemental guidelines under "Format and Contents" for Standard Research Applications herein. Indicate Program Area 80.2 in Block 8.

• Project Summary page indicating equipment sought and the overall project goals for its use. Indicate on the project summary page that this is an Equipment Grant application.

• A general description of the research interests and goals of the applicant in order to provide perspective for the proposal (one page).

• Budget (Form CSRS–55) and Budget Justification. Justification should: Describe the instrument requested, including the manufacturer and model number if known; provide a detailed budget breakdown of the equipment and accessories required; indicate the amount of funding requested from USDA; and provide a statement that the necessary matching funds will be made available from an institutional or other source. (Note that no more than 50 percent of the equipment cost will be provided by the USDA).

• Indicate on the Project Summary Page that this proposal qualifies as an Equipment Grant application.

No installation, maintenance, warranty, or insurance expenses may be paid from these awards.

Computer equipment is eligible only if it is to be used specifically for scientific purposes and is carefully justified. Purchase of a computer primarily for use as a word processor or for other administrative purposes is not permitted.

(3) Seed grants—Applications from faculty wishing to collect preliminary data should be submitted to the Seed Grant Program. Proposals should be submitted by the Seed Grants deadline date found in the program announcement. Such proposals should be completed as described in 7 CFR 3200.4(c) and the supplemental guidelines under "Format and Contents" for Standard Research Grants herein, with the following modifications:

• Program Area 80.3 should be indicated in Block 8 of the grant application cover sheet (CSRS–661) and that this is a Seed Grant application on the Project Summary Page.

• Project Description must be limited to five (5) single- or double-spaced pages.

• Note that the budget should be limited to a total of $50,000 (including indirect costs) for two years.

• Indicate on the Project Summary Page that this proposal qualifies as a Seed Grant application.

(4) Strengthening Standard Research Projects—Faculty who are eligible for the Strengthening Award Program may wish to apply for a Standard Research Project Award. Such applications should be completed as described in 7 CFR 3200.4(c) as supplemented by "Format and Contents" for Standard Research Grants herein and should be directed to the appropriate research program area described herein and submitted by the designated deadline for that particular program area.

• Indicate on the Project Summary Page that this proposal qualifies as a Strengthening Standard Research Project application.

What to Submit

An original and 14 copies of the application and pertinent addenda to the project description are requested. Due to the heavy volume of proposals that are received each year and the difficulty in identifying proposals submitted in several packages, all copies of each proposal must be mailed in a single package. In addition, please see that each copy of the proposal is stapled securely in the upper left-hand corner. Do not bind any of the copies of the proposal, as it will only delay processing.

Every effort should be made to ensure that the proposal contains all pertinent information when originally submitted. Prior to mailing, it is urged that the proposal be compared with the checklist in section VII.

Where to Submit

The research grant application must be postmarked by the relevant date indicated in the program announcement and submitted to the following address:

National Competitive Research Initiative Grants Program, c/o Proposal Services Branch, Cooperative State Research Service, room 303 Aerospace Center, U.S. Department of Agriculture, Washington, DC 20250–2200. Telephone: (202) 401–5049.

If you plan to hand deliver your proposal or use special mail services such as overnight express, the following street address must be included and a different zip code used: 901 D Street, SW., Washington, DC 20024.

Do not submit the proposal to individual program officers and do not submit it through your Senator or Congressional Representative, as these actions could delay the receipt of the application.

When To Submit

To be considered for funding during FY 1992, proposals must be postmarked by the following dates:

Postmarked dates	Program codes	Program areas	Contacts (202)
January 13, 1992	21.0	Water Quality	401-6030
	23.0	Forest/Rangeland/Crop Ecosystems	401-5114
	51.1	Pathology	401-4310
	51.4	Weed Science	401-4316
January 21, 1992	31.0	Human Nutrient Requirements for Optimal Health	205-0250
	54.1	Photosynthesis and Respiration	401-6030
	55.0	Alcohol Fuels Research	401-4310
January 27, 1992	52.1	Plant Genome	401-4871
	52.2	Plant Genetic Mechanisms and Molecular Biology	401-5042
February 3, 1992	22.1	Plant Responses to the Environment	401-4871
	51.2	Entomology	401-5114
	51.3	Nematology	401-5114
February 10, 1992	43.0	Animal Molecular Genetics	401-4399
February 18, 1992	24.0	Improved Utilization of Wood and Wood Fiber	401-4002
	41.0	Reproductive Biology of Animals	401-6234
February 24, 1992	42.0	Cellular Growth and Developmental Biology of Animals	205-0250
March 9, 1992	53.0	Plant Growth and Development	401-5042
	54.2	Nitrogen Fixation/Metabolism	401-6030
March 16, 1992	44.0	Mechanisms of Animal Disease	401-4399
	71.0	Processing for Value-Added Products	401-4002
March 30, 1992	61.0	Market Assessments, Competitiveness, and Technology Assessments	401-4425
	62.0	Rural Development	401-4425
April 6, 1992	80.1	Research Career Enhancement Awards	401-5114
	80.2	Equipment Grants	401-5114
	80.3	Seed Grants	401-5114
April 13, 1992	32.0	Food Safety	401-4399

Section III. Proposal Review and Evaluation

Peer Evaluation

In addition to the following, Peer Evaluation will be conducted in accordance with 7 CFR 3200.11 and 3200.14.

Evaluation Factors

So that the respective peer panel may accomplish the most complete review possible, the panel will take into account the evaluation factors that follow, pursuant to 7 CFR 3200.5(a).

Standard Research Grants, Postdoctoral Fellowships and New Investigator Awards

The following evaluation factors will be used in reviewing applications for Standard Research Grants, Postdoctoral Fellowships, New Investigator Awards:

- Scientific merit of the proposal, consisting of:
- Conceptual adequacy of the hypothesis;
- Objectives and approach;
- Preliminary data;
- Impact of anticipated results; and
- Probability of success of project.
- Qualifications of proposed project personnel and adequacy of facilities.
- Relevance of project to long-range improvements in and sustainability of U.S. agriculture or to one or more of the research purposes set out in section 1402 of the 1977 Act, as amended.

However, because section 2(b)(10) of the 1965 Act, as amended, requires not less than 20% of the funds appropriated to carry out section 2(b) to be available for research conducted by multidisciplinary teams and requires not less than 20% of the funds appropriated to carry out section 2(b) to be available for mission-linked research, CSRS reserves the right to reevaluate standard research grant proposals to attain these amounts.

Research Conference Applications

In evaluating proposals for the support of research conferences, the following factors will be considered:

- Relevance of the proposed conference to agriculture in the U.S. and the appropriateness of the conference in fostering scientific exchange.
- Qualifications of organizing committee and appropriateness of invited speakers to the topic areas being covered.
- Uniqueness and timeliness of conference.
- Appropriateness of budget request.

Strengthening Awards

The following evaluation factors will be used in reviewing applications for Research Career Enhancement Awards, Equipment Grants, and Seed Grants:

- The merit of the proposed activities or research equipment as a means of enhancing the research capabilities of the applicant and/or institution.
- The applicant's previous research experience and background.
- The appropriateness of the proposed activities or research equipment for the goals proposed.
- Relevance of project to long-range improvements in and sustainability of U.S. agriculture or to one or more of the research purposes set out in section 1402 of the 1977 Act, as amended.
- Whether or not the applicant institution is located within a USDA-EPSCoR State.

The evaluation factors used for Standard Research Projects also will apply for Strengthening Standard Research Project Grants with the addition of the following factor:

- Whether or not the applicant institution is located within a USDA-EPSCoR State.

Proposal Disposition

In addition to the following, the guidelines set out in 7 CFR 3200.5(b) apply to this subject.

The NCRIGP reserves the right to negotiate with the principal investigator or project director and/or with the submitting organization or institution regarding project revisions (e.g., reductions in the scope of work), funding level, or period or method of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made regarding the proposal; however, withdrawn proposals normally will not be returned. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by the NCRIGP for a period of one year. The remaining copies will be destroyed.

Section IV. Grant Awards

General

This topic is covered by the guidelines set out in 7 CFR 3200.6.

Obligations

In addition to the following, the guidelines for this subject are set out in 7 CFR 3200.6(e). For any grant awarded, the maximum financial obligation of CSRS shall be the amount of funds authorized for the award. This amount will be stated on the award instrument and on the approved budget. However, in the event an erroneous amount is stated on the grant award instrument, the approved budget, or any supporting document, CSRS reserves the unilateral right to make the correction and to make an appropriate adjustment in the amount of the award to align with the authorized amount.

Section V. Post-Award Administration

Conditions That Apply

The guidelines set forth in 7 CFR 3200.7 apply to this subject area.

Release of Information

The guidelines for this subject are contained in 7 CFR 3200.13.

SUPPLEMENTARY INFORMATION:

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the Final rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0524–0022.

The award of any grant under the NCRIGP during FY 1992 is subject to the availability of funds. One copy of each proposal that is not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Done at Washington, DC, this 22nd day of November, 1991.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 91–28593 Filed 11–29–91; 8:45 am]

BILLING CODE 4310–22–M

federal register

Monday
December 2, 1991

Part III

Department of Education

Grants and Cooperative Agreements; Availability, Centers for International Business Education Program

DEPARTMENT OF EDUCATION

[CFDA No. 84.220]

Notice Inviting Applications for New Awards for Fiscal Year 1992 Under the Centers for International Business Education Program

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

The Centers for International Business Education program is integrally related to AMERICA 2000; The President's Education Strategy, to move the Nation toward achieving the national education goals and educational excellence for all Americans. Specifically, the program provides opportunities for business faculty, students and business practitioners in the local community to focus on issues dealing with U.S. competitiveness and provides opportunities to acquire the knowledge and necessary skills to compete in a global economy. The Secretary urges project planners to set rigorous standards that will ensure that individuals enrolling in the program secure the level of training required to make businesses truly competitive in the international arena. In addition, as called for in AMERICA 2000, projects and the businesses they serve should identify performance indicators to measure program effectiveness, and insist on change if the results prove unsatisfactory.

Eligibility

To be eligible for assistance under this program, an applicant must be an institution of higher education, or a combination of these institutions, that establishes a Center Advisory Council prior to the date that Federal assistance is received. The Center Advisory Council must conduct extensive planning prior to the establishment of a Center for International Business Education concerning the scope of the Center's activities and the design of its programs.

The Center Advisory Council must include—

(1) One representative of an administrative department or office of the institution of higher education (or a combination of these institutions);

(2) One faculty representative of the business or management school or department of the institution (or a combination of these institutions);

(3) One faculty representative of the international studies or foreign language school or department of the institution (or a combination of these institutions);

(4) One faculty representative of another professional school or department of the institution (or a combination of these institutions), as appropriate;

(5) One or more representatives of local or regional businesses or firms;

(6) One representative appointed by the Governor of the State in which the institution (or a combination of these institutions) is located whose normal responsibilities include official oversight or involvement in State-sponsored trade-related activities or programs; and

(7) Such other individuals as the institution of higher education (or a combination of these institutions) deems appropriate.

Purpose of the Program

The purpose of the Centers for International Business Education Program is to provide grants to eligible institutions of higher education, or combinations of these institutions, to pay the Federal share of the cost of planning, establishing and operating Centers for International Business Education that will—

(1) Be national resources for the teaching of improved business techniques, strategies, and methodologies that emphasize the international context in which business is transacted;

(2) Provide instruction in critical foreign languages and international fields needed to provide an understanding of the cultures and customs of United States trading partners;

(3) Provide research and training in the international aspects of trade, commerce, and other fields of study;

(4) Provide training to students enrolled in the institution, or combinations of institutions, in which a center is located; and

(5) Serve as regional resources to businesses proximately located by offering programs and providing research designed to meet the international training needs of these businesses.

Deadline for Transmittal of Applications: February 28, 1992.

Deadline for Intergovernmental Review: April 28, 1992.

Available Funds: $1,500,000.

Estimated Range of Awards: $250,000–$350,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 Months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs); part 77 (Definitions that Apply to Department Regulations); part 79 (Intergovernmental Review of Department of Education Programs and Activities); part 82 (New Restrictions on Lobbying); and part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)) and 34 CFR part 86 (Drug-Free Schools and Campuses); (b) The Centers for International Business Education Program statute, codified under title VI, part B, section 612 of the Higher Education Act of 1965, as amended by section 6261 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 (20 U.S.C. 1130–1).

Programmatic Requirements

Programs and activities to be conducted by Centers for International Business Education assisted under this program must include—

(1) Interdisciplinary programs which incorporate foreign language and international studies training into business, finance, management, communications systems, and other professional curricula;

(2) Interdisciplinary programs which provide business, finance, management, communications systems, and other professional training for foreign language and international studies faculty and advanced degree candidates;

(3) Evening or summer programs, including, but not limited to, intensive language programs, available to members of the business community and other professionals, which are designed to develop or enhance their international skills, awareness, and expertise;

(4) Collaborative programs, activities, or research involving other institutions of higher education, local educational agencies, professional associations, businesses, firms or combinations thereof, to promote the development of international skills, awareness, and

expertise among current and prospective members of the business community and other professionals;

(5) Research designed to strengthen and improve the international aspects of business and professional education and to promote integrated curricula; and

(6) Research designed to promote the international competitiveness of American businesses and firms, including those not currently active in international trade.

Other Allowable Activities

Programs and activities to be conducted by Centers for International Business Education assisted under this program may also include—

(1) The establishment of overseas internship programs for students and faculty designed to provide training and experience in international business activities, except that no Federal funds provided under this program may be used to pay wages or stipends to any participant who is engaged in compensated employment as part of an internship program; and

(2) Other eligible activities consistent with the purposes and intent of the legislation.

Funding Requirements

The applicant's share of the cost of planning, establishing and operating centers under this section may not be less than—

(1) 10 per centum for the first year in which Federal funds are furnished;

(2) 30 per centum for the second year; and

(3) 50 per centum for the third year and for each year thereafter.

The non-Federal share of the cost of planning, establishing, and operating centers under this program may be provided either in cash or by in-kind assistance.

Other Requirements

The statute requires applicants to provide—

(1) An assurance that the Center Advisory Council will meet not less than once each year after the establishment of the Center to assess and advise on the programs and activities conducted by the Center;

(2) A description of the extensive planning that the Center Advisory Council and the institution of higher education, or a combination of these institutions, have conducted or will conduct prior to the establishment of the Center for International Business Education, concerning the scope of the Center's activities and the design of its programs;

(3) An assurance of ongoing collaboration in the establishment and operation of the Center by faculty of the business, management, foreign language, international studies and other professional schools or departments, as appropriate;

(4) An assurance that the education and training programs of the Center will be open to students concentrating in each of these respective areas, as appropriate; and

(5) An assurance that the institution of higher education, or combination of these institutions, will use the assistance provided under this section to supplement and not to supplant activities conducted by the institution or institutions of higher education.

Allowable Costs

Grant funds may be used to pay the Federal share of the cost of planning, establishing or operating a Center, including the cost of—

(1) Faculty and staff travel in foreign areas, regions, or countries;

(2) Teaching and research materials;

(3) Curriculum planning and development;

(4) Bringing visiting scholars and faculty to the center to teach or to conduct research;

(5) Training and improvement of the staff, for the purpose of, and subject to such conditions as the Secretary finds necessary, for carrying out the objectives of this program; and

(6) Other costs consistent with planning, establishing or operating a Center.

The applicant may complete a copy of Standard Form 424A, printed in the application package, for each year for which funding is requested, and may use section F of Standard Form 424A to provide a detailed breakout of all proposed costs for each 12 month period for which funding is requested. Under 34 CFR 75.562, the Secretary accepts an indirect cost rate of 8 percent of the total direct cost of the project.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under the Centers for International Business Education Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(b) The criteria.—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of title VI, part B, section 612 of the Higher Education Act of 1965, as amended by section 6261 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 (20 U.S.C. 1130–1), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program, as stated in the Purpose of Program section of this notice;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) of this section will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B) of the section, the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Approved under OMB Control No. 1840–0616)

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one state should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 18, 1991, pages 47293–47294.

In States that have not established a process or chosen a program for review, State, areawide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.220, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

No grant may be awarded unless a complete form has been received.

(a) If an applicant wants a new grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education Application Control Center, Attention: (CFDA # 84.220) Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.220) room 3633, 7th & D Streets, SW., ROB–3, Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of this application form for Federal assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 Rev. 4–88) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

Assurances—Centers for International Business Education Program.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; (ED 80–0013).

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information Contact

For specific information concerning the program, contact: Susanna C. Easton, Center for International Education, Office of Postsecondary Education, Department of Education,

room 3053, ROB–3, 400 Maryland Avenue SW., Washington, DC 20202–5332. Telephone: (202) 708–8764. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339. (In the Washington, DC area code, telephone 708–9300 between 8 a.m. and 7 p.m. Eastern time).

Program Authority: (20 U.S.C. 1130–1)

Dated: November 25, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

U. S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 2 0

TITLE: CENTERS FOR INTERNATIONAL BUSINESS EDUCATION

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — No

SECTION A – BUDGE

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds	
		Federal (c)	Non-Fede (d)
1.		$	$
2.			
3.			
4.			
5. TOTALS		$	$

SECTION B – BUDGET

6 Object Class Categories	GRANT P	
	(1)	(2)
a. Personnel	$	$
b. Fringe Benefits		
c. Travel		
d. Equipment		
e. Supplies		
f. Contractual		
g. Construction		
h. Other		
i. Total Direct Charges (sum of 6a - 6h)		
j. Indirect Charges		
k. TOTALS (sum of 6i and 6j)	$	$
7. Program Income	$	$

Authorized for Local

OMB Approval No. 0348-0044

Non-Construction Programs

UDGET SUMMARY

ds	New or Revised Budget		
-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
	$	$	$
	$	$	$

DGET CATEGORIES

RANT PROGRAM, FUNCTION OR ACTIVITY			Total
	(3)	(4)	(5)
	$	$	$
	$	$	$
	$	$	$

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

Local Reproduction

SECTION C - NON-FEDERA	
(a) Grant Program	(b) Applic
8.	$
9.	
10.	
11.	
12. TOTALS (sum of lines 8 and 11)	$

SECTION D - FORECASTE		
	Total for 1st Year	1st Quart
13. Federal	$	$
14. NonFederal		
15. TOTAL (sum of lines 13 and 14)	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS	
(a) Grant Program	(b) Firs
16.	$
17.	
18.	
19.	
20. TOTALS (sum of lines 16 -19)	$

SECTION F - OTHER BUDGE (Attach additional Sheet	
21. Direct Charges:	22.
23. Remarks	

Authorized for Local R

DERAL RESOURCES

Applicant	(c) State	(d) Other Sources	(e) TOTALS
	$	$	$
	$	$	$

ASTED CASH NEEDS

t Quarter	2nd Quarter	3rd Quarter	4th Quarter
	$	$	$
	$	$	$

UNDS NEEDED FOR BALANCE OF THE PROJECT

FUTURE FUNDING PERIODS (Years)			
b) First	(c) Second	(d) Third	(e) Fourth
	$	$	$
	$	$	$

UDGET INFORMATION
l Sheets if Necessary)

	22. Indirect Charges:

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

cal Reproduction

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

BILLING CODE 4000-01-C

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully all the information included in this notice. The Secretary recommends that you carefully consider the sections of this notice pertaining to the Purpose of the Program and the Programmatic Requirements as you address the selection criteria the Secretary uses to evaluate applications. The narrative should—

1. Begin with an Abstract; that is, a summary of the proposed project.

2. Include the following information in order to establish eligibility under this program:

(a) The date the Center Advisory Council was or will be established.

Note: The Advisory Council shall be established prior to the date that Federal assistance is received.

(b) A list of the members of the Advisory Council and a description of their academic or other affiliations.

(c) A description of the extensive planning which was or will be conducted by the Advisory Council prior to the establishment of the Center for International Business Education, concerning the scope of the Center's activities and the design of its programs.

3. Describe the proposed Center for International Business Education in light of each of the selection criteria in the order in which the criteria are listed in this notice. Describe the activities proposed to be carried out in each year of the 3-year funding cycle under the "Plan of Operation" section of the application.

4. Include any other pertinent information that might assist the Secretary in reviewing the application. Please limit the Application Narrative to 65 double-spaced, typed pages (on one side only). Please do not use reduced size type script. Supporting materials may be appended.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1840–0616, Washington, DC 20503.

(Information collection approved under OMB control number 1840–0616. Expiration date 2/92)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

ASSURANCES

INSTRUCTIONS: Applicants are required to provide the following assurances: This assurance form must be signed by authorized representatives of the legal applicants.

ASSURANCES -- CENTERS FOR INTERNATIONAL BUSINESS EDUCATION

The applicant hereby assures and certifies that:

1. In addition to conducting the extensive planning activities required under the eligibility section of the statute, the center advisory council shall meet not less than once a year after the establishment of the center to assess and advise on the programs and activities conducted by the center;

2. There shall be ongoing collaboration in the establishment and operation of the center by faculty of the business, management, foreign language,international studies and other professional schools or departments, as appropriate;

3. The education and training programs of the center will be open to students concentrating in each of these respective areas, as appropriate; and

4. The applicant will use the assistance provided under this program to supplement and not to supplant activities already being conducted by the applicant.

Name and Title of Authorized Representative

Signature Date

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

---

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

---

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

[FR Doc. 91-28831 Filed 11-29-91; 8:45 am]
BILLING CODE 4000-01-C

federal register

Monday
December 2, 1991

Part IV

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AB07

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Verification regulations contained in subpart E of the Student Assistance General Provisions regulations, 34 CFR part 668, to conform them to certain revised provisions in the Tax Reform Act of 1986 (Pub. L. 99-514), the Higher Education Amendments of 1986 (Pub. L. 99-498), the Higher Education Technical Amendments Act of 1987 (Pub. L. 100-50), Pub. L. 100-39, and the Compact of Free Association (Pub. L. 99-239), and to update data reporting requirements to reduce the administrative burden associated with verification requirements on applicants and schools. The Verification regulations require institutions to have a system for verifying student aid application information reported by applicants for use in calculating expected family contributions (EFCs) for the Pell Grant, campus-based (Perkins Loan (formerly National Defense/Direct Student Loan), College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG)), need-based Income Contingent Loan (ICL), and Stafford Loan programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person..

The revised §§ 668.51, 668.53, (other than 668.53(a)(5)), 668.54, 668.55, 668.56, 668.57, 668.58, 668.59, 668.60, and 668.61, for student financial assistance under the Pell Grant, campus-based, Stafford Loan, and need-based ICL programs are applicable starting with applications for the 1992-93 award year.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, Program Analyst, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW., Regional Office Building 3, Room 461, Washington, DC 20202-5451, Telephone (202) 708-4601.

SUPPLEMENTARY INFORMATION: The Verification regulations contained in subpart E of the Student Assistance General Provisions regulations (34 CFR part 668) govern the verification of the information that is used to calculate an applicant's expected family contribution (EFC) as part of the determination of an applicant's need for student financial assistance. The EFC is the amount that an applicant and the applicant's family can reasonably be expected to contribute towards the applicant's cost of attendance at an institution of higher education.

The changes in these regulations result from a review of current policies and procedures and from recently enacted legislation that rendors certain provisions in the current verification regulations obsolete. Thus new provisions are necessary.

On October 31, 1989, the Secretary published a notice of proposed rulemaking (NPRM) for part 668 in the **Federal Register** (54 FR 45994). The NPRM included a discussion of the major issues raised by the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which discussion of those issues may be found:

Section 668.54(a) would be amended to provide that an institution is not required to verify the information of more than 30 percent of its applicants for assistance under the Title IV programs in any award year. (page 45994);

Section 668.54 and § 668.60 would be amended to require an applicant to provide the necessary documentation to verify any data element required by an institution or the Secretary. (page 45994);

Section 668.54 would be amended to update the identification of political entities affected by The Compact of Free Association and to provide that eligible title IV aid applicants from these entities would continue to be excluded from verification requirements. (page 45994);

Section 668.54(b)(2)(vii) would be amended to provide instruction on how to notify an institution to which a student is transferring that it is not required to verify the student's data. (page 45994);

Section 668.55 would be amended to require applicants to update changes in dependency status throughout the award year for all Title IV programs. Exceptions to this updating requirement would no longer exist for cases in which a dependency status change is the result of a change in martial status, or when a dependency status change for a student occurs after the student's Stafford Loan is certified. Applicants would also be required to verify the number enrolled in postsecondary educational institutions even though there was no change from information verified in the previous award year. These regulations do not include the changes that were proposed in the NPRM for § 668.55. A more detailed discussion of these proposed changes that were not made are found in the Analysis of Comments and changes. (pages 45994 and 45995);

Section 668.56(a)(5) would be amended to delete certain elements of income subject to verification as untaxed income. (page 45995);

Section 668.56(c), which provided an exclusion from verification of a dependent Pell applicant's base year income, would be deleted, as a result of which the verification of a dependent student's base year income would be required. (page 45995);

Section 668.57 would be amended to require foreign tax returns, and tax returns of Puerto Rico, U.S. territories and commonwealths, to be treated the same as U.S. tax returns. (page 45995);

Section 668.57(d) would be deleted because, under section 478 of the Higher Education Act of 1965, as amended, the Secretary is no longer authorized to prescribe requirements for verifying independent student status. (page 45995);

Section 668.58 would be amended to clarify the 60-day period of employment for College Work-Study recipients (page 45995); and

Section 668.59 would amend the dollar tolerance for the Stafford and campus-based programs and also continue one of the Pell Grant specific tolerances: Zero SAI Charts (page 45995).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 47 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes made in the regulations in response to those comments follows.

Substantive issues are discussed under the regulations to which they pertain. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Section 668.51 General

Comments: One commenter suggests that an institution participating in the Quality Control Pilot Project should not be required to collect income tax forms for students selected for verification. The commenter believes that the collection of income tax forms is an added administrative burden and may inhibit the institution from verifying a larger variety and number of error-prone

elements than is required of it under applicable law.

Discussion: The Secretary believes that, to be effective, quality control procedures must include institutional verification of income information contained on the applicant's application for student financial assistance by comparison with the income information contained on the tax return. This is based upon the fact that an institution participating in the Pilot Project is subject to § 668.14(f) of the Student Assistance General Provisions, which requires it to develop and apply a system to identify and resolve any inconsistencies found in the information supplied with respect to a student's application. The Secretary considers the tax return to be an effective means of resolving any such inconsistencies.

Changes: None.

Section 668.53 Policies and Procedures

Comment: Several commenters support the Secretary's proposal that an applicant be notified of his or her verification results only if the applicant's award or loan amount is to be changed as a result of verification. Commenters believe this proposal would relieve administrative and paperwork burdens.

Discussion: As proposed in the NPRM, the Secretary has amended § 668.53 to provide for notification of verification results only where the applicant's award or loan amount is to be changed, to relieve administrative and paperwork burden on institutions.

Changes: None.

Comments: Three commenters believe that it is not necessary for an institution to develop a written policy or procedure for verification. The commenters feel that the regulations specify the documentation students selected for verification must provide. The commenters suggest that the Department may address any of its concerns related to verification in the Verification Guide, which is published annually to update and restate current verification policies and procedures, rather than require the development of separate written policies and procedures for verification.

Discussion: By requiring institutions to develop written policies and procedures on verification, the Secretary intends to promote compliance with the substantive requirements set forth in the verification regulations by ensuring that institutions have detailed written policies and procedures that apply the regulatory standards to implement those verification requirements. The purpose of the Verification Guide is only to explain the verification regulations; the Guide does not provide any requirements other than those in these regulations and the regulatory and statutory requirements in other title IV programs.

Changes: None.

Section 668.54 Selection of Application for Verification

Comments: Three commenters oppose the requirement to verify up to 30% of the applications of applicants for assistance under Title IV programs in an award year. One of the commenters suggests that institutions should only be required to verify 20% of the applications. Another commenter suggests that institutions verify 12% to 15% of the applications. One commenter believes that the 30% verification limit is not practical for institutions with frequent enrollment periods because they find it necessary to verify 100% of their applications, although they are only required to verify 30%. Several commenters support the 30% limitation and do not foresee any added verification problems.

Discussion: Section 484(f) of the Higher Education Act of 1965, as amended, provides that an institution is not required to verify more than 30% of its applicants for Title IV assistance in any award year. The Secretary believes that any downward adjustment of the 30% required verification percentage would compromise the Department's ability to detect significant levels of error in Title IV applications and to prevent subsequent overawards and underawards. However, an institution is not limited to the verification of 30% of its applicants and may choose to verify a higher percentage of applicants if the institution believes a higher percentage is necessary to accurately administer the student financial assistance programs.

Changes. None.

Comments: Several commenters support the revised exclusions from verification as a result of the Compact of Free Association. One commenter opposes the exclusion from verification of eligible Title IV applicants who are residents of the Trust Territories and the Republics under the Compact of Free Association because the commenter believes it is inequitable to treat these students differently from all other students selected for verification, who are required to complete the verification process. The commenter feels that the exclusion of these students from verification will lead to fraud and abuse in their reporting of family income and resources.

Discussion: The Secretary has determined that the difficulties this limited number of applicants would face in obtaining documentation to verify their application information outweigh the potential fraud and abuse that could occur as a result of excluding them from verification requirements. Fraud and abuse is punishable under the law and the potential criminal penalties will continue to be a deterrent to students who might otherwise misreport their income and resources despite their exclusion from verification requirements. The Secretary believes that these students should not be required to provide verification documentation unless the institution has conflicting documentation concerning a student's finances or has reason to believe the information reported by the student is inaccurate.

Changes: None.

Comments: One commenter opposes requiring the signatures of the applicant and applicant's parents on verification documents because the time involved in obtaining the required signatures tends to undermine any advantage to be gained by using the Electronic Data Exchange to speed up the delivery process. The commenter believes that securing the signature of the student at the entrance interview, instead of requiring signatures of both applicant and the applicant's parents on the verification documents, could shorten the verification process by at least four weeks.

Discussion: In accordance with § 668.57, the Secretary will continue to require the signature of the applicant, and each of the applicant's parents whose income was required to be used in calculating the EFC. The Secretary believes that signatures compel signatories of verification documents to be responsible for the accuracy of the information provided in those documents and deter individuals who might otherwise purposely provide false or misleading information.

Changes. None.

Comments: A commenter questions the proposal that verification of a spouse's information or a spouse's signature, if the spouse cannot be located, not be required. The commenter does not believe that a married person would ever be unable to locate his or her spouse, unless the couple is separated. Therefore, the commenter suggests that this exception be deleted from § 668.54.

Discussion: The Secretary has provided § 668.54(b)(3)(iii) and (iv) for applicants who are not legally separated or divorced from their spouse and who are not able to either locate the spouse or contact the spouse using normal means of communication. The provision

does not apply to an applicant living with a spouse or with knowledge of the spouse's whereabouts.

Changes: None.

Comments: Several commenters question and oppose inclusion of the statement "or the Secretary" in § 668.54(a)(6) because they believe the Secretary already has the authority to request data. One commenter considers the addition of the phrase "or the Secretary" to be the equivalent of giving the Secretary carte blanche authority to require documents that have no relationship to the assessment of a family's ability to pay postsecondary institutional costs.

Discussion: The phrase "or the Secretary" was added primarily to give the Secretary or his agent the authority to collect any data elements to complete reviews with regard to the institution's verification process. The Secretary believes that data collection authority in preparation for verification is essential in determining the reason for, and eliminating, applicant error while minimizing burden on institutions. The Secretary's authority and institution's authority to collect data are coextensive under these regulations, and neither the Secretary nor institutions have the authority under these regulations to collect documents unrelated to verification of data elements on student financial assistance applications.

Changes: None.

Comment: A commenter believes that students selected for verification by an institution should not be required to verify all required data elements because this will expand the verification process. The commenter suggests that the Secretary should keep the current policy in effect.

Discussion: The Secretary believes that applicants selected by the institution should verify all applicable items specified in § 668.56 in an effort to eliminate applicant error. The six required items are all major factors in determining an applicant's EFC, and all are items shown to have high error rates in quality control studies of the Pell Grant Program.

Changes: None.

Comments: A number of commenters suggest that the Secretary use the Electronic Student Aid Report (ESAR) to notify an institution to which a student is transferring that the student's previous institution had completed verification for the student, in cases in which both institutions use the ESAR system. Thus, a transaction "04" on an ESAR would indicate that the verification process was completed for a transfer student. Several commenters believe ESARs could be used for transfer students who were eligible for Pell Grants, but that a separate mechanism would be necessary for Pell Grant ineligibles. Several commenters believe the Financial Aid Transcript (FAT) could be used to accomplish the task of notifying the second school that verification has or has not been completed by the transfer student's first school, since a student who applies for student aid at a second school must supply the FAT before he or she can receive aid. The commenters believe the verification information could be easily reported as part of the information provided on the FAT, and that this means of communicating verification results is preferable to the practice of relying on the first school to send a letter. Several commenters express concern that the second institution must rely on information received from the first institution and that there is a potential liability to the second institution if verification was not performed correctly.

A number of commenters believe the Secretary and institutions should take whatever steps are necessary to avoid requiring students to complete the verification process more than once in an award year. Schools should develop communication tools to meet the needs of transfer students by accepting a letter or statement on the FAT containing verification status. If additional documentation is needed, schools could request copies of documents used to accomplish verification. Several commenters state that Federal regulations are not necessary to specify the form of communication among institutions. The verification procedures for transfer students should be outlined in accordance with regulations, but tailored by financial aid administrators to meet a given student population's need.

Discussion: The Secretary has clarified that it is the responsibility of the institution from which the student is transferring and the student to provide accurate verification documentation if the verification process was completed prior to transfer. If the verification process is completed by the second institution, after the student transfers, the student and the second institution are responsible for completing verification correctly. The Secretary is unable at this time to include the financial aid transcript (FAT) and Electronic Student Aid Report (ESAR) in § 668.54(b)(2) as optional means of providing documentation that would exempt a student, transferring from one institution to another, from verification at the institution to which he or she is transferring. The ESAR, which is an electronic exchange of information between the schools and the central processor, would not provide the signatures that are necessary for verification of application data. Changing the FAT to include a section on verification would require that § 668.19 of the Student Assistance General Provisions Regulations also be amended. These options are not practical for inclusion in this rulemaking. The Secretary believes that regulations prescribing how schools are to communicate with regard to verification of transfer students are necessary to ensure that the proper verification information and documentation is available to complete the verification process fairly and correctly. These regulations will ensure that the information and data used to assess liabilities for either the student or institution is accurate when a student receives an overaward. ED notes that transfer student's overawards and repayment of the overawards are determined in the same manner as students who do not transfer, provided that the institutions are following the applicable regulations. Therefore, the Secretary will continue to study the effects of the verification process on transfer students and the institutions attended by such students in an effort to determine whether future rulemaking on this issue could reduce burden for both institutions and transfer students.

Changes: None.

Section 668.55 Updating Information

Comments: Several commenters concur with the various proposed changes to this section: Changing the Stafford Loan updating requirements to conform to those used in other student financial aid programs; updating dependency status as a result of changes in marital status throughout the year; and requiring verification of the number of family members enrolled in postsecondary education. One commenter states that the number of family members enrolled in postsecondary educational institutions often changes from year to year, or within years, and that these changes are likely sources of error. Another commenter supports the Secretary's proposal to allow a student to update his or her marital status during the award year because updating this item would reduce inequities in aid awards. One commenter contends that consistent updating requirements for all Title IV programs will simplify the process of updating awards or status because the institution will need only one set of updating procedures. Another

commenter suggests that students should be allowed to take advantage of any increase in aid eligibility that might develop as a result of updating changes and that the Secretary not impose requirements that would allow for decreases in assistance but not increases. The updating of changes, according to one commenter, would make the updating process equal among students and would make it easier for financial aid officers to enforce the regulations. Another commenter suggests that the spirit of this proposal for consistent updating requirements appears to favor the premise that, once married, students would be considered independent regardless of age, and no parental signature would be required to certify that the student would not be claimed as a Federal tax exemption during the current year. One commenter supports the ability of students to update their dependency status as a result of a change in marital status. However, the commenter believes that some further study may be required to determine appropriate effective dates for marital status changes, and suggests that only changes occurring before the first day of the last payment period should be considered for any given payment period.

A number of commenters object to the proposal that would require applicants to continually update their application information throughout the award year in the event that the number of household members attending postsecondary institutions changes. They express concern that post-disbursement adjustments of this kind could create overpayment situations for students who were eligible for a specific dollar amount of financial assistance at the time of application and that such changes involving household members may be beyond the control of these students.

One commenter questions whether institutions, which enroll a transfer student who completed verification at the first institution, will be required to recalculate eligibility for the prior year and charge the student any liabilities resulting from the recalculation. The commenter believes that, in the absence of such a requirement, assessment of liabilities incurred from updating would be unfair because students who remain continually enrolled at the same institution would be assessed liabilities, whereas transfer students would not be assessed liabilities.

One commenter believes the proposed regulations would require an institution to review every year's application to determine if changes in application information occurred and that resulting delays in the processing of awards would be burdensome for students and institutions.

The commenters are also concerned about the timely receipt of the corrected SAR, given the deadline dates for accepting a SAR, because the institution relies on the corrected SAR to determine whether the student should be eligible for any portion of the Pell Grant award based on the student's updated marital status.

Two commenters recommend that updating changes be handled on a professional judgment basis by the aid administrators and in no case should a student be in a position of repaying disbursed funds because of updating changes to marital status, dependency status or number enrolled in postsecondary institutions. Instead, the commenters propose that those changes be reflected in the subsequent year's applications. If the changes occur during an award year, but after the initial disbursement has been made, the aid administrator would note the change in applicant data and determine if any adjustments would be warranted and equitable. The same rules of documentation for all professional judgment cases would apply.

A number of commenters disagree with the proposal to include Stafford Loan applicants along with other applicants in requiring dependency status updates, even though the application was previously certified, because it would add additional frustration and complication to the delivery system and delay receipt of Stafford Loan proceeds. If the Stafford Loan application has already been certified by the institution and received a guarantee and been processed by the lender, the check must be returned and the guarantee cancelled. Depending upon the internal operating procedures of the lender and the guarantee agency involved, it may take up to 60 days for the cancellation to be reflected in the database, thereby delaying the guarantee of any new application. According to the commenters, this proposal would seriously threaten the continued enrollment of applicants who do not have the resource to meet their living expenses.

Several commenters question whether the institution will be liable for repayment of a previously certified Stafford Loan that is disbursed to a student who subsequently marries and becomes ineligible for the loan.

Another commenter asks for guidance concerning an institution's discovery that an applicant did not update information during the prior year as required. The commenter suggests that, in these cases, institutions should be given the option of reducing aid for the current year by any prior year overaward amount that is discovered during the application process. The commenter finds that making adjustments of awards for a prior year is extremely burdensome.

Several commenters request clarification of the concept of overaward for the Stafford or Supplemental loan programs in view of their understanding that a student can keep a disbursed loan amount even though his or her situation later changes. The commenters also suggest that, if the updating changes are adopted, specific information that must be collected to achieve updating should be explicitly outlined so aid administrators are fully aware of what information is necessary.

Discussion: The Secretary has decided not to revise § 668.55 as a result of the commenters' suggestions and to minimize administrative burden. Because of the complexity involved in updating dependency status on certified Stafford Loans and constantly updating awards throughout the year, the Secretary is retaining the requirement that an applicant may not change his or her dependency status as a result of a change in material status. For the same reason, the Secretary has retained a requirement that an applicant is not permitted to update his or her application information on a previously certified Stafford Loan application.

Changes: The proposed changes to § 668.55 are deleted and the current exceptions to updating requirements will be retained. Section 668.55 will not permit applicants to update dependency status throughout the year as a result of a change in marital status. Also, applicants will not be allowed to update previously certified Stafford Loan applications. Institutions will not be required to adjust Pell Grant, campus-based or need-based ICL program assistance previously awarded to the applicant for that award year, although § 668.55 (c)(2) continues to allow institutions to revise such assistance at their discretion.

Section 668.56 Items to be Verified

Comments: Several commenters strongly agree that only the elements of untaxed income listed on the tax return, excluding those itemized on schedules, should be required to be reviewed under verification. One commenter believes that the Secretary should address the issue of tax-deferred pension and savings plans withheld from earnings

such as 401(k) and 403(b) plans. The commenter agrees that interest on tax-free bonds should be verified as part of untaxed income, in accordance with modifications to the tax structure which now require this income source to be reported on Forms 1040 and 1040A.

Discussion: The Secretary has limited verification of required untaxed income items to those items that an institution may verify using a tax return and excluding use of itemized schedules. The verification of contributions to tax-deferred pension and savings plans withheld from earnings such as 401(k) and 403(b) plans would require documentation that varies depending upon the State and local requirements where the plan is offered. Therefore, the Secretary believes that the verification of income from tax-deferred pension and savings plans withheld from earnings may be more appropriately left to the institution's discretion.

Changes: None.

Comments: One commenter requests clarification of the phrase "unless the institution has reason to believe" with regard to the number of family members enrolled at least half-time in a postsecondary institution. A number of commenters concur with the proposed regulation that would require verification of the number of family members enrolled in postsecondary education in every year that the applicant is selected for verification. Another commenter supports the use of the Secretary's verification worksheet to verify the number of family members in the household that are pursuing postsecondary studies. Another commenter asks whether both of the dependent applicant's parents must sign the statement verifying the number in college as indicated in § 668.57(c).

Discussion: Section 668.56 affords an institution the option to verify applicant data for reasons other than for conflicting documentation. The phrase "institution has reason to believe" was added to § 668.56 to afford an institution the option to verify applicant data that does not conflict with other application data on file but which may conflict with non-documented information available to the institution, such as information from verbal conversations. The institution may then request additional documentation.

The Secretary has revised § 668.57(c) to require applicants to verify annually the number of family members enrolled in a postsecondary educational instutition because it is a continuous source of error in calculating applicant EFCs. The verification of this data element requires the signatures of both parents, if both parents' data was used to calculate the applicant's EFC. When both parents sign the verification worksheet, they are certifying that the information is correct at the time of verification.

Changes: None.

Comments: A number of commenters concur with the Secretary's proposal to require verification of a dependent Pell applicant's base year income. The commenters believe that verification of this income will not impose any additional administrative burden since this income must be verified for the campus-based and Stafford Loan programs. One commenter currently verifies student base year income. Another commenter sees this as an administrative procedure to comply with current policy, since dependent base year income is used to determine eligibility for Pell Grants.

Discussion: Verification of dependent Pell applicants' base year income is now mandated under the Higher Education Act of 1965, as amended. This income is a fixed data element in the Pell Grant Index (PGI) formula used in calculating an applicant's EFC and is subject to verification unless the selected applicant has been classified as a dislocated worker by the appropriate State agency.

Changes: None.

Section 668.57 Acceptable Documentation

Comments: Several commenters concur with the Secretary's proposal to delete the required verification of independent student status under certain categories. The commenters believe that institutions' financial aid offices should decide whether verification of independent student status is necessary based on professional judgment. A new definition of independent student has been adopted and guidelines for institutional compliance were published in an August, 1987 Dear Colleague Letter. Another commenter suggested that the new independent student definition, as well as required documentation to demonstrate independent student status, should be included in the regulations to ensure knowledge of, and consistent application of, these regulations.

Discussion: The Higher Education Act requires a student to document his or her satisfaction of a criterion for independent student status before a disbursement of Title IV Program funds may be made. Sections 411E and 478(a) of the Higher Education Act of 1965, as amended, prohibit the Secretary from issuing regulations under the section of the Act which includes the definition of an independent student. Therefore, under current law, the Secretary cannot prescribe the specific documentation the institution must collect for verification of independent student status, and the documentation requirements based on former law must be deleted.

Changes: None.

Comments: One commenter agrees that additional verification of the number of family members in college is necessary since plans often change between the time a financial aid application is submitted and the beginning of the college term. One commenter is unsure of the circumstances that would prompt an institution to require documentation, other than for a case where the number of family members or ages of family members would cause a concern. The commenter suggests that these types of errors do not require extensive institutional documentation, and that the application and verification forms should be expanded to collect student identification numbers for all family members who are listed as attending postsecondary educational institutions to assist institutions in obtaining the required certification from schools or to search their own records to provide that data to other schools. Although aware of the impact that the number of family members in college has on an applicant's eligibility, the commenter is unclear as to the reason why it is necessary to impose those measures that the commenter believes are costly and will cause significant delays in the processing of applications.

Discussion: The Secretary believes it is necessary to require institutions to verify annually the number of family members enrolled in college because of the frequency of changes in this area. By requiring applicants to document the names of the household members and the names of the members attending postsecondary educational institutions, institutions can reduce a significant source of error that cannot be verified using only the tax return. Collection of ID numbers would impose additional burden and processing delays for both institutions and applicants. The Secretary is unable to request student identification numbers, which are usually Social Security Numbers (SSN), for family members enrolled in postsecondary educational institutions because of the enactment of the Privacy Act of 1974. The Act prohibits an agency from denying a person any right, title or privilege based on the person's refusal to disclose their social security number unless specifically authorized by statute or the disclosure requirement predates the Privacy Act. The Department has

never collected SINs, that is, social security numbers, of family members and has no statutory authorization to do so. Clearly, if the Department could not make benefit decisions based on an applicant's refusal to supply an SSN absent proper authority, the Department could never deny an applicant a benefit based on a family member's refusal to provide an SSN. Therefore, the Department could only request the SSN on a voluntary basis. Such a collection would be ineffective, making an additional burden imposed as part of the information collection excessively burdensome. Such a collection would also create processing delays for both higher education institutions and applicants. However, the Secretary is seeking to reduce applicant error and believes that requiring an applicant and the applicant's parents, for dependent applicants, or the applicant and the applicant's spouse, for independent applicants, to recertify the accuracy of the reported information concerning family members in college will reduce applicant error based on failure to correct outdated information concerning family members in college. Therefore, the Secretary has revised the regulations to provide that an applicant must verify the number of family members attending postsecondary educational institutions.

Changes: None.

Comments: One commenter asks the Secretary to consider two important factors before adopting the proposal to require income tax returns filed with the Commonwealth of Puerto Rico, the government of another U.S. territory or commonwealth, or the central government of a foreign country to be treated the same as U.S. income tax returns. Those factors include the ability of students to obtain these income documents in a timely manner, especially if the parent resides in a remote area; and financial aid administrators' access to foreign currency exchange tables necessary to convert financial information reported in foreign currencies into U.S. dollars. Another commenter believes that the use of comparable income tax returns as a means of verification is acceptable if appropriate instructions for those returns are provided by the Secretary. This commenter finds the interpretation of returns written in a foreign language or with unusual references to be difficult without proper instructions. One commenter suggested that an English translation of the Puerto Rican tax returns be included in the Verification Guide each year to assist institutions with their review of this material.

Discussion: Public Law 100–369 requires that treatment of income tax returns filed with the Commonwealth of Puerto Rico, the government of another U.S. territory or commonwealth, or the central government of a foreign country be the same as that for U.S. tax returns. The Secretary will attempt to make available English-language copies of commonly encountered foreign tax return forms or provide instructions in the Verification Guide concerning how these forms may be obtained.

Changes: None.

Section 668.58 Interim Disbursements

Comments: Several commenters support the proposed change that will enable College Work-Study (CWS) recipients to be employed for the first 60 consecutive days of the award year, prior to the completion of verification, provided that there is no indication that the aid application is inaccurate. Some commenters believe this change will increase institutional flexibility without obligating institutions to employ students prior to the completion of verification. Another commenter does not believe that the phrase in § 668.58(a)(2)(ii)(B) should be changed from "schools may employ students under the CWS program for the first sixty days from the date of enrollment" to "schools may employ students under the CWS program for the first sixty days of an award year." Most students do not begin their enrollment on July 1.

Discussion: The Secretary agrees with the comments received suggesting that since most students do not begin their enrollment on July 1, which is the beginning of an award year, 60 days from the beginning of enrollment provides sufficient time for most students to complete the verification process, especially since most students begin the verification process prior to enrollment. The Secretary is not requiring institutions to employ an applicant under the College Work-Study Program before the applicant completes the verification process. Institutions may exercise discretion in determining whether to provide CWS employment to individual applicants.

Changes: The proposed § 668.58 (a)(2)(ii)(B) is revised to allow an employer to employ an eligible student under the CWS program for the first 60 consecutive days after the date the applicant enrolled for that award year.

Comments: One commenter questioned whether a school that receives Stafford Loan proceeds that are found, as a result of verification, to be in excess of the amount a student is eligible to receive, may deliver the correct amount and return the excess proceeds to the lender. Another commenter believes that it is not helpful to allow schools to make payments, and then hold the college liable if awards must be subsequently reduced because of changes made as a result of verification. The commenter feels that the schools should not be placed in a position of assuming financial liability because of student error or behavior. One commenter also recommends that Stafford loan proceeds be held for sixty days instead of forty-five.

Discussion: Institutions are permitted to deliver the correct amount of Stafford Loan proceeds to students who are found to have proceeds in excess of their eligibility as a result of new or adjusted information acquired during verification, and return the excess proceeds to the lender. The Secretary sets forth a procedure in § 668.58(d) for institutions to follow when the amount of previously certified Stafford Loan proceeds exceeds the student's need for a loan based on verified information. The Secretary believes that institutions must use discretion when providing interim disbursements of loan proceeds to applicants prior to the completion of verification. If the excess funds cannot be eliminated in subsequent disbursements, the institution must return the loan proceeds to the lender.

The Secretary believes that forty-five (45) days is a sufficient period of time for holding the Stafford Loan proceeds pending completion of the verification process. Generally, applicants will complete the verification process within the 45-day period.

Changes: None.

Section 668.59 Consequences of a Change in Application Information

Comments: A number of commenters agreed with the proposed $200.00 tolerance for all Title IV programs. One commenter believes that this change will encourage more careful completion of, and fewer mistakes on, the original aid application because financial aid officers will make a more concerted effort to inform students about proper completion of their forms and likely sources of error. Another commenter feels this change will improve consistency across Title IV programs and reduce overawards, making additional funds available to other needy students. This commenter feels that the change in tolerance levels will also decrease debt burden for some students who would otherwise receive larger loans than they would be qualified to receive but for the tolerance. Two commenters state that the change will make it easier for institutions to

administer financial aid. One commenter believes the new tolerance may result in more recalculation work on the part of a financial aid officer, but will undoubtedly result in stricter compliance with the stated tolerances. The commenters have found over the years that the dual tolerances are confusing to new aid officers, and confusion results in errors which result in improper awards.

Several commenters object to the proposal to change the amount of the dollar tolerance for the Stafford Loan and campus-based programs because they believe it will increase burden for both educational institutions and students. One commenter states that reducing the amount of income variance permitted under the tolerance options will have the net effect of requiring more students to correct and reprocess their applications for student aid. Another commenter strongly recommends that the Secretary leave the tolerance at the present $800 level for Stafford Loan and campus-based programs because, the commenter contends, a significant part of the problem of application error is caused by the wording of the questions and the layout of the forms. Another commenter thinks it would not be appropriate to apply the tolerance, previously used exclusively for Pell Grants, to all Title IV programs since the formulas are not similar in their application or results. The commenter suggests that application of a $200 tolerance could make a substantial difference in a Pell Grant award, but little or no difference in the Stafford loan, and that alignment of programs by utilizing the same dollar tolerance does not address the issue of consistency. Several commenters find that the tolerance level of $800 for campus-based financial assistance is extremely helpful in getting financial assistance to students in a timely manner, and that the $800 tolerance makes little difference in the amount of eligibility for these students. The commenters propose that the tolerance for campus-based, Stafford Loan, and Pell Grant programs be placed at $800 rather than the proposed $200. One commenter reminds the Secretary that students are encouraged to file for financial aid early using estimated IRS tax forms and that many taxpayers do not file tax returns in January, so that the $200 tolerance will result in an increased number of recalculated financial aid forms.

Discussion: The Secretary concurs with the commenters as to the potential burden resulting from reducing the Stafford Loan tolerance and has decided not to revise the tolerance as stated in proposed § 668.59(b) of the NPRM but to retain the $200 tolerance for the Pell Grant Program and $800 tolerance for the campus-based and Stafford Loan programs that are contained in the current regulations.

Changes: The current tolerances in § 668.59(b) will be retained and the change proposed in the NPRM will not be made.

Comments: Several commenters concur with the proposal to delete the Zero Pell Grant Index (PGI) Charts. They find the charts to be confusing and the institutions often find it necessary to recalculate the PGI. A few commenters find the Zero PGI charts to be valuable and time-saving references, and they do not agree that these charts are too complex. These commenters encourage the Secretary to reconsider the discontinuation of the Zero PGI Charts as a resource.

Discussion: The Secretary concurs with the commenters who advocate retention of the Zero PGI Charts and will, therefore, continue to annually provide the Zero PGI Charts in the Verification Guide. The charts will no longer be published in the **Federal Register**.

Changes: Section 668.59 has been revised. The change proposed in the NPRM, to delete the Zero PGI Charts, will not be made.

Section 668.60 Deadlines for Submitting Documentation and the Consequences for Failing To Provide Documentation

No comments.

Section 668.61 Recovery of Funds

Comments: One commenter believes that the recovery of overawards received by applicants, as a result of interim disbursements pending completion of verification, is unduly harsh to eligible institutions and to the students who attend them. The commenter suggests that the problem of overpayments resulting from interim disbursements does not appear to be widespread and does not affect the integrity of the needs analysis which underlies the Federal financial aid programs. Therefore, the commenter suggests that this requirement be deleted from the final regulations. Another commenter states that, while consistency of definition is important, the proposed regulations require recovery of funds that may already have been disbursed before the overaward is determined based on the updated status. Because those funds are beyond the control of the institution at that point, the commenter suggests that the regulations be amended to include provisions for adjusting disbursements subsequent to an overaward and, if an adjustment is not possible, to consider the overaward as a resource for subsequent awards.

Discussion: The Secretary has decided to adopt the proposed change to § 668.61 as published in the NPRM because the commenters' concerns about overawards should be substantially alleviated by the retention of the current § 668.55, in lieu of requiring updating of dependency status and household size throughout the year. The Secretary believes that an overaward caused by updating adjustments can be eliminated in most instances by using the overaward procedures in § 668.61.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, colleges and universities, consumer protection, education load programs—education, grant programs—education, report and recordkeeping requirements, student aid.

Dated: November 26, 1991.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Programs; 84.032 Stafford Loan Program; 84.032 Plus Loan Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.226 Income Contingent Loan Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program)

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Subpart E of part 668 is revised to read as follows:

Subpart E—Verification of Student Aid Application Information

Sec.

668.51 General.
668.52 Definitions.
668.53 Policies and procedures.
668.54 Selection of applications for verification.
668.55 Updating information.
668.56 Items to be verified.
668.57 Acceptable documentation.
668.58 Interim disbursements.
668.59 Consequences of a change in application information.
668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.
668.61 Recovery of funds.

Subpart E—Verification of Student Aid Application Information

§ 668.51 General

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, campus-based, need-based Income Contingent Loan (ICL), and Stafford Loan programs.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant shall provide the specified documents or information.

(c) *Institutional Quality Control Project.* (1) For the 1986–87 through the 1993–94 award years, the Secretary exempts institutions selected to participate in the Institutional Quality Control Project from the requirements contained in the following sections:

(i) Section 668.53(a) (1) through (4).

(ii) Section 668.54(a) (2), (3), and (5).

(iii) Section 668.56.

(iv) Section 668.57, except that an institution shall require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.

(v) Section 668.60(a).

(2) For the purpose of this section, the Institutional Quality Control Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the Title IV, HEA programs. Under such a quality control system, the institution must evaluate its current procedures for administering the Title IV, HEA programs ("management assessment component"), identify the errors that result from its current procedures ("error measurement process component") and design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component").

(d) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the GSL Programs that are not located in a State.

(Authority: 20 U.S.C. 1094)

§ 668.52 Definitions.

The following definitions apply to this subpart:

Base year means the calendar year preceding the first calendar year of an award year.

Edits means a set of pre-established factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

Expected family contribution (EFC) means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

Need analysis servicer means an agency or organization who has had its system for determining EFCs under the campus-based, GSL, and need-based ICL programs certified by the Secretary for the applicable award year.

Student aid application means an application submitted by a person to have his or her EFC determined under the Pell Grant, campus-based, need-based ICL, or GSL programs.

(Authority: 20 U.S.C. 1094)

§ 668.53 Policies and procedures.

(a) An institution shall establish and use written policies and procedures for verifying information contained in a student aid application in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of verification if, as a result of verification, the applicant's EFC changes and results in a change in the applicant's award of loan;

(4) The procedures the institution requires an applicant to follow to correct application information determined to be in error; and

(5) The procedures for making referrals under § 668.14(g).

(b) The institution's procedures must provide that it shall furnish, in a timely manner, to each applicant selected for verification a clear explanation of—

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

(Approved by the Office of Management and Budget under Control Number 1840–0570)

(Authority: 20 U.S.C. 1094)

§ 668.54 Selection of applications for verification.

(a) *General requirements.* (1) Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph.

(2) An institution shall require each applicant whose application is selected for verification on the basis of edits specified by the Secretary, to verify all of the applicable items specified in § 668.56, except that no institution is required to verify the applications of more than 30 percent of its applicants for assistance under the Pell Grant, campus-based, need-based ICL, and Stafford Loan programs in an award year. The Secretary may certify need analysis servicers, and may enter into agreements with those servicers under which the Secretary provides the edits to the servicer and the servicer indicates to institutions the applications selected for verification.

(3) The institution shall require each applicant to verify the applicable items specified in § 668.56 (except that no eligible institution is required to verify more than 30 percent of the applications submitted in any award year), if—

(i) The applicant is selected by the institution to receive an award under the campus-based programs or the need-based ICL program or requests the

institution to certify his or her application for a Stafford Loan; and

(ii) The institution does not receive—

(A) A Student Aid Report (SAR) for the applicant; or

(B) The output document generated on behalf of the applicant submitting an application to a certified need analysis servicer that has an agreement with the Secretary as described under paragraph (a)(2) of this section.

(4) If an institution has reason to believe that any information on an application used to calculate an EFC is inaccurate, it shall require the applicant to verify the information that it has reason to believe is inaccurate.

(5) If an applicant is selected to verify the information on his or her application under paragraph (a)(2) of this section, the institution shall require the applicant to verify the information as specified in § 668.56 on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for the applicable award year.

(6) An institution or the Secretary may require an applicant to verify any data elements that the institution or the Secretary specifies.

(b) *Exclusions from verification.* (1) An institution need not verify an application submitted for an award year if the applicant dies during the award year.

(2) Unless the institution has reason to believe that the information reported by the applicant is incorrect, it need not verify applications of the following applicants:

(i) An applicant who is—

(A) A legal resident of and, in the case of a dependent student, whose parents are also legal residents of, the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or

(B) A citizen of and, in the case of a dependent student, whose parents are also citizens of, the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student, whose parents are residing in a country other than the United States and cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant who is a dependent student, both of whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown and cannot be obtained by the applicant.

(vi) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(vii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains—

(A) A letter from the previous institution stating that it has verified the applicant's information and, if relevant, the provision used in § 668.59 for not recalculating the applicant's EFC; and

(B) A copy of the verified application and, if the applicant applied for a Pell Grant, pages 1 and 3 of the applicant's SAR.

(3) An institution need not require an applicant to document a spouse's information or provide a spouse's signature if—

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1091, 1094)

§ 668.55 Updating information.

(a) (1) Unless the provisions of paragraph (a)(2) or (a)(3) of this section apply, an applicant is required to update—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(3) If, as a result of a change in the applicant's marital status, the number of family members in the applicant's household, the number of those household members attending postsecondary education institutions, or the applicant's dependency status changes, the applicant shall not update those factors or that status.

(b) If the number of family members in the applicant's household or the number of those household members attending postsecondary educational institutions changes for a reason other than a change in the applicant's marital status—

(1) An applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information; and

(2) An applicant for a Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution.

(c) If an applicant has received Pell Grant, campus-based, need-based ICL, or Stafford Loan program assistance for an award year, the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending postsecondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Pell Grant, campus-based, or need-based ICL program assistance or certifying a Stafford Loan application; and

(2) Is not required to adjust the Pell Grant, campus-based or need-based ICL program assistance previously awarded to the applicant for that award year, or any previously certified Stafford Loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d) (1) Except as provided in paragraphs (a)(3) and (d)(2) of this section, if an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant must file a new application for

that award year reflecting the applicant's new dependency status regardless of whether ther applicant is selected for verification.

(2) If the institution has previously certified a Stafford Loan application for an applicant, the applicant shall not update his or her dependency status on the Stafford Loan application.

(Approved by the Office of Management and Budget under Control Number 1840–0570)

(Authority: 20 U.S.C. 1094)

§ 668.56 Items to be verified.

(a) Except, as provided in paragraphs (b), (c), (d), and (e) of this section, an institution shall require an applicant selected for verification under § 668.54(a) (1) or (2) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year if base year data was used in determining eligibility, or income earned from work, for a non-tax filer.

(2) U.S. income tax paid for the base year if base year data was used in determining eligibility.

(3)(i) For an applicant who is a dependent student, the aggregate number of family members in the household or households of the applicant's parents if—

(A) The applicant's parent is single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(B) The applicant's parents are married to each other and not separated and the aggregate number of family members is greater than three.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(A) The applicant is single, divorced, separated, or widowed and the number of family members is greater than one; or

(B) The applicant is married and not separated and the number of family members is greater than two.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The following untaxed income and benefits for the base year if base year data was used in determining eligibility—

(i) Social security benefits if—

(A) Verification is required by a comment on the applicant's SAR; or

(B) The applicant does not receive a SAR and the institution has reason to believe that those benefits were received;

(ii) Child support if the institution has reason to believe that child support was received;

(iii) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account;

(iv) Interest on tax-free bond;

(v) Foreign income excluded from U.S. income taxation if the institution has reason to believe that foreign income was received;

(vi) The earned income credit taken on the applicant's tax return; and

(vii) All other untaxed income subject to U.S. income tax reporting requirements in the base year which is included on the tax return form, excluding information contained on schedules appended to such forms.

(b) If an applicant selected for verification submits a SAR to the institution or the institution receives an output document as described in § 668.54(a)(3)(ii)(B) within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under § 668.54(a)(2), the institution need not require the applicant to verify—

(1) The number of family members in the household; or

(2) The number of family members in the household, who are enrolled as at least half-time students in postsecondary educational institutions.

(c) If the number of family members in the household, the independent student status, or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(d) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment status from its own records, the institution need not require the applicant to verify that information.

(e) If the applicant or the applicant's spouse or, in the case of a dependent student, the applicant's parents receive untaxed income or benefits from a Federal, State, or local government agency determining their eligibility for that income or those benefits by means of a financial needs test, the institution need not require the untaxed income and benefits to be verified.

(Approved by the Office of Management and Budget under Control Number 1840–0570)

(Authority: 20 U.S.C. 1094, 1095)

§ 668.57 Acceptable documentation.

(a) *Adjusted Gross Income (AGI), income earned from work, and U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify AGI and U.S. income tax paid by submitting to it, if relevant—

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W–2 received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W–2 he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who filed a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of the "IRS Listing of Tax Account Information."

(3) An institution shall accept, in lieu of an income tax return or an IRS Listing of Tax Account Information of an individual whose income was used in calculating the EFC of an applicant, the documentation set forth in paragraph (a)(4) of this section if the individual for the base year—

(i) Has not filed and is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or a Listing of Tax Account Information, and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide a Listing of Tax Account Information.

(4) An institution shall accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed nor is required to file an income tax return for the base year and certifying for that year that individual's—

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(ii) For an individual described in paragraph (a)(3)(ii) of this section—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the base year, or a copy of the IRS's approval of an extension beyond the automatic four-month extension if the individual requested an additional extension of the filing time; and

(B) A copy of each IRS Form W–2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iii) For an individual described in paragraph (a)(3)(iii) of this section—

(A) A copy of each IRS Form W–2 that the individual received for the base year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U. S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed income tax return when filed. When an institution receives the copy of the return, it may re-verify the adjusted gross income and taxes paid by the applicant and his or her spouse or parents.

(6) If an individual who is required to submit an IRS Form W–2 under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work, the source of that income, and the reason that the IRS Form W–2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and the applicant's parent if the applicant is a dependent student, or the applicant and the applicant's spouse if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of that household member to the applicant.

(c) *Number of family household members enrolled in postsecondary institutions.* (1) Unless the institution has reason to believe that the information included on the application regarding the number of household members in the applicant's family enrolled on at least a half-time basis in postsecondary institutions is inaccurate, the institution shall require an applicant selected for verification to verify that information by submitting to it a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, listing—

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of the institution attended by each student.

(2) If the institution has reason to believe that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require—

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend or the institution has information itself that the student will be attending the same school as the applicant.

(d) *Untaxed income and benefits.* An institution shall require an applicant selected for verification to verify—

(1) Untaxed income and benefits described in § 668.56(a)(5) (iii), (iv), (v), and (vi) by submitting to it—

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or is required to be filed, a statement signed by the relevant individuals certifying that no tax return was filed or is required to be filed and providing the sources and amount of untaxed income and benefits specified in § 668.56(a)(5) (iii), (iv), (v), and (vi);

(2) Social security benefits—

(i) If an edit comment appears on the applicant's SAR indicating incorrect Social Security benefits, the applicant shall verify Social Security benefits, by submitting a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant, applicant's parents, and any other children of the applicant's parents who are members of the applicant's household, in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR and the institution has reason to believe that the applicant has incorrectly reported Social Security benefits received by the applicant or any individual described in paragraph (d)(2)(i) of this section, the applicant shall verify Social Security benefits by submitting either the document described in paragraph (d)(2)(i) of this section or, at the institution's option, a statement signed by both the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it—

(i) A statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant and the applicant's spouse in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution has reason to believe that the information provided is inaccurate, the applicant must verify the amount of child support received by providing a document such as—

(A) a copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

(Approved by the Office of Management and Budget under Control Number 1840-0570)

(Authority: 20 U.S.C. 1094)

§ 668.58 Interim disbursements.

(a) (1) If an institution has reason to believe that the information included on the application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the institution may not—

(i) Disburse any Pell Grant or campus-based program funds to the applicant;

(ii) Employ the applicant in its CWS Program; or

(iii) Certify the applicant's Stafford Loan application or process Stafford Loan proceeds for any previously certified Stafford Loan application.

(2) If an institution does not have reason to believe that the information included on an application is inaccurate prior to verification, the institution—

(i) May withhold payment of Pell Grant, campus-based, and need-based ICL funds; or

(ii) (A) May make one disbursement of any combination of Pell Grant, Perkins Loan, NDSL, SEOG or need-based ICL funds for the applicant's first payment period; and

(B) May employ or allow an employer to employ an eligible student under the CWS Program for the first 60 consecutive days after the student's enrollment in that award year; and

(iii)(A) May withhold certification of the applicant's Stafford Loan application; or

(B) May certify the Stafford Loan application provided that the institution does not process Stafford Loan proceeds.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii)(A) or (B) of this section, it is liable for any overpayment discovered as a result of the verification process to the extent that the overpayment is not recovered from the student.

(c) An institution may not withhold any Stafford Loan proceeds from a student under paragraph (a)(2) of this section for more than 45 days. If the applicant does not complete the verification process within the 45 day period, the institution shall return the proceeds to the lender.

(d) (1) If the institution receives Stafford Loan proceeds in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated by reducing subsequent disbursements for the applicable loan period, the institution shall process the proceeds and advise the lender to reduce the subsequent disbursements.

(2) If the institution receives Stafford Loan proceeds in an amount which exceed the student's need for the loan based upon the verified information and the excess funds cannot be eliminated in subsequent disbursements for the applicable loan period, the institution shall return the excess proceeds to the lender.

(Authority: 20 U.S.C. 1094)

§ 668.59 Consequences of a change in application information.

(a) For the Pell Grant Program—

(1) Except as provided in paragraphs (a) (2) and (3) of this section, if the information on an application changes as a result of the verification process, the institution shall require the applicant to resubmit his or her SAR to the Secretary if—

(i) The institution recalculates the applicant's EFC (Pell Grant Index), determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Pell Grant award; or

(ii) The institution does not recalculate the applicant's EFC.

(2) An institution need not require an applicant with a reported Pell Grant Index (PGI) of zero on his or her SAR to resubmit that SAR to the Secretary if it determines that the applicant's Pell Grant Index remains at zero on the basis of the verified information and the applicable "Zero PGI Chart" published by the Secretary.

(3) An institution need not require an applicant to resubmit his or her SAR to the Secretary, recalculate an applicant's EFC, or adjust an applicant's Pell Grant award if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors reflecting a net change in dollar items of less than $200.

(b) For the Pell Grant Program—

(1) If an institution does not recalculate an applicant's EFC under the provisions of paragraphs (a) (2) and (3) of this section, the institution shall calculate and disburse the applicant's Pell Grant award on the basis of the applicant's original EFC.

(2) (i) Except as provided under paragraph (b)(2)(ii) of this section, if an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process, the institution shall—

(A) Require the applicant to resubmit his or her application to the Secretary;

(B) Recalculate the applicant's Pell Grant award on the basis of the EFC on the corrected SAR; and

(C) Disburse any additional funds under that award only if the applicant provides the institution with the corrected SAR and only to the extent that additional funds are payable based on the recalculation.

(ii) If an institution recalculates an applicant's EFC because of a change in application information resulting from the verification process and determines that the change in the EFC increases the applicant's award, the institution—

(A) May disburse the applicant's Pell Grant award on the basis of the original EFC without requiring the applicant to resubmit his or her SAR to the Secretary; and

(B) Except as provided in § 668.60(b), shall disburse any additional funds under the increased award reflecting the new EFC if the applicant provides it with the correct SAR.

(c) For the campus-based, need-based ICL and Stafford Loan programs—

(1) Except as provided in paragraph (c)(2) of this section, if the information on an application changes as a result of the verification process, the institution shall—

(i) Recalculate the applicant's EFC; and

(ii) Adjust the applicant's financial aid package for the campus-based, need-based ICL, and Stafford Loan programs to reflect the new EFC if the new EFC results in an overaward of campus-based or need-based ICL funds or decreases the applicant's recommended loan amount.

(2) An institution need not recalculate an applicant's EFC or adjust his or her aid package if, as a result of the verification process, the institution finds—

(i) No errors in nondollar items used to calculate the applicant's EFC; and

(ii) No errors in dollar items or errors reflecting a net change in dollar items of less than $800; or

(d) If the institution selects an applicant for verification for an award year who previously received a loan under the Stafford Loan Program for that award year, and as a result of verification the loan amount is reduced by $200 or more, the institution shall comply with the procedures for notifying the borrower and lender specified in § 668.61(b).

(e) If the applicant has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot do so, the institution shall forward the applicant's

name, social security number, and other relevant information to the Secretary.

(Approved by the Office of Management and Budget under Control Number 1840–0570)

(Authority: 20 U.S.C. 1094)

§ 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in § 668.57 that are requested by the institution or the Secretary.

(b) For purposes of the campus-based, Stafford Loan and need-based ICL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution or by the Secretary—

(i) The institution may not—

(A) Disburse any additional Perkins Loan, NDSL, SEOG or need-based ICL funds to the applicant;

(B) Continue to employ or allow an employer to employ the applicant under CWS;

(C) Certify the applicant's Stafford Loan application; or

(D) Process Stafford Loan proceeds for the applicant;

(ii) The institution shall return to the lender any Stafford Loan proceeds that otherwise would be payable to the applicant; and

(iii) The applicant shall repay to the institution any Perkins Loan, NDSL, or SEOG, or need-based ICL payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding paragraph (b)(1)(i) of this section; and

(3) An institution may not withhold any Stafford Loan proceeds from an applicant under paragraph (b)(1)(i)(D) of this section for more than 45 days. If the applicant does not complete verification within the 45-day period, the institution shall return the Stafford Loan proceeds to the lender.

(c) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the **Federal Register**. If a verified SAR is submitted to the institution during the established additional time period, and the PGIs on the two SARs are different, payment must be based on the higher of the two PGIs.

(2) If the applicant does not provide the requested documentation, and if necessary, a verified SAR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any Pell Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent Pell Grant application, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, need-based ICL or Stafford Loan program assistance of an applicant who has been requested to provide documentation until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing the verification process without completing that process, and the deadline is in the subsequent award year, the institution may not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify that applicant's Stafford Loan application or process that applicant's Stafford Loan proceeds; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

(Authority: 20 U.S.C. 1094)

§ 668.61 Recovery of funds.

(a) If an institution discovers, as a result of the verification process, that an applicant received under § 668.58(a)(2)(ii)(A) more financial aid than the applicant was eligible to receive, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, by the earlier of the following dates, if the applicant does not return the overpayment:

(A) Sixty days after the applicant's last day of attendance.

(B) The last day of the award year in which the institution disbursed Pell Grant, Perkins Loan, NDSL, SEOG or need-based ICL funds to the applicant.

(b) If the institution determines as a result of the verification process that an applicant received for an award year Stafford Loan proceeds of $200 or more in excess of the student's financial need for the loan, the institution shall notify the student and the lender of the excess amount within 30 days of the institution's determination that the borrower is ineligible for the excess amount.

(Authority: 20 U.S.C. 1094)

[FR Doc. 91–28829 Filed 11–29–91; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
December 2, 1991

Part V

The President

Proclamation 6383—National Adoption Week, 1991

Federal Register
Vol. 56, No. 231
Monday, December 2, 1991

Presidential Documents

Title 3—

The President

Proclamation 6383 of November 27, 1991

National Adoption Week, 1991

By the President of the United States of America

A Proclamation

Adoption is a wonderful act of love, generosity, and lifelong commitment—virtues that have always gone hand in hand with building a family. This week, we acknowledge the many rewards that adoption holds for children, for parents, and for our Nation.

More than 50,000 American children are adopted each year. These youngsters are as eager to give love as they are to gain permanent homes and families of their own. Indeed, any adult who has been blessed with an adopted child or grandchild knows what tremendous affection and joy that youngster brings to the lives of others.

Although the actual process may include moments of anticipation, frustration, and worry, adoption benefits each of the parties involved—including the biological mother who, for whatever reason, cannot keep her child and courageously decides to give him or her the chance to enjoy life in a secure, loving environment. Because strong, loving families are the foundation of stable, caring communities and nations, adoption also enriches our entire country.

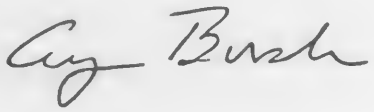
Tragically, however, despite the many benefits of adoption, thousands of children continue to wait. Approximately 36,000 children in the United States who are legally available for adoption are living in foster care or in institutions. Many of these children are characterized as special needs children: older children and children with disabilities, children with siblings who need to be adopted by the same family, or members of a minority group. Regardless of the individual needs they may have, all of these children long for the kind of permanent homes and loving families that most of us have always been able to take for granted.

As a Nation, we have begun to dismantle legal, financial, and attitudinal barriers to adoption. This progress has been made possible, in large part, by the vigorous efforts of concerned public officials, parents, social workers, attorneys, counselors, members of the clergy, and others. However, because every child deserves the special love and support that only a family can provide, we still have much work to do. We must continue to promote public awareness of adoption and to find ways of bringing prospective parents together with the thousands of children who continue to wait. We must also continue to offer encouragement and assistance to those courageous women who, despite the pressures of a crisis pregnancy, reject abortion and choose life for their unborn children.

The Congress, by Senate Joint Resolution 207, has designated the week of November 24 through November 30, 1991, as "National Adoption Week" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of November 24 through November 30, 1991, as National Adoption Week. I urge all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 27 day of November, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-29031
Filed 11-29-91; 10:19 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 56, No. 231

Monday, December 2, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

61109-61346.....2

CFR PARTS AFFECTED DURING DECEMBER

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.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 3839/Pub. L. 102-170

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1992. (Nov. 26, 1991; 105 Stat. 1107; 36 pages) Price: $1.25

S. 374/Pub. L. 102-171

Aroostook Band of Micmacs Settlement Act. (Nov. 26, 1991; 105 Stat. 1143; 7 pages) Price: $1.00

Last List November 29, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2233**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-013-00001-3)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
4	(869-013-00003-0)	15.00	Jan. 1, 1991
5 Parts:			
1-699	(869-013-00004-8)	17.00	Jan. 1, 1991
700-1199	(869-013-00005-6)	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	(869-013-00006-4)	18.00	Jan. 1, 1991
7 Parts:			
0-26	(869-013-00007-2)	15.00	Jan. 1, 1991
27-45	(869-013-00008-1)	12.00	Jan. 1, 1991
46-51	(869-013-00009-9)	17.00	Jan. 1, 1991
52	(869-013-00010-2)	24.00	Jan. 1, 1991
53-209	(869-013-00011-1)	18.00	Jan. 1, 1991
210-299	(869-013-00012-9)	24.00	Jan. 1, 1991
300-399	(869-013-00013-7)	12.00	Jan. 1, 1991
400-699	(869-013-00014-5)	20.00	Jan. 1, 1991
700-899	(869-013-00015-3)	19.00	Jan. 1, 1991
900-999	(869-013-00016-1)	28.00	Jan. 1, 1991
1000-1059	(869-013-00017-0)	17.00	Jan. 1, 1991
1060-1119	(869-013-00018-8)	12.00	Jan. 1, 1991
1120-1199	(869-013-00019-6)	10.00	Jan. 1, 1991
1200-1499	(869-013-00020-0)	18.00	Jan. 1, 1991
1500-1899	(869-013-00021-8)	12.00	Jan. 1, 1991
1900-1939	(869-013-00022-6)	11.00	Jan. 1, 1991
1940-1949	(869-013-00023-4)	22.00	Jan. 1, 1991
1950-1999	(869-013-00024-2)	25.00	Jan. 1, 1991
2000-End	(869-013-00025-1)	10.00	Jan. 1, 1991
8	(869-013-00026-9)	14.00	Jan. 1, 1991
9 Parts:			
1-199	(869-013-00027-7)	21.00	Jan. 1, 1991
200-End	(869-013-00028-5)	18.00	Jan. 1, 1991
10 Parts:			
0-50	(869-013-00029-3)	21.00	Jan. 1, 1991
51-199	(869-013-00030-7)	17.00	Jan. 1, 1991
200-399	(869-013-00031-5)	13.00	[4] Jan. 1, 1987
400-499	(869-013-00032-3)	20.00	Jan. 1, 1991
500-End	(869-013-00033-1)	27.00	Jan. 1, 1991
11	(869-013-00034-0)	12.00	Jan. 1, 1991
12 Parts:			
1-199	(869-013-00035-8)	13.00	Jan. 1, 1991
200-219	(869-013-00036-6)	12.00	Jan. 1, 1991
220-299	(869-013-00037-4)	21.00	Jan. 1, 1991
300-499	(869-013-00038-2)	17.00	Jan. 1, 1991
500-599	(869-013-00039-1)	17.00	Jan. 1, 1991
600-End	(869-013-00040-4)	19.00	Jan. 1, 1991
13	(869-013-00041-2)	24.00	Jan. 1, 1991
14 Parts:			
1-59	(869-013-00042-1)	25.00	Jan. 1, 1991
60-139	(869-013-00043-9)	21.00	Jan. 1, 1991
140-199	(869-013-00044-7)	10.00	Jan. 1, 1991
200-1199	(869-013-00045-5)	20.00	Jan. 1, 1991
1200-End	(869-013-00046-3)	13.00	Jan. 1, 1991
15 Parts:			
0-299	(869-013-00047-1)	12.00	Jan. 1, 1991
300-799	(869-013-00048-0)	22.00	Jan. 1, 1991
800-End	(869-013-00049-8)	15.00	Jan. 1, 1991
16 Parts:			
0-149	(869-013-00050-1)	5.50	Jan. 1, 1991
150-999	(869-013-00051-0)	14.00	Jan. 1, 1991
1000-End	(869-013-00052-8)	19.00	Jan. 1, 1991
17 Parts:			
1-199	(869-013-00054-4)	15.00	Apr. 1, 1991
200-239	(869-013-00055-2)	16.00	Apr. 1, 1991
240-End	(869-013-00056-1)	23.00	Apr. 1, 1991
18 Parts:			
1-149	(869-013-00057-9)	15.00	Apr. 1, 1991
150-279	(869-013-00058-7)	15.00	Apr. 1, 1991
280-399	(869-013-00059-5)	13.00	Apr. 1, 1991
400-End	(869-013-00060-9)	9.00	Apr. 1, 1991
19 Parts:			
1-199	(869-013-00061-7)	28.00	Apr. 1, 1991
200-End	(869-013-00062-5)	9.50	Apr. 1, 1991
20 Parts:			
1-399	(869-013-00063-3)	16.00	Apr. 1, 1991
400-499	(869-013-00064-1)	25.00	Apr. 1, 1991
500-End	(869-013-00065-0)	21.00	Apr. 1, 1991
21 Parts:			
1-99	(869-013-00066-8)	12.00	Apr. 1, 1991
100-169	(869-013-00067-6)	13.00	Apr. 1, 1991
170-199	(869-013-00068-4)	17.00	Apr. 1, 1991
200-299	(869-013-00069-2)	5.50	Apr. 1, 1991
300-499	(869-013-00070-6)	28.00	Apr. 1, 1991
500-599	(869-013-00071-4)	20.00	Apr. 1, 1991
600-799	(869-013-00072-2)	7.00	Apr. 1, 1991
800-1299	(869-013-00073-1)	18.00	Apr. 1, 1991
1300-End	(869-013-00074-9)	7.50	Apr. 1, 1991
22 Parts:			
1-299	(869-013-00075-7)	25.00	Apr. 1, 1991
300-End	(869-013-00076-5)	18.00	Apr. 1, 1991
23	(869-013-00077-3)	17.00	Apr. 1, 1991
24 Parts:			
0-199	(869-013-00078-1)	25.00	Apr. 1, 1991
200-499	(869-013-00079-0)	27.00	Apr. 1, 1991
500-699	(869-013-00080-3)	13.00	Apr. 1, 1991
700-1699	(869-013-00081-1)	26.00	Apr. 1, 1991
1700-End	(869-013-00082-0)	13.00	[5] Apr. 1, 1990
25	(869-013-00083-8)	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.0-1-1.60	(869-013-00084-6)	17.00	Apr. 1, 1991
§§ 1.61-1.169	(869-013-00085-4)	28.00	Apr. 1, 1991
§§ 1.170-1.300	(869-013-00086-2)	18.00	Apr. 1, 1991
§§ 1.301-1.400	(869-013-00087-1)	17.00	Apr. 1, 1991
§§ 1.401-1.500	(869-013-00088-9)	30.00	Apr. 1, 1991
§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
§§ 1.908-1.1000	(869-013-00092-7)	22.00	Apr. 1, 1991
§§ 1.1001-1.1400	(869-013-00093-5)	18.00	[5] Apr. 1, 1990
§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
2-29	(869-013-00095-1)	21.00	Apr. 1, 1991
30-39	(869-013-00096-0)	14.00	Apr. 1, 1991
40-49	(869-013-00097-8)	11.00	Apr. 1, 1991
50-299	(869-013-00098-6)	15.00	Apr. 1, 1991
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–013–00101–0)	6.50	Apr. 1, 1991
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–013–00105–2)	18.00	July 1, 1991
100–499	(869–013–00106–1)	7.50	July 1, 1991
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[6] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
1927–End	(869–013–00113–3)	25.00	July 1, 1991
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–013–00115–0)	15.00	July 1, 1991
700–End	(869–013–00116–8)	21.00	July 1, 1991
31 Parts:			
0–199	(869–013–00117–6)	15.00	July 1, 1991
200–End	(869–013–00118–4)	20.00	July 1, 1991
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–013–00121–4)	26.00	July 1, 1991
630–699	(869–013–00122–2)	14.00	July 1, 1991
700–799	(869–013–00123–1)	17.00	July 1, 1991
800–End	(869–013–00124–9)	18.00	July 1, 1991
33 Parts:			
1–124	(869–013–00125–7)	15.00	July 1, 1991
125–199	(869–013–00126–5)	18.00	July 1, 1991
200–End	(869–013–00127–3)	20.00	July 1, 1991
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–013–00129–0)	14.00	July 1, 1991
400–End	(869–013–00130–3)	26.00	July 1, 1991
35	(869–013–00131–1)	10.00	July 1, 1991
36 Parts:			
1–199	(869–013–00132–0)	13.00	July 1, 1991
200–End	(869–013–00133–8)	26.00	July 1, 1991
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–013–00137–1)	14.00	July 1, 1991
40 Parts:			
1–51	(869–013–00138–9)	27.00	July 1, 1991
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–013–00140–1)	31.00	July 1, 1991
61–80	(869–013–00141–9)	14.00	July 1, 1991
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–013–00143–5)	29.00	July 1, 1991
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–013–00145–1)	20.00	July 1, 1991
190–259	(869–013–00146–0)	13.00	July 1, 1991
260–299	(869–011–00147–5)	22.00	July 1, 1990
300–399	(869–013–00148–6)	13.00	July 1, 1991
400–424	(869–013–00149–4)	23.00	July 1, 1991
425–699	(869–013–00150–8)	23.00	[6] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–013–00152–4)	22.00	July 1, 1991

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–013–00153–2)	8.50	[7] July 1, 1990
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–013–00155–9)	11.00	July 1, 1991
201–End	(869–013–00156–7)	10.00	July 1, 1991
42 Parts:			
*1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–011–00158–1)	5.50	Oct. 1, 1990
400–429	(869–011–00159–9)	21.00	Oct. 1, 1990
430–End	(869–011–00160–2)	25.00	Oct. 1, 1990
43 Parts:			
1–999	(869–011–00161–1)	19.00	Oct. 1, 1990
*1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–011–00163–7)	12.00	Oct. 1, 1990
44	(869–011–00164–5)	23.00	Oct. 1, 1990
45 Parts:			
*1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–011–00166–1)	12.00	Oct. 1, 1990
500–1199	(869–011–00167–0)	26.00	Oct. 1, 1990
1200–End	(869–011–00168–8)	18.00	Oct. 1, 1990
46 Parts:			
1–40	(869–011–00169–6)	14.00	Oct. 1, 1990
41–69	(869–011–00170–0)	14.00	Oct. 1, 1990
70–89	(869–011–00171–8)	8.00	Oct. 1, 1990
90–139	(869–011–00172–6)	12.00	Oct. 1, 1990
140–155	(869–011–00173–4)	13.00	Oct. 1, 1990
156–165	(869–011–00174–2)	14.00	Oct. 1, 1990
166–199	(869–011–00175–1)	14.00	Oct. 1, 1990
*200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–011–00177–7)	11.00	Oct. 1, 1990
47 Parts:			
0–19	(869–011–00178–5)	19.00	Oct. 1, 1990
20–39	(869–011–00179–3)	18.00	Oct. 1, 1990
40–69	(869–011–00180–7)	9.50	Oct. 1, 1990
70–79	(869–011–00181–5)	18.00	Oct. 1, 1990
80–End	(869–011–00182–3)	20.00	Oct. 1, 1990
48 Chapters:			
1 (Parts 1–51)	(869–011–00183–1)	30.00	Oct. 1, 1990
1 (Parts 52–99)	(869–011–00184–0)	19.00	Oct. 1, 1990
2 (Parts 201–251)	(869–011–00185–8)	19.00	Oct. 1, 1990
2 (Parts 252–299)	(869–011–00186–6)	15.00	Oct. 1, 1990
3–6	(869–011–00187–4)	19.00	Oct. 1, 1990
7–14	(869–011–00188–2)	26.00	Oct. 1, 1990
15–End	(869–011–00189–1)	29.00	Oct. 1, 1990
49 Parts:			
1–99	(869–011–00190–4)	14.00	Oct. 1, 1990
100–177	(869–011–00191–2)	27.00	Oct. 1, 1990
178–199	(869–011–00192–1)	22.00	Oct. 1, 1990
200–399	(869–011–00193–9)	21.00	Oct. 1, 1990
400–999	(869–011–00194–7)	26.00	Oct. 1, 1990
1000–1199	(869–011–00195–5)	17.00	Oct. 1, 1990
1200–End	(869–011–00196–3)	19.00	Oct. 1, 1990
50 Parts:			
1–199	(869–011–00197–1)	20.00	Oct. 1, 1990
200–599	(869–011–00198–0)	16.00	Oct. 1, 1990
600–End	(869–011–00199–8)	15.00	Oct. 1, 1990
CFR Index and Findings Aids	(869–013–00053–6)	30.00	Jan. 1, 1991

Title	Stock Number	Price	Revision Date
Complete 1991 CFR set		620.00	1991
Microfiche CFR Edition:			
Complete set (one-time mailing)		185.00	1988
Complete set (one-time mailing)		185.00	1989
Subscription (mailed as issued)		188.00	1990
Subscription (mailed as issued)		188.00	1991
Individual copies		2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 1991

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
December 2	December 17	January 2	January 16	January 31	March 2
December 3	December 18	January 2	January 17	February 3	March 3
December 4	December 19	January 3	January 21	February 3	March 4
December 5	December 20	January 6	January 21	February 3	March 5
December 6	December 23	January 6	January 21	February 4	March 6
December 9	December 24	January 8	January 23	February 7	March 9
December 10	December 26	January 9	January 24	February 10	March 10
December 11	December 26	January 10	January 27	February 10	March 11
December 12	December 27	January 13	January 27	February 10	March 12
December 13	December 30	January 13	January 27	February 11	March 13
December 16	December 31	January 15	January 30	February 14	March 16
December 17	January 2	January 16	January 31	February 18	March 17
December 18	January 2	January 17	February 3	February 18	March 18
December 19	January 3	January 21	February 3	February 18	March 19
December 20	January 6	January 21	February 3	February 18	March 20
December 23	January 7	January 22	February 6	February 21	March 23
December 24	January 8	January 23	February 7	February 24	March 24
December 26	January 10	January 27	February 10	February 24	March 26
December 27	January 13	January 27	February 10	February 25	March 27
December 30	January 14	January 29	February 13	February 28	March 30
December 31	January 15	January 30	February 14	March 2	March 31

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected),* the *Federal Register Index,* or both.

LSA • List of CFR Sections Affected

The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6483

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(___ ___)
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

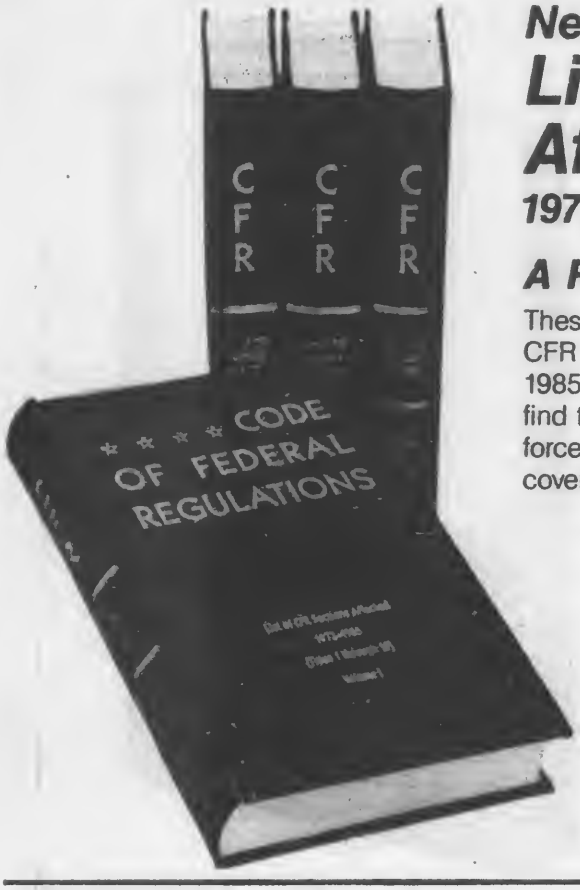
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(REV. 10-1-88)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371



New Publication

List of CFR Sections Affected

1973-1985

A Research Guide

These four volumes contain a compilation of the "List of CFR Sections Affected (LSA)" for the years 1973 through 1985. Reference to these tables will enable the user to find the precise text of CFR provisions which were in force and effect on any given date during the period covered.

Volume I (Titles 1 thru 16).....$27.00
Stock Number 069-000-00029-1

Volume II (Titles 17 thru 27).....$25.00
Stock Number 069-000-00030-4

Volume III (Titles 28 thru 41).....$28.00
Stock Number 069-000-00031-2

Volume IV (Titles 42 thru 50).....$25.00
Stock Number 069-000-00032-1

Superintendent of Documents Publications Order Form

Order Processing Code
***6962**

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-2529

Please Type or Print (Form is aligned for typewriter use.)

Prices include regular domestic postage and handling and are good through 7/91. After this date, please call Order and Information Desk at 202-783-3238 to verify prices. International customers please add 25%.

Qty.	Stock Number	Title	Price Each	Total Price
1	021-602-00001-9	Catalog–Bestselling Government Books	FREE	FREE
			Total for Publications	

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

Mail To: Superintendent of Documents
Government Printing Office
Washington, DC 20402-9325

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Credit card expiration date) ***Thank you for your order!***

(Signature)

Rev 1-91

Order Now!

The United States Government Manual 1991/92

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and agency/subject indexes.

Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$23.00 per copy

Superintendent of Documents Publication Order Form

Order processing code: *6901

Charge your order. it's easy! VISA

To fax your orders and inquiries. 202-512-2250

☐ **YES,** please send me the following indicated publication:

_____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1991/92 at $23.00 per copy. S/N 069-000-00041-0.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 10/92. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA, or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

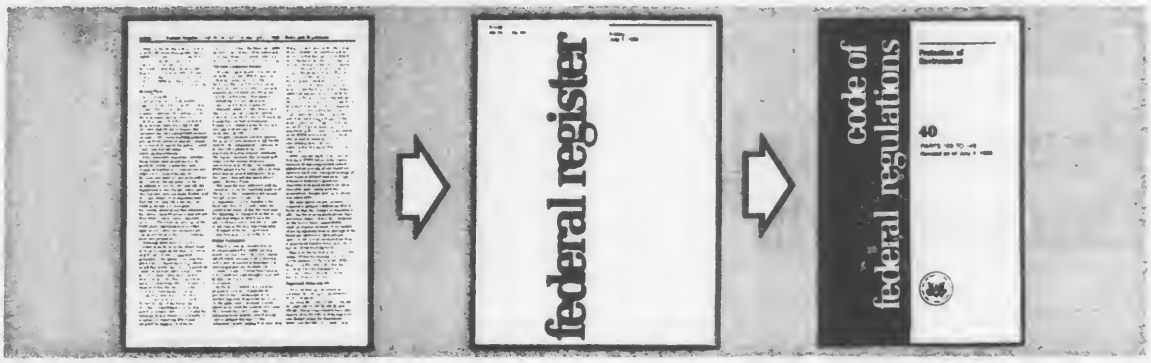
_____
(Signature)

(Rev. 10-91)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register**, published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register**; and the cumulative **Federal Register Index**.

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current CFR volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of **CFR** Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:
***6463**

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    ____$340 for one year
    ____$170 for six-months
  - **24 x Microfiche Format:**
    ____$195 for one year
    ____$97.50 for six-months
  - **Magnetic tape:**
    ____$37,500 for one year
    ____$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    ____$620 for one year
  - **24 x Microfiche Format:**
    ____$188 for one year
  - **Magnetic tape:**
    ____$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**
☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

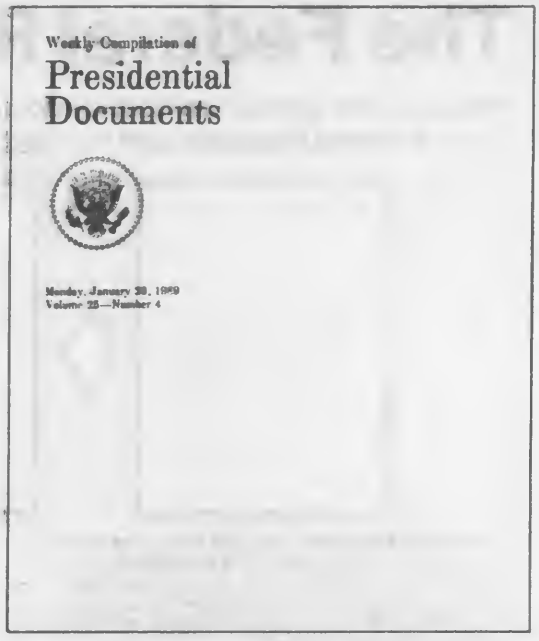
_____
(Signature) (Rev. 2/90)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code
*6466

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **Please choose method of payment:**

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature) (Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371