10–15–96
Vol. 61 No. 200
Pages 53591–53824

federal register

Tuesday
October 15, 1996

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: October 22, 1996 at 9:00 a.m.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
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RESERVATIONS: 202–523–4538

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Contents

Federal Register
Vol. 61, No. 200
Tuesday, October 15, 1996

Agency for Health Care Policy and Research
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53747

Agency for International Development
RULES
Commodities and services financed by AID; source, origin and nationality rules, 53615–53622
NOTICES
Close-out guidance; P.L. 480 Title II draft; availability, 53757–53759

Agricultural Marketing Service
RULES
Almonds grown in California, 53607–53608
Potatoes (Irish) grown in—
Maine, 53606–53607

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Food and Consumer Service
RULES
Acquisition regulations:
Federal regulatory reform, 53645–53677
Organization, functions, and authority delegations:
Finance and management office; CFR part removed, 53608

Air Force Department
NOTICES
Commercial activities performance (OMB Circular A-76); cost comparison studies, 53723–53725

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Firearms:
Commerce in explosives, 53688–53692

Animal and Plant Health Inspection Service
RULES
Overtime services relating to imports and exports:
Commuted traveltime allowances, 53603–53606
Plant-related quarantine, domestic:
Fire ant, imported, 53601–53603

Army Department
NOTICES
Environmental statements; availability, etc.:
Pine Bluff Arsenal, AR; chemical agent demilitarization facility; construction and operation, 53725

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Institute for Occupational Safety and Health, 53747–53748

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commission of Fine Arts
NOTICES
Meetings, 53720

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Brinkmann Corp., 53720–53722

Customs Service
NOTICES
Customhouse broker license cancellation:
Gabehart, Kim K., 53779
Customhouse broker license cancellation, suspension, etc.:
Goldstein, Steven, 53779

Defense Department
See Air Force Department
See Army Department
See Defense Special Weapons Agency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 53722
Federal claims collection:
Garnishments processing fee, 53722–53723
Meetings:
Semiconductor Technology Council, 53723
Women in Services Advisory Committee, 53723

Defense Special Weapons Agency
NOTICES
Privacy Act:
Systems of records, 53725–53727

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Bridgeway Trading Corp., 53761
Dupont Merck Pharmaceutical Co., 53761–53762
Septer, Michael J., D.O., 53762–53766

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
See Southwestern Power Administration
PROPOSED RULES
Acquisition regulations:
Management and operating contracts—
Competition and extension contract reform initiative; implementation; correction, 53699–53700
NOTICES
Committees; establishment, renewal, termination, etc.:
American Statistical Association Committee on Energy Statistics, 53727
Meetings:
Environmental Management Site-Specific Advisory Board—
Kirtland Area Office (Sandia), 53727–53728
Oak Ridge Reservation, 53728

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 53728

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Louisiana et al., 53639–53643
Air quality implementation plans; approval and promulgation; various States:
Maine, 53636–53639
Massachusetts, 53628–53633
New Jersey, 53624–53628
Tennessee, 53633–53636
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Louisiana et al., 53694
Air quality implementation plans; approval and promulgation; various States:
Maine, 53693–53694
New Jersey, 53692–53693
Tennessee, 53693

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

Federal Aviation Administration
RULES
Airworthiness directives:
New Piper Aircraft, Inc., 53611–53614
Federal Regulatory Review; disposition of comments, 53610–53611
PROPOSED RULES
Airworthiness directives:
Glasflugel, 53683–53685
Airworthiness standards:
Special conditions—
Jetstream Aircraft Ltd. model 4100 series airplanes, 53680–53682
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 53778–53779

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 53644
Pennsylvania, 53643
Washington et al., 53643–53644
Television stations; table of assignments:
New York et al., 53644–53645
PROPOSED RULES
Common carrier services:
Newspaper/broadcast cross-ownership restriction; waiver, 53694–53698
Radio stations; table of assignments:
Tennessee, 53698–53699
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53733–53734
Submission for OMB review; comment request, 53734–53735

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 53730–53732
Senior Executive Service:
Performance Review Board; membership, 53732
Applications, hearings, determinations, etc.:
Carnegie Interstate Pipeline Co., 53729
Colorado Interstate Gas Co., 53729
KN Interstate Gas Transmission Co., 53729
Stingray Pipeline Co., 53729–53730

Federal Housing Finance Board
NOTICES
Federal home loan bank system:
Community support review—
Selection of members, 53735–53746

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
Echo International Freight Forwarding et al., 53746

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 53746
Formations, acquisitions, and mergers, 53746
Permissible nonbanking activities, 53746–53747

Financial Management Service
See Fiscal Service

Fine Arts Commission
See Commission of Fine Arts

Fiscal Service
RULES
Bonds and notes, U.S. Treasury:
Federal asset forfeiture laws; payment of U.S. Savings Bonds under Federal judicial or administrative forfeiture, 53822–53823

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
San Joaquin County, CA; san joaquin kit fox, etc., 53750–53751

Food and Consumer Service
RULES
Food stamp program:
Miscellaneous farm bill provisions, 53595–53601

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Chlortetracycline
Correction, 53615
New drug applications—
Monensin blocks, 53614–53615
PROPOSED RULES
Human drugs:
Colloidal silver ingredients or silver salts, products containing (OTC); not generally recognized as safe and effective, 53685–53688
NOTICES
Food additive petitions:
Dover Chemical Corp., 53748

Human drugs:
Patent extension; regulatory review period determinations—
Neutrexin; correction, 53748

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Immigration and Naturalization Service
RULES
Immigration:
Aliens—
Law students and graduates; representation and appearances, 53609–53610
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53766

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Quinault Indian Nation, WA, 53751

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Amortizable bond premium; public hearing cancelled, 53688
Bad debts modifications and dealer assignments of notional principal contracts; cross reference
Correction, 53688
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53779–53780

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Fresh tomatoes from—
Mexico, 53702
Sulfanilic acid from—
China, 53702–53718
Antidumping duty orders and findings:
Determinations not to revoke, 53701–53702

International Trade Commission
NOTICES
Antidumping:
Open-end spun rayon singles yarn from—
Austria, 53760

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
See Juvenile Justice and Delinquency Prevention Office
NOTICES
Pollution control; consent judgments:
Burlington Northern Railroad Co., 53760–53761
Eveready Battery Co., Inc., 53761

Juvenile Justice and Delinquency Prevention Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 53766–53767

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Talapoosa Mining Incorporated's Talapoosa project, 53751
Environmental statements; notice of intent:
Headwaters Resource Area, MT, 53751–53752
Meetings:
Resource advisory councils—
John Day-Snake, 53752
Oil shale classification order of public lands:
Wyoming, 53752
Public land orders:
Wyoming, 53752–53753
Survey plat filings:
Nevada, 53753

National Institute of Standards and Technology
NOTICES
National voluntary conformity assessment system evaluation (NVCASE) program, 53718–53719

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 53749
National Institute of Neurological Disorders and Stroke, 53749
Research Grants Division special emphasis panels, 53749–53750

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Rockfish fishery, 53679
Tuna, Atlantic bluefin fisheries, 53677–53679
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Taylor, Jessie W., 53719
Meetings:
International Commission for the Conservation of Atlantic Tuna, 53719–53720

National Park Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 53753–53754
Environmental statements; availability, etc.:
Nez Perce National Historical Park et al., ID, 53754–53755
Meetings:
National Capital Area; 1996 Christmas Pageant of Peace, 53755

Native American human remains and associated funerary objects:
University of Pennsylvania Museum of Archaeology and Anthropology, PA; inventory from Hawaii, 53755–53756

National Science Foundation
NOTICES
Meetings:
Anthropological and Geographic Sciences Advisory Panel, 53767
Biomolecular Structure and Function Advisory Panel, 53767
Economics, Decision and Management Sciences Advisory Panel, 53767–53768
Education and Human Resources Advisory Committee, 53768
Education and Human Resources Committee of Visitors, 53768
Engineering Advisory Committee, 53768
Engineering Education and Centers Special Emphasis Panel, 53768
Genetics Advisory Panel, 53769
Infrastructure, Methods, and Science Studies Advisory Panel, 53769

National Transportation Safety Board
NOTICES
Aircraft accidents; hearings, etc.:
Administrator v. Willette et al.; Air carrier voluntary disclosure reporting procedures (advisory circular 120-56); applicability, 53769

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Wisconsin Public Service Co. et al., 53769–53772

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

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest rates for valuing benefits, 53623–53624
NOTICES
Single-employer and multiemployer plans:
Interest rates and assumptions, 53772–53773

Presidential Documents
PROCLAMATIONS
Special observances:
Day of Concern About Young People and Gun Violence, National (Proc. 6935), 53593–53594
Leif Erikson Day (Proc. 6934), 53591–53592

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Maricopa County, AZ; Ak-Chin indian community, 53756–53757

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 53773
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange Clearing Corp. et al., 53773–53774
Chicago Board Options Exchange, Inc., 53774–53775

Small Business Administration
NOTICES
Disaster loan areas:
North Carolina, 53775–53776
Pennsylvania, 53776

Southwestern Power Administration
NOTICES
Integrated System power rates and opportunities, 53732–53733

State Justice Institute
NOTICES
Grants, cooperative agreements, and contracts; guidelines, 53782–53820

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Canadian American Railroad Co., 53779

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 53776

Trade Representative, Office of United States
NOTICES
Argentine:
Apparel, textiles, footwear; specific duties and non-tariff barriers affecting; investigation and request for comments, 53776–53777

Transportation Department
See Federal Aviation Administration
See Surface Transportation Board
RULES
Acquisition regulations:
Federal regulatory reform
Correction, 53677
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 53777
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 53777–53778
Hearings, etc.—
Golden West Airlines, Inc., 53778

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Customs Service
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
State Justice Institute, 53782–53820

Part III

Treasury Department; Fiscal Service, 53822–53823

Reader Aids

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

Electronic Bulletin Board

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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:
6934 53591
6935 53593

7 CFR
271 53595
272 53595
274 53595
278 53595
301 53601
354 53603
950 53606
981 53607
3010 53608

8 CFR
292 53609

14 CFR
Ch. I 53610
39 (2 documents) 53611
63613

Proposed Rules:
25 53680
39 53683

21 CFR
520 53614
558 53615

Proposed Rules:
310 53685

22 CFR
228 53615

26 CFR
Proposed Rules:
1 (2 documents) 53688

27 CFR
Proposed Rules:
55 53688

29 CFR
4044 53623

31 CFR
353 53882

40 CFR
52 (5 documents) 53624
53628, 53633, 53636, 53639
81 53639

Proposed Rules:
52 (4 documents) 53692,
53693, 53694
81 53694

47 CFR
73 (4 documents) 53643
53644

Proposed Rules:
Ch. I 53694
73 53698

48 CFR
401 53645
402 53645
403 53645
404 53645
405 53645
406 53645
407 53645
408 53645
409 53645
410 53645
411 53645
412 53645
413 53645
414 53645
415 53645
416 53645
417 53645
418 53645
419 53645
420 53645
421 53645
422 53645
423 53645
424 53645
425 53645
426 53645
427 53645
428 53645
429 53645
430 53645
431 53645
432 53645
433 53645
434 53645
435 53645
436 53645
437 53645
438 53645
439 53645
440 53645
441 53645
442 53645
443 53645
444 53645
445 53645
446 53645
447 53645
448 53645
449 53645
450 53645
451 53645
452 53645
453 53645
1212 53677

Proposed Rules:
917 53699
950 53699
952 53699
970 53699

50 CFR
285 53677
679 53679

Federal Register
Vol. 61, No. 200
Tuesday, October 15, 1996

Presidential Documents

Title 3—

The President

Proclamation 6934 of October 9, 1996

Leif Erikson Day, 1996

By the President of the United States of America

A Proclamation

Leif Erikson Day commemorates the life and the voyages of the great Nordic explorer who first set foot on the fertile soil of North America about one thousand years ago. On this day, we also celebrate the close bonds of friendship between the people of the United States and the Nordic peoples, as well as the outstanding contributions that Nordic Americans have made to our country.

We have good cause to mark this day. The pioneering spirit that Leif Erikson and his followers demonstrated embodies the virtues of independence, self-determination, and initiative that are firmly rooted in our national consciousness today. As a vital transatlantic bridge between the continents of America and Europe, the Nordic countries of Iceland, Norway, Sweden, Denmark, and Finland have repeatedly shown a bedrock commitment to the democratic values that contributed greatly to the formation of our own national ideals.

Just as our forebears persevered through what sometimes seemed insurmountable odds to transform adversity into prosperity, we have continued to champion the cause of liberty and to reach out without reservation or hesitation to our neighbors and those in need around the world. The same heritage that enabled our ancestors to brave wars and uncharted frontiers—because they were convinced that they were working to create a better world—also emboldens us today in our cooperative effort to integrate the Baltic states of Estonia, Latvia, and Lithuania into the Western community of nations.

Our immigrant ancestors survived unthinkable hardships to achieve economic, religious, and political freedom. Their dreams were big, but so was their willingness to work for them. The link they forged across the oceans is sustained today by a common commitment to freedom and the rule of law—ideals that have strong roots in the civic and legal traditions of Nordic countries dating back at least to medieval times.

In honor of Leif Erikson—son of Iceland, grandson of Norway—the Congress, by joint resolution approved on September 2, 1964 (Public Law 88–566), has authorized and requested the President to designate October 9 of each year as ‘‘Leif Erikson Day.’’

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 1996, as Leif Erikson Day. I encourage the people of the United States to observe this occasion with appropriate ceremonies and activities commemorating our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 96–26529
Filed 10–11–96; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6935 of October 10, 1996

National Day of Concern About Young People and Gun Violence, 1996

By the President of the United States of America

A Proclamation

Few losses are more difficult to face than the death of a young person. Such deaths are even more appalling when they result from violence by another youth. It is a tragedy of modern American life that thousands of our young people each year suffer deadly violence initiated by their peers. Federal Bureau of Investigation (FBI) data show that in the decade between 1984 and 1993 the number of homicide arrests of juveniles skyrocketed by 168 percent. Even more disturbing, the fastest increase in violent crime arrests of juveniles occurred among children 10 to 12 years old. Demographic experts predicted that, if those trends continued, juvenile violent crime arrests would double by the year 2010.

Now, new FBI data show reason for cautious optimism. For the first time in 7 years, the juvenile crime arrest rate decreased—by 2.9 percent in 1995. In addition, juvenile arrests for murder declined by 15.2 percent in 1995—the largest 1-year decrease in more than 10 years. Since 1993, the arrest rate for murder among juveniles has decreased by 22.8 percent.

Although this trend is encouraging, far too many of our young people still are committing violent acts. Fueling this problem is the prevalence of, and easy access to, illegal firearms on our Nation's streets. Between 1985 and 1992, the number of juvenile homicides not involving guns increased by 20 percent, while the number involving guns jumped by 300 percent. Because guns are easily available, routine fights among young people often turn into gun battles. Then, as the tragic cycle of violence repeats itself, more and more young people, fearing for their safety, arm themselves. The resulting escalation of gun violence and death threatens the Nation's most precious resource for the future—our young people.

We have expanded an experimental tracing program that targets those who provide or sell guns to young people. But we need to do more to keep guns out of the hands of our kids. We need to further improve and vigorously enforce our gun laws. And we need to reduce the sale and use of illegal drugs, which also fuel gun violence.

We also need to begin teaching children as early as possible how to choose not to be violent. All of us can take an active role in making sure that conflict resolution and other anti-violence programs are in place in our local schools, community centers, and places of worship. Community leaders, businesses, and other local institutions must create ''safe havens'' where children can go after school. Such actions can be a tangible sign of care and concern on the part of the community. Most importantly, parents need to teach their children right from wrong, so that they can learn the core values of our society and live according to them. In this undertaking, parents must be sensitive, patient, diligent, and fair, in order to provide a proper nonviolent model.

While parents, teachers, clergy, and the community at large can provide encouragement, the ultimate responsibility for reducing youth violence lies with our young people themselves. They must commit to resolve disputes

without violence and to avoid violent situations and friends. They must become positive role models for their peers, siblings, and younger children. Many young people have already made this commitment and are working in their schools and neighborhoods to end violence. For this, we salute them and urge them to continue to work for peaceful solutions. We call upon all young people to make this same commitment.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 10, 1996, as a National Day of Concern About Young People and Gun Violence. On this day I call upon young people in classrooms and playgrounds across the United States to make a solemn decision about their future. I call upon them voluntarily to sign a pledge promising that they will never take a gun to school, that they will never use a gun to settle a dispute, and that they will use their influence to prevent friends from using guns to settle disputes. Finally, I call upon all Americans to commit themselves anew to helping our Nation's young people avoid violence and grow up to be happy, healthy, and productive adults.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first

William J. Clinton

[FR Doc. 96–26530
Filed 10–11–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 61, No. 200
Tuesday, October 15, 1996

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

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

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 271, 272, 274, and 278

[Amendment No. 343]

RIN 0584–AB02

Food Stamp Program: Miscellaneous Farm Bill Provisions Relating to the Authorization of Retail Firms and Wholesale Food Concerns

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: This Food Stamp Program rulemaking implements the three following provisions of the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act): homeless food stamp households may purchase meals with food stamps in restaurants approved by State agencies for this purpose, and the Department may periodically require authorized retailers and wholesalers to be reauthorized to participate in the Food Stamp Program, and no co-located wholesale/retail food concern may be authorized as a retail food store unless the firm does a substantial level of retail food business, or unless failure to authorize such a firm as a retail food store would cause hardship to food stamp households. This rulemaking is necessary to implement sections 1713, 1733 and 1734 of the FACT Act. The intended effects are: to expand the sources of low-cost food to homeless recipients; to provide the Department with complete and current information on retailers and wholesalers participating in the Food Stamp Program and ensure that only those firms qualified to participate in the program are authorized; and to preclude the authorization of the firms not needed to effectuate the purposes of the program.

EFFECTIVE DATE: These provisions were effective February 1, 1992, except the provisions of 7 CFR 278.1(i) which have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1995. The provisions of this section will become effective upon approval. FCS will publish a document in the Federal Register announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Suzanne Fecteau, Chief, Coupon and Retailer Branch, Food Stamp Program, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305–2418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) 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.

Regulatory Flexibility Act

The final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). William E. Ludwig, the Administrator of the Food and Consumer Service (FCS), has certified that this final rule will not have a significant economic impact on a substantial number of small entities. State and local agencies that administer the Program will be affected. Some restaurants will be affected because they will be allowed to accept food stamp benefits in payment for meals served to homeless food stamp recipients. The rule will also affect retail food stores and wholesale food concerns which accept and redeem food stamp benefits. Thus, while the rule may affect a substantial number of small entities, the effect on any one entity will not be significant.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's intention to request Office of Management and Budget's approval of a revision to a currently approved information collection pertaining to food stamp applications to accept and redeem food stamps.

Comments on this information collection must be received by December 16, 1996.

Send requests for copies of this information collection to: Suzanne M. Fecteau, Chief, Redemption Management Branch, Benefit Redemption Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302 or call (703) 305–2418.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

For further information contact Suzanne M. Fecteau, (703) 305–2418.

Supplementary information: *Title:* Food Stamp Application for Stores, Form FNS–252 (9–93); Food Stamp Program for Stores-Reauthorization, Form FCS–252R (2–95);Food Stamp Program Application for Stores—Supplement, Form FNS–252A (8–94);Food and Nutrition Service Meal Services, Form FNS–252–2 (10–79).

OMB Number: 0584–0008.

Expiration Date of Approval: Three years from date of approval.

Type of Request: Revision of a currently approved collection. Request

for approval of application forms has been previously submitted. This submission is for an additional requirement under section 278.1(i) of the Food Stamp Program regulations as described below. The burden associated with this requirement applies to one class of respondents which complete the form FNS–252–2.

Abstract: FCS of the Department of Agriculture is the Federal Agency responsible for the Food Stamp Program. The Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et seq.) requires that the Agency determine the eligibility of firms and certain food service organizations to accept and redeem food stamp benefits and to monitor them for compliance and continued eligibility.

Part of FCS' responsibility is to accept applications from retail food stores, restaurants and programs that wish to participate in the Food Stamp Program, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem food stamp benefits. FCS is also responsible for requiring updates to application information and reviewing the information to determine whether or not the firms or services continue to meet eligibility requirements.

Section 278.1(i) of this rule contains an information collection requirement. It requires that restaurants interested in serving homeless food stamp recipients are responsible for obtaining contracts with the appropriate State agency and providing to the State agency the approximate prices that will be charged for meals served to homeless food stamp recipients.

Estimate of Burden: The public reporting burden for the collection of information for all applicant firms wishing to participate, or continue to participate, in the FSP is estimated to average .280 hours per response.

Respondents: Retail food stores, restaurants and State or local governments.

Estimated Number of Respondents: 80,613.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden: 18,396.

The individual components of the burden are as follows:

Form No. and/or title	Use	Annual responses	Hours per response	Annual burden
Form FNS 252, FSP Application for Stores	New	26,431	.45	11,894
Form FNS 252–2 FSP	New	[1] 817	[1] .226	[1] 185
Application for Meal Services (including private restaurants)	Update	1,775	.1667	296
Form FCS–252R FSP Reauthorization Application	Update	51,590	.1167	6021
		80,613		18,396

[1] Of the 817 new meal service applications, we estimate that 98 will be private restaurants which will be required to obtain a contract with an appropriate State agency. We estimate that the contract requirement will take .50 hours per response, for a total of 49 hours annually.

Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, to the following address. Please refer to the OMB Control No. 0584–0008. Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for FCS, 725 17th Street, N.W., Washington, D.C. 20503.

Executive Order 12778

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

Background

On October 23, 1991, the Food and Nutrition Service, which has since been redesignated the Food and Consumer Service (FCS), published a proposed rule at 56 FR 54799 to implement the three following provisions of the Food, Agriculture, Conservation and Trade Act of 1990 (Pub. L. No. 101–624, 104 Stat. 3359): (1) restaurants may accept food stamp benefits in exchange for meals from homeless recipients, and (2) the Department may require a periodic reauthorization of authorized firms, and (3) no co-located wholesale/retail food concern may be authorized as a retail food store unless the concern does a substantial level of retail food business, or failure to authorize such firm would cause hardship to food stamp households. These amendments to the Food Stamp Act of 1977, as amended, (the Act) (7 U.S.C. 2011 *et seq.*) are found in Pub. L. No. 101–624 at sections 1713, 1733, and 1734, respectively. The public was provided a 30-day period to submit comments on the proposed provisions. Thirteen comments were received in response to the proposed rule. The major concerns raised by the commentors are discussed below.

Authorization of Restaurants to Serve Prepared Meals to Homeless Persons

One State agency commented that use of the terms ''private establishment'' and ''restaurant'' interchangeably in the proposed rule is confusing and that the term ''private homeless meal providers'' should be used instead. The Department concurs that use of the two aforementioned terms is confusing. However, the term ''private homeless meal providers'' would also be confusing since the regulations contain other references to ''private nonprofit homeless meal providers.'' In order to avoid confusion and to clarify which types of establishments are being referred to, the Department has used the word ''restaurant'' in this preamble and also in the regulatory text. In addition, to further assist with clarification, the Department has in this rulemaking specified that those entities other than restaurants feeding the homeless are referred to as ''public or private

nonprofit'' homeless meal providers. To further elucidate the types of establishments to be considered ''restaurants'' for the purposes of serving meals to eligible categories of recipients, the Department is clarifying that such facilities must be primarily in the business of selling food. Thus, section 7 CFR 278.1(d)(3) is being revised to state that a restaurant must have more than 50 percent of its total sales in food.

The Food Stamp Act and the proposed rule permit restaurants to accept food stamp benefits from homeless recipients but require that restaurants sell the meals at concessional (reduced) prices. Several public interest groups and certain state agencies expressed concern that restaurants would not wish to participate in the program if they were required to provide meals at reduced prices to homeless participants. Another commentor asked whether a restaurant could argue that its prices are so low that a further reduction is not reasonable. The Department has further considered the requirement for a ''concessional'' price and has concluded that an already low price can be considered to meet this requirement. This interpretation is consistent with a reference in the relevant legislative history to a concessional price as a ''cheap or reduced'' price in the discussion of restaurants serving elderly and disabled persons offering concessional prices. H.R. Rep. No. 464, 95th Cong., 1st Sess. 333. Due to the similarities in the two provisions, this final rule also refers to a concessional price as a ''low or reduced price.''

Another commentor asked whether concessional prices would be determined for each restaurant or for each food item. The same commentor also asked if there is a predetermined methodology to determine concessional prices. Provisions for concessional prices will be determined by the contract between the restaurant and the State. There is no predetermined methodology for determining concessional prices. It could include, but would not be limited to, a simple percentage reduction, a set dollar amount reduction, or an offer of a free food item or beverage (excluding alcoholic beverages). Price reductions for homeless individuals must be negotiated between the restaurant and the State.

One commentor asked what is considered a reasonable rate of price reduction. In addition, it has come to the Department's attention that there is a perception that if a restaurant's means of arriving at reduced prices consists of a percentage reduction, that percentage reduction must be 10 percent. This is not correct. If a restaurant chooses a percentage reduction as a means of arriving at reduced prices, the amount of the reduction may be a subject for negotiation between the restaurant and the State agency. Thus, the final rule does not prescribe a specific rate of reduction in prices of meals sold to homeless participants.

One commentor asked whether restaurants would be required to post two meal prices—one for the homeless and one for the other customers. As long as the restaurant charges the homeless concessional prices, it will not be necessary for the restaurant to post separate prices in order to comply with this rule.

One State agency asked if a restaurant which is approved to serve meals to the elderly and disabled recipients and their spouses would be required to serve the homeless. It is the Department's position that restaurants approved for providing meals to elderly and disabled recipients would not be required to sell meals to the homeless. Restaurant participation in either of these programs is strictly voluntary.

One public interest group stated that change in restaurant transactions should not be limited to 99 cents. Section 7(b) of the Act (7 U.S.C. 2016(b)) provides that eligible households using coupons may receive cash in change so long as the cash received does not equal or exceed the value of the lowest coupon denomination issued. Thus, cash change must be limited to 99 cents as mandated by the Act. The Department has no discretion to change this provision and has adopted it as final in this rulemaking. However, in addition to giving up to 99 cents in change, a restaurant may use the lowest denomination coupon, which is $1. These coupons must be unmarked and uncancelled for making change. For example, if change in the amount of $2.50 is due, the restaurant would give the recipient two one-dollar coupons and 50 cents in cash change.

One State agency commented that it presumed that State sales tax is applicable to restaurant meals purchased with coupons by homeless persons. Section 4(a) of the Act (7 U.S.C. 2013(a)) provides that a State agency may not participate in the Food Stamp Program if State or local taxes are collected within that State on purchases made with food stamp benefits. The Department cannot waive this provision. Sales tax cannot be collected on any purchase with food stamp benefits, whether it be restaurant meals or food purchased in retail food stores.

Several commentors stated that the requirement that State agencies contract with restaurants would create a new function for State agencies which are suffering from a lack of resources. These commentors recommended that USDA should handle the negotiations and contracts with restaurants as well as monitor restaurants. Another commentor recommended that the State agency delegate this function to a private nonprofit organization. Congress stated in Pub. L. 101–624 which amended section 3(g)(9) of the Act (7 U.S.C. 2012 (g)(9)), that restaurants eligible for authorization to accept food stamp benefits are those that shall contract with the appropriate agency of the State to offer meals to homeless individuals. However, there is no restriction in the statute which would preclude State agencies from contracting with private nonprofit organizations to administer the restaurant program contracts. The State agency would, however, remain responsible and the Department would hold the State agency liable for any action related to the contract.

One State agency questioned whether the Food and Consumer Service (FCS) has review and approval authority over contracts with restaurants. State agencies have the initial responsibility for ensuring that contracts comply with the provisions of the Act and these regulations. While FCS is responsible for implementing and enforcing the law and accompanying regulations regarding the purchase of meals by homeless participants, FCS is not assuming any direct responsibility for prior review and approval of contracts between State agencies and restaurants. However, at the time a restaurant applies to FCS for authorization to accept food stamp benefits from homeless persons, the restaurant must present a copy of the contract with the State agency. At that time, FCS will review the contract to ensure it meets minimum regulatory requirements. Should a restaurant have a complaint during negotiation of the contract about any of the provisions being required by the State agency, the restaurant may request that FCS review the issue.

One State agency commented that the State has no outreach funds to solicit participation of restaurants. The proposed rule did not mandate that States employ outreach efforts to solicit participation of restaurants. However, if the State wishes to do so, the Department suggests that the State could contact the State restaurant association to determine the level of interest of restaurants in participating in this program.

One commentor stated that in order to encourage restaurants to participate in the program, a simple application process, minimal State regulation and the same prices for homeless and non-homeless alike are needed. This rule does not establish new application procedures for restaurants; the same procedures used for other retailers are used for restaurants. Further, the Department does not expect States to impose a complex set of regulations in administering this program. In addition, as stated above, the Department has no discretion regarding the charging of concessional prices since the requirement that restaurants provide meals at concessional prices is included in the law. Of course, restaurants with already low prices would not be required to further reduce prices to homeless food stamp recipients.

The proposed rule provided that homeless recipients' identification (ID) cards would be marked ''CD,'' the same mark on the card issued to elderly and disabled persons eligible for communal dining or restaurant meals. Several public interest groups and a few State agencies believed that the use of a specially-marked ID card for the homeless would stigmatize them and publicize their situation. In addition, one commentor stated that a declaration system should be used to identify homeless persons. In implementing section 1713, the Department has looked to its experience with section 3(g)(3) of the Act (7 U.S.C. 2012(g)(3)), which allows elderly persons and disabled recipients and their spouses to purchase meals from restaurants. There is a long-standing procedure which designates specially-marked ID cards for elderly and disabled recipients and their spouses and requires restaurants to check ID cards unless restaurant personnel know the individual is eligible to purchase meals with food stamp benefits. The Department is not aware of any problems which have resulted from this procedure. In addition, having the specially-marked ID card will avoid the recipient having to verbally declare homelessness in a public setting as would the system suggested by the commentor. The legislation restricts the use of food stamp benefits in restaurants to only certain groups of recipients, and the only effective method for enforcing this restriction is to issue the recipients specially-marked ID cards. For reasons of program integrity, the Department had decided to require specially-marked ID cards. To assist restaurants in recognizing recipients eligible to purchase meals, State agencies need to provide restaurants with specially-marked sample ID cards. However, to maximize flexibility for State agencies, the Department has decided not to specify the mark which must be used.

Some State agencies and a public interest group commented that requiring restaurants to check the ID cards of homeless persons is discriminatory. One of these commentors further stated that the requirement to check ID cards places a more restrictive level of accountability on restaurants than is placed on grocery stores. As stated above, the use of food stamp benefits in restaurants is restricted to elderly and disabled recipients and their spouses, and to homeless individuals. Based on this restriction, the Department believes that it must ensure that only those individuals entitled to use food stamp benefits in restaurants do so.

Additional commentors suggested that the homeless designation should be removed from the ID card once the recipient is no longer homeless, and thus, not eligible to purchase meals in restaurants. The Department agrees with this suggestion and has amended the regulations at 7 CFR 274.10(a)(3) to ensure the applicability of the designation be re-established each time that recertification of eligibility occurs.

One State agency commented that the use of food stamp benefits in a restaurant is not the best use of food stamp benefits for those persons temporarily living with someone else who may have access to cooking facilities. The reference to homeless individuals in Section 3(i)(3) of the Act (7 U.S.C. 2012(3)) does not include access to cooking facilities as a factor for determining eligibility of a homeless person. Thus, the Department does not have the discretion to define homeless individuals in terms of whether such individuals have access to cooking facilities.

One commentor asked how complaints about service to the homeless at restaurants would be handled. That commentor also asked if such complaints would be referred to FCS field offices since restaurants operate as authorized retailers. The State agency has primary responsibility for enforcement of all provisions of contracts. Thus, complaints about service to the homeless (e.g., slow service; rude treatment; spoiled food) would be referred to the State agency. However, if violations of the Act or regulations are involved (e.g., selling meals to persons not eligible to buy them, the selling of ineligible items or cash change violations and unequal treatment of food stamp customers), complaints should be referred to FCS field offices which are responsible for handling such complaints.

One State agency asked whether fast food restaurants would be eligible to participate. Neither the Act nor these regulations exclude any specific type of restaurants from participation. Thus, if a fast food restaurant agrees to provide meals to homeless participants at low or reduced prices, and otherwise qualifies, it could be authorized.

One State agency was concerned about whether restaurants would be able to participate in areas where the Electronic Benefit Transfer (EBT) system has been implemented. In accordance with Food Stamp Program regulations at 7 CFR 274.12, all authorized retailers (including authorized restaurants) must be afforded the opportunity to participate in the EBT system.

One commentor asked whether it is possible to apply for a waiver of any of the requirements of the proposed rule. Food Stamp Program regulations at 7 CFR 272.3 permit the Department to approve requests for waivers to deviate from specific regulatory provisions in some situations. However, because the Department does not have the authority to waive any provisions of the Act except in special demonstration projects, any request must not relate to statutory provisions.

Periodic Reauthorization of Retail Food Stores/Wholesale Food Concerns

In order to ensure that participating firms continue to be eligible to accept food stamp benefits, Section 1733 of Pub. L. No. 101–624 permits FCS to require a full and complete periodic reauthorization of all firms. The information obtained in the reauthorization will be used to update any or all of the information on the firm's application form.

One commentor stated that the rule did not set forth adequate criteria for determining whether a retail food store will be reauthorized and that it would be appropriate to withdraw the proposed rulemaking and issue a further rulemaking which sets forth criteria for reauthorization. The criteria set forth in sections 3(k), 3(u) and 9 of the Act for the authorization of firms will be used during the reauthorization process to determine whether firms are qualified to participate. The criteria for authorization (and, thus, periodic reauthorization) of firms are not affected by this rule and are the same as those specified in the current Act. Therefore, it is not necessary to reissue those standards through this rulemaking action. The Department would call attention to the new authorization criteria made effective on March 25,

1994 with the passage of section 205 of P.L. 103–225, 108 Stat. 108–110.

The reauthorization will utilize the same criteria for authorizing new stores to determine whether firms continue to qualify. If FCS finds during the reauthorization process that a firm no longer qualifies, the firm will be withdrawn. If the firm does meet the appropriate criteria, it will be allowed to continue program participation.

One commentor stated that the proposed rule does not provide adequate notice to existing firms regarding the time period for the periodic reauthorization. The Department is unable to specify an exact date or timetable for updating data on authorized firms. The periodic reauthorization of firms will be conducted as resources and time permit. However, the Department will provide firms with sufficient notice and time to respond to the request for updated information.

Authorization of Wholesale Firms Co-Located With Retail Food Stores

The October 23, 1991, proposed rulemaking included a provision mandated by Section 1734 of Pub. L. No. 101–624, that no co-located wholesale/retail food concern may be authorized as a retail food store unless (A) such firm does a substantial level of retail food business or (B) the Secretary determines that failure to authorize such a wholesale/retail food concern as a retail food store would cause hardship to food stamp households. The proposed rule would have required that a wholesaler's retail food sales constitute at least 50 percent of its total sales in order to be considered as having ''substantial'' retail food business.

A commentor stated that the requirement that a firm which is primarily a wholesaler must have 50 percent of its sales in retail food sales would be virtually impossible since having 50 percent retail food sales would mean the firm was primarily a retailer and not a wholesaler. The Department concurs with the logic of this comment and notes that the statute requires that such firms have a substantial retail business. Webster's Dictionary defines substantial as ''being largely, but not wholly that which is specified.'' In keeping with the definition and Congressional concern about integrity problems with firms with wholesale components, the Department has provided in this final rule that a firm which has more than 50 percent of its total sales in retail food sales shall not have to meet the criteria contained in this final rule in order to be authorized to accept and redeem food stamps, but will be subject to the criteria for authorizing retail firms set forth in Sections 3(k) and 3(u) of the Food Stamp Act of 1977, as amended.

As stated above, Section 1734 mandated that no co-located wholesale/retail food concern may be authorized unless it does a substantial retail food business. A wholesale firm should have what can clearly be recognized as a retail outlet in order to participate in the program. It is not the Department's intent to prevent the participation of any wholesaler having a legitimate, substantial retail food business. On the other hand, a wholesale firm which sells little food at the retail level should not be authorized as a retailer.

The first criterion against which an applicant will be evaluated is whether the firm has what can be considered a legitimate retail outlet. In determining this, several indicators shall be considered. For example, is the business licensed solely as a wholesale business, or is there a separate and distinct license for retail sales? Does the firm have separate retail sales tax records and/or separate bookkeeping records? In addition, the way the firm holds itself out to the public shall be evaluated in determining whether a firm is a legitimate retail outlet. This would include the layout of the retail sales space (e.g., presence of a counter for retail customers). Whether a firm actively seeks out retail trade through advertisements, offers specials to attract retail customers, or posts retail prices shall also be considered in determining if a firm is a legitimate retail outlet. In addition, the hours of operation should be considered as well as whether the firm has parking for retail customers as opposed to just a loading dock area.

The Department is adding a new paragraph (A) at 7 CFR 278.1(b)(1)(iv) to emphasize the fact that a co-located wholesale/retail firm must be a legitimate retail outlet. This reflects the longstanding Departmental policy that no firm shall be authorized as a retail outlet unless it is a legitimate retailer.

Once it has been determined that the firm is a legitimate retail outlet, a determination must be made as to whether the co-located firm has a ''substantial'' level of retail food sales. One commentor suggested that ''substantial'' be defined as a dollar amount (rather than as a percentage), specifically at least $100,000 in retail food sales annually. Some wholesalers may have only a small percentage of their total sales in retail trade, but this may still be a significant dollar amount.

The Department agrees with these comments and has determined that the use of a specific dollar threshold is more appropriate in defining the term ''substantial''. There will be no required percentage of total sales which must be in retail food business.

The Department believes that the restriction on the authorization of co-located retail/wholesale firms is intended to limit the participation of firms not needed to effectuate the purpose of the program. For the most part, these firms do limited retail food business. FCS data show that firms with very limited retail food sales have a higher propensity to violate than firms with relatively high retail food sales. Thus, the final rule allows a firm that has at least $250,000 in annual retail food sales to be authorized. The Department believes that the $250,000 threshold is a reasonable definition of ''substantial'' and effectively meets the intent of Congress. The Department is confident that this criterion is fair to all wholesale food concerns—large and small—which provide retail services to the community and at the same time protects the integrity of the program. The Department would like to again emphasize that a co-located firm may be authorized to accept food stamps, even if it does not have substantial retail food business, if failure to authorize the firm would cause hardship to food stamp households.

A co-located wholesale/retail firm must either have a substantial retail food business or demonstrate that a hardship to recipients would result if it were not authorized. The proposed rulemaking specified the following criteria for determining whether a hardship to recipients would result from not authorizing a co-located firm: (1) Program recipients would have difficulty in finding authorized firms to accept food stamp benefits for eligible foods; (2) special ethnic foods would not otherwise be available to recipients; or (3) recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm. The Department did not receive any comments on these criteria; therefore, they are adopted in this final rule. The Department wishes to stress that a hardship exception can only be granted to a legitimate retail firm.

Finally, if it has been determined that a co-located firm has a legitimate retail business and either has annual retail food sales of at least $250,000, or can demonstrate recipient hardship, its retail food business must then be subject to the criteria for authorizing retail firms set forth in Sections 3(k) and 3(u) of the Food Stamp Act of 1977, as amended.

A commentor stated that the proposed rule would impose an unnecessary paperwork burden on retailers and

wholesalers. The authority to request information from applicant firms (including those requesting reauthorization) is contained in 7 CFR 278.1(b) of the regulations and is approved under OMB Number 0584–0008. This rule does not add any new information collection requirements. Instead, it modifies current requirements to allow determinations to be made on the qualifications of co-located retail/wholesale firms.

The same commentor stated that the rule would require applicant stores to provide data concerning their sales volume for both wholesale and retail segments of their business and that such data is classified as trade secrets and is therefore confidential. Retail and wholesale sales data are necessary to allow a determination on a co-located retail/wholesale firm's qualification for authorization to accept food stamps as a retail food store. Section 9(c) of the Act (7 U.S.C. 2018(c)) requires that such information be submitted. Section 1734 of Pub. L. No. 101–624 specifies that retailer/wholesaler firms must have a substantial retail food business, and the review of sales data is necessary for the meaningful enforcement of the provision. It should be noted, however, that section 9(c) contains safeguards which restrict the use or disclosure of such information.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs. Reporting and recordkeeping requirements.

7 CFR Part 274

Administrative practice and procedures, Food stamps, Grant programs, social programs, Reporting and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesaler, Penalties.

Accordingly, 7 CFR parts 271, 272, 274, and 278 are amended as follows:

1. The authority citation for parts 271, 272, 274, and 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. The definition of ''Eligible foods'' is amended by removing the word ''and'' at the end of paragraph (7), removing the period after paragraph (8) and adding a semi-colon and the word ''and'' in its place, and by adding a new paragraph (9).

b. The definition of ''Homeless meal provider'' is revised.

c. The definition of ''Retail food store'' is amended by adding the words ''or a restaurant that contracts with an appropriate State agency to provide meals at concessional (low or reduced) prices to homeless food stamp households;'' at the end of paragraph (2).

The addition and revision read as follows:

§ 271.2 Definitions.

* * * * *

Eligible foods * * * (9) In the case of homeless food stamp households, meals prepared by a restaurant which contracts with an appropriate State agency to serve meals to homeless persons at concessional (low or reduced) prices.

* * * * *

Homeless meal provider means:

(1) A public or private nonprofit establishment (e.g., soup kitchens, temporary shelters) that feeds homeless persons; or

(2) A restaurant which contracts with an appropriate State agency to offer meals at concessional (low or reduced) prices to homeless persons.

* * * * *

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. Section 272.9 is amended by adding two new sentences after the last sentence to read as follows:

§ 272.9 Approval of homeless meal providers.

* * * The State food stamp agency, or another appropriate State or local governmental agency identified by the State food stamp agency or private nonprofit organization under contract with the State food stamp agency shall execute contracts with restaurants wishing to sell meals in exchange for food stamp benefits to homeless food stamp households. Such contracts shall specify that such meals are to be sold at ''concessional'' (low or reduced) prices and shall also specify the approximate prices which will be charged, or the amount and type of price reduction.

PART 274—ISSUANCE AND USE OF COUPONS

4. In section 274.10:

§ 274.10 [Amended]

a. Paragraph (a)(3) is amended by adding a comma and the words ''and to homeless households certified for restaurant meals'' after the word ''period''.

b. Paragraph (a)(4)(iii) is redesignated as paragraph (a)(4)(iv) and a new paragraph (a)(4)(iii) is added.

c. Paragraph (j) is amended by adding four new sentences at the end of the paragraph. The additions read as follows:

§ 274.10 Use of identification cards and redemption of coupons by eligible households.

(a) * * *

(4) * * *

(iii) Eligible homeless households may use food stamp benefits to purchase meals from restaurants authorized by FCS for such purpose. Any homeless household eligible for, and interested in, using restaurants in those areas where restaurants are authorized to accept food stamp benefits shall have a specially-marked ID card. The State agency shall provide samples of specially-marked ID cards to authorized restaurants.

* * * * *

(j) * * * However, in the case of homeless food stamp households, neither cash change nor credit slips shall be returned for food stamps used for the purchase of prepared meals from authorized public and private nonprofit homeless meal providers. Such meal providers may use the lowest denomination coupons that are uncancelled and unmarked for making change in food stamp transactions. Restaurants which are authorized by FCS under § 278.1 to provide meals to homeless food stamp recipients shall return cash change to such recipients in food stamp transactions when the amount of change due is less than one dollar. If change of one dollar or more is due, uncancelled and unmarked one dollar coupons shall also be used for change.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

5. In section 278.1:

a. Paragraph (b)(1)(iv) is revised.

b. Paragraph (c)(5) is revised.

c. Paragraph (d)(3) is revised.

d. Paragraphs (i) through (s) are redesignated as paragraphs (j) through (t) respectively, and a new paragraph (i) is added.

d. Newly redesignated paragraph (n) is revised.

e. Newly redesignated paragraph (s) is amended by adding the words ''public and private nonprofit'' before the words ''homeless meal provider'' and ''homeless meal providers'' each time they appear. (six occurrences).

The revisions and additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(b) *Determination of authorization.* * * *

(1) The nature and extent of the food business conducted by the applicant. * * *

(iv) No co-located wholesale/retail food concern with 50 percent or less of its total sales in retail food sales may be authorized to redeem food stamps unless it meets the criteria applicable to all retail firms and:

(A) It is a legitimate retail food outlet. Indicators which may establish to FCS that a firm is a legitimate retail food outlet include, but are not limited to, the following:

(*1*) The firm's marketing structure; as may be determined by factors such as, but not limited to:

(*i*) A retail business license;

(*ii*) The existence of sales tax records documenting retail food sales; and/or separate bookkeeping records; and

(*2*) The way the firm holds itself out to the public as evidenced by factors such as, but not limited to:

(*i*) The layout of the retail sales space;

(*ii*) The use of retail advertisements;

(*iii*) The posting of retail prices;

(*iv*) Offering specials to attract retail customers;

(*v*) Hours of operation for retail business;

(*vi*) Parking area for retail customers; and

(B) It has total annual retail food sales of at least $250,000; or

(C) It is a legitimate retail outlet but fails to meet the requirements in paragraph (b)(1)(iv)(B) of this section, and not authorizing such a firm would cause hardship to food stamp households. Hardship would occur in any one of the following circumstances:

(*1*) Program recipients would have difficulty in finding authorized firms to accept their coupons for eligible food;

(*2*) Special ethnic foods would not otherwise be available to recipients; or

(*3*) Recipients would be deprived of an opportunity to take advantage of unusually low prices offered by the firm if no other authorized firm in the area offers the same types of food items at comparable prices.

* * * * *

(c) *Wholesalers.* * * *

(5) For one or more specified authorized public or private nonprofit homeless meal providers.

* * * * *

(d) *Meal services.* * * *

(3) It is a restaurant operating under a contract with a State or local agency to prepare and serve (or deliver) low-cost meals to homeless persons, elderly persons and SSI recipients (and in the case of meal delivery services, to elderly persons or handicapped persons) and their spouses. Such a facility must have more than 50 percent of its total sales in food. The contracts of restaurants must specify the approximate prices which will be charged.

* * * * *

(i) *Private homeless meal providers.* FCS may authorize as retail food stores those restaurants which contract with the appropriate State agency to serve meals to homeless persons at ''concessional'' (low or reduced) prices. Restaurants shall be responsible for obtaining contracts with the appropriate State agency as defined in § 272.9 and for providing a copy of the contract to FCS at the time it applies for authorization to accept food stamp benefits. Contracts must specify the approximate prices which will be charged. Examples of reduced prices include, but are not limited to, a percentage reduction, a set dollar amount reduction, a daily special meal, or an offer of a free food item or beverage (excluding alcoholic beverages).

* * * * *

(n) *Periodic reauthorization.* At the request of FCS a retail food store or wholesale food concern will be required to undergo a periodic reauthorization determination by updating any or all of the information on the firm's application form. Failure to cooperate in the reauthorization process will result in withdrawal of the firm's approval to participate in the program.

* * * * *

§ 278.2 [Amended]

6. In § 278.2:

a. Paragraph (a) is amended by adding the words ''public or private nonprofit'' before the word ''homeless'' in the last sentence of the paragraph.

b. The third sentence of paragraph (b) is amended by adding the words ''public or private nonprofit'' before the words ''homeless meal providers'', and before the words ''homeless meal provider''.

c. Paragraph (c) is amended by adding the words ''public or private nonprofit'' before the words ''homeless meal providers'' the first time they appear in the third sentence of the paragraph.

d. Paragraph (d) is amended by adding the words ''public or private nonprofit'' before the words ''homeless meal providers'' in the third sentence.

e. Paragraph (g) is amended by adding the words ''public and private nonprofit'' before the words ''homeless meal providers'' wherever they occur (two occurrences).

f. Paragraph (h) is amended by adding the words ''public or private nonprofit'' before the words ''homeless meal providers'' in the last sentence of the paragraph.

g. Paragraph (1) is amended by adding the words ''public and private nonprofit'' before the words ''Homeless meal provider'' and before the words ''homeless meal providers''.

§ 278.3 [Amended]

7. In § 278.3, paragraph (a) is amended by adding the words ''public or private nonprofit'' before the words ''homeless meal providers'' wherever they occur (three occurrences).

§ 278.4 [Amended]

8. In § 278.4, the second sentence of paragraph (c) is amended by adding the words ''public or private nonprofit'' before the words ''homeless meal providers.''

Dated: September 27, 1996.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 96–26067 Filed 10–11–96; 8:45 am]

BILLING CODE 3410–30–U

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–063–1]

Imported Fire Ant; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the imported fire ant regulations to lengthen the certification period for containerized nursery stock treated with a 10 parts per million dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 parts per million dosage rate for granular tefluthrin. Research has demonstrated that a 10 parts per million dosage of granular tefluthrin is efficacious for 18 months, which is 12 months longer than the current certification period for that

dosage and 6 months longer than the current certification period for a 15 parts per million dosage. Lengthening the certification period for the 10 parts per million dosage and removing the 15 parts per million dosage will reduce the amount of insecticide used, which will reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

DATES: This rule will be effective on December 16, 1996 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before November 14, 1996.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 96–063–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 96–063–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–5255; or E-mail: rmilberg@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery.

The regulations in ''Subpart—Imported Fire Ant'' (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the appendix to the subpart, which sets forth the treatment provisions of the ''Imported Fire Ant Program Manual.''

Currently, the appendix offers three dosage rate/certification period options for granular tefluthrin: 0 to 6 months for a 10 parts per million (ppm) dosage, 0 to 12 months for a 15 ppm dosage, and a continuous certification period for a 25 ppm dosage.

Tests conducted by the Animal and Plant Health Inspection Service's Imported Fire Ant Methods Development Station in Gulfport, MS, have demonstrated that granular tefluthrin incorporated at a dosage rate of 10 ppm into soil or potting media for containerized nursery stock is efficacious for 18 months. This is 12 months longer than the current certification period for a 10 ppm dosage and 6 months longer than the current certification period for a 15 ppm dosage. Based on that efficacy data, we have determined that containerized nursery stock can be certified for interstate movement for 18 months after treatment with granular tefluthrin at a dosage rate of 10 ppm.

Therefore, this direct final rule will amend the appendix to the regulations by increasing the certification period for the 10 ppm dosage of granular tefluthrin from 0–6 months to 0–18 months. In light of that longer certification period for the lower 10 ppm dosage, the 15 ppm dosage, which has a certification period of 0 to 12 months, is no longer necessary and will be removed. The dosage rate of 25 ppm will be required for certification of containerized nursery stock for interstate movement from quarantined areas for more than 18 months.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the Federal Register unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the Federal Register.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the Federal Register withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the Federal Register, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

This direct final rule amends the regulations by lengthening the certification period for containerized nursery stock treated with a 10 ppm dosage of granular tefluthrin and by removing the 15 ppm dosage rate for granular tefluthrin. Lengthening the certification period for the 10 ppm dosage and removing the 15 ppm dosage will reduce the amount of insecticide used, which will reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

The number of current users of granular tefluthrin—and the number of potential new users that may result from this rule change—is not known, but most are assumed to be small entities (wholesalers of nursery stock having fewer than 100 employees, and retail nurseries having less than $5 million in annual revenue). Several thousand nursery wholesalers and retailers have signed compliance agreements under the imported fire ant regulations, but not all of these are necessarily shipping restricted products requiring the application of granular tefluthrin or alternative chemicals out of the regulated areas. Moreover, most nurseries under compliance agreements currently use treatments other than tefluthrin. Therefore, an estimate of how many small entities will be affected by this rule change is difficult, but they may number in the hundreds.

Costs for most users of granular tefluthrin will be reduced because of the increased period of certification. Under the current regulations, a dose rate of 15 ppm is required for a certification period up to 12 months and a dose rate of 25 ppm is required for a certification

period greater than 12 months. Thus, a cost savings of from 33 to 60 percent will be realized by purchasers of granular tefluthrin who ship their products out of the restricted areas between 12 and 18 months after treatment. The current retail price of granular tefluthrin is about $4.00 per pound, but prices can vary considerably depending upon whether or not it is purchased in bulk. A 33 to 60 percent cost savings realized by applying tefluthrin at a 10 ppm dose rate rather than a 15 or 25 ppm dose rate could mean a savings of about $1.33 to $2.40 in the application of one pound of granular tefluthrin.

We do not anticipate that there will be a noticeable impact on small entities that distribute agricultural chemicals. Distributors of agricultural chemicals are diversified businesses that sell a wide variety of chemicals, fertilizers, and other farm and nursery supplies. We do not expect any significant economic impact on any other small entities.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. In part 301, Subpart—Imported Fire Ant, in the appendix to the subpart, paragraph III.C.3.c. is amended by revising the dosage table to read as follows:

Subpart—Imported Fire Ant

* * * * *

Appendix to Subpart ''Imported Fire Ant''—Portion of ''Imported Fire Ant Program Manual''[8]

III. Regulatory Procedures

* * * * *

C. *Approved Treatments.*

* * * * *

3. Plants—Balled or in Containers

* * * * *

c. Tefluthrin: Granular Formulation.

* * * * *

Dosage: * * *

Granular tefluthrin dosage (parts per million)	Certification period (months after treatment)
10 ppm	0–18 months.
25 ppm	Continuous.

* * * * *

Done in Washington, DC, this 8th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–26348 Filed 10–11–96; 8:45 am]

BILLING CODE 3410–34–P

[8] A copy of the entire ''Imported Fire Ant Program Manual'' may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737–1236.

7 CFR Part 354

[Docket No. 95–049–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by removing and adding commuted traveltime allowances for travel between various locations in Canada, Louisiana, Michigan, and Washington. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James Smith, Operations Officer, Port Operations, PPQ, APHIS, Suite 4A34, 4700 River Road Unit 60, Riverdale, MD 20737–1236, (301) 734–8415.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for travel between various locations in Canada, Louisiana, Michigan, and Washington. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12866 and Regulatory Flexibility Act

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

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

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

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in alphabetical order, the following entries to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Remove]			
* * *	* * *	*	
Louisiana:			
Barksdale AFB, Shreveport			3½
* * *	* * *	*	
England AFB	Alexandria	1	
England AFB, Alexandria	Baton Rouge		5
England AFB, Alexandria	Monroe		4
* * *	* * *	*	
Lake Charles	Alexandria		4
* * *	* * *	*	
Michigan:			
Bay City	Detroit		5
Battle Creek	Kalamazoo		2
Detroit (including Detroit Metropolitan Airport, Inkster)		3	
* * *	* * *	*	
Monroe	Detroit		3
Mt. Clemens	Romulus		4
Muskegon	Detroit		6
* * *	* * *	*	
Muskegon	Kalamazoo		4

COMMUTED TRAVELTIME ALLOWANCES—Continued

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
* * *	* * *	*	
Port Huron	Detroit	.....	4
Saginaw	Detroit	.....	5
Selfridge AFB	Romulus	.....	4
South Haven	Detroit	.....	6
* * *	* * *	*	
Washington:			
* * *	* * *	*	
Undesignated Ports	Portland, OR, Tacoma, Seattle	3	
* * *	* * *	*	
[Add]			
* * *	* * *	*	
Canada: Vancouver, BC (Including Richmond)	Blaine	.....	4
* * *	* * *	*	
Louisiana:			
* * *	* * *	*	
England Air Park	Baton Rouge	.....	5
England Air Park	Shreveport	.....	5
England Air Park	Monroe	.....	4
* * *	* * *	*	
Michigan:			
Battle Creek	Grand Rapids	.....	3
Bay City	Mt. Pleasant	.....	3
Detroit (including Detroit Metropolitan Airport, and Willow Run Airport).	Romulus/Detroit	3	
* * *	* * *	*	
Saginaw	Mt. Pleasant	.....	3
Selfridge AFB	Port Huron	.....	3
* * *	* * *	*	
Washington:			
* * *	* * *	*	
Fairchild AFB	Ellensburg	.....	6
Fairchild AFB	Spokane	2	
* * *	* * *	*	
Spokane International Airport	Ellensburg	.....	6
Spokane International Airport	Spokane	2	
* * *	* * *	*	
Undesignated Ports	Astoria or Portland, OR; Blaine, Ellensburg, Seattle, Spokane, Tacoma.	.....	3
* * *	* * *	*	

Done in Washington, DC, this 8th day of October 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–26349 Filed 10–11–96; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 950

[Docket No. FV95–950–1FR]

Irish Potatoes Grown in Maine; Termination of Marketing Order No. 950

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule terminates the Federal marketing order regulating the handling of Irish potatoes grown in Maine (order) and the rules and regulations issued thereunder. The Maine potato industry has not operated under the order for almost three decades and the order does not reflect current industry structure and operating procedures. Thus, there is no need to continue this order.

EFFECTIVE DATE: November 14, 1996.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 690-0464, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is governed by the provisions of § 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act and § 950.84 of the order.

This regulatory action is being taken as a part of the National Performance Review to eliminate unnecessary regulations and to improve those that remain in force.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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

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 750 producers of Maine potatoes. Some of them are also handlers who would be subject to seasonal handling regulations under the order. 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, which include handlers, are defined as those whose annual receipts are less than $5,000,000. The majority of the Maine potato producers and handlers may be classified as small entities.

No seasonal regulations have been implemented under the order since the 1967–68 season. There is no indication that regulations will again be needed. This action terminates the order and regulations issued thereunder. Further, the order does not reflect current industry structure and operating procedures. Therefore, AMS has determined that this action will not have a significant impact on a substantial number of small entities.

The order was initially established on August 24, 1954, to help the industry solve specific marketing problems and maintain orderly marketing conditions. It was the responsibility of the Maine Potato Marketing Committee (committee), the agency established for local administration of the marketing order, to periodically investigate and assemble data on the growing, harvesting, shipping, and marketing conditions of Maine potatoes. The committee endeavored to achieve orderly marketing and improve acceptance of Maine potatoes through the establishment of minimum size and quality requirements. When regulated, fresh potato shipments consisted only of those grades and sizes desired by consumers.

The Maine potato industry has not operated under the marketing order for almost three decades. Regulations have not been applied to Maine potato handlers since the late 1960's and a committee to locally administer the marketing order has not been appointed since the early 1970's. In August 1954, when the marketing order was issued, there were almost 4,500 producers of Maine potatoes. Currently, there are about 750 producers.

While a sizeable potato industry remains active in Maine, there seems to be virtually no interest in a Federal marketing order. Over the years, there have been periodic inquiries about reviving the marketing order, but no formal requests for reactivation have ever materialized. In any case, with the passage of time and changes in industry structure and operating practices since the order was formulated, the marketing order does not reflect current industry structure and operating procedures.

A proposed rule was published in the November 16, 1995, issue of the Federal Register giving interested persons until December 18, 1995, to file written comments. No comments were received.

Pursuant to § 608c(16)(A) of the Act and § 950.84 of the order, the Secretary has determined that Marketing Order No. 950, covering Irish potatoes grown in Maine, and the rules and regulations issued thereunder, no longer tend to effectuate the declared policy of the Act, and are hereby terminated. Trustees need not be appointed to continue in the capacity of concluding and liquidating the affairs of the former committee, since no funds or property remain to be distributed or liquidated.

Section 608c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress has been so notified.

List of Subjects in 7 CFR Part 950

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 950—[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR part 950 is removed.

Dated: October 4, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96–26347 Filed 10–11–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 981

[Docket No. FV96–981–3FIR]

Almonds Grown in California; Change in Quality Control Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing the quality control requirements currently prescribed under the California almond marketing order. The marketing order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule removes the exemption from inspection for the Peerless variety of almonds sold inshell. This change is needed to bring the administrative rules and regulations into conformance with amendments to the marketing order recently approved by a majority vote of producers. In addition, this change will better reflect current industry practices because most almonds are already inspected, including the Peerless variety.

DATES: November 14, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–1509, Fax # (202) 720–5698; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax # (209) 487–5906. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981 (7 CFR Part 981), as amended, regulating the handling of almonds grown in California, hereinafter referred to as the ''order.'' This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

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

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 115 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers of almonds in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This rule finalizes a change in the order's administrative rules and regulations to remove an exemption from inspection for the Peerless variety of almonds sold inshell as bleaching stock. It also modifies the definition of adjusted kernel weight so that adjusted kernel weight for the Peerless variety is based on actual weight, consistent with other almonds, rather than calculated with a predetermined conversion factor known as a shelling ratio. The majority of handlers already have all almonds inspected, including the Peerless variety. Therefore, this rule will better reflect current industry practice. In addition, this rule is needed to bring the administrative rules and regulations into conformance with amendments to the marketing order recently approved by a majority vote of producers. Since virtually all of the Peerless almonds sold inshell are currently inspected, there is little or no impact expected on small businesses.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on August 14, 1996, and published in the Federal Register (61 FR 42990, August 20, 1996), with an effective date of August 21, 1996. That rule amended §§ 981.401 and 981.442 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended September 19, 1996. No comments were received.

The almond marketing order authorizes quality control provisions which include a requirement that almonds must be inspected prior to processing to determine the percentage of inedible kernels in each lot, and to determine the adjusted kernel weight of almonds in each lot. Inedible kernels are reported to individual handlers and the Board, and handlers are required to dispose of a quantity of almonds equal to their inedible obligation as determined by the inspection. Inedible kernels are disposed of to non-human consumption outlets for such uses as animal feed or crushing into oil. Adjusted kernel weight is reported to handlers by the Federal-State Inspection Service (FSIS). Handlers are then required to report adjusted kernel weight to the Board, who uses the information to report industry statistics.

The rules and regulations under the marketing order currently exempt from inspection the Peerless variety of almonds used as bleaching stock and sold inshell. When the quality control regulations were initially implemented, it was determined there was no need to establish the percentage of inedible kernels of almonds sold inshell, which at that time were predominately of the Peerless variety, because inedible kernels could not be removed from product sold inshell and thus could not be disposed of in non-human consumption outlets. Therefore, inshell almonds, including Peerless, are exempt from meeting the inedible disposition obligation. However, in order to determine the kernel weight of Peerless almonds sold inshell for reporting to the Board, a predetermined shelling ratio contained in the marketing order has been used in the absence of inspection. This shelling ratio converted the weight of inshell almonds to a shelled weight, or kernel weight. Over time, the total quantity and varieties of all almonds sold inshell have increased, while Peerless bleaching stock sales have declined. There has also been an increased desire and need to obtain an accurate product weight for growers, handlers, and the Board. Thus, it has become common industry practice to have inspections performed on Peerless almonds sold inshell, as with other varieties sold inshell, regardless of the inspection exemption.

Consistent with the Act, the almond marketing order was recently amended by a majority vote of producers to require that the weight of inshell almonds be determined by weighing a representative sample of such almonds. Previously, predetermined shelling ratios were used to determine the kernel weight. Thus, the shelling ratios were removed from the order. The purpose of the quality control amendments was to reflect current industry practices as referenced above, and to provide more accurate information for reporting purposes.

The amendments to the order necessitate conforming changes to the administrative rules and regulations. Section 981.442 of the quality control regulations is revised to remove an inspection exemption for Peerless inshell almonds. Thus, all almonds, regardless of form or variety, will be inspected.

In addition, § 981.401 is revised to remove the exemption for Peerless almonds from the definition of adjusted kernel weight. Currently, the adjusted kernel weight of Peerless inshell almonds is based on a predetermined weight contained in the shelling ratio table that was removed from the marketing order. Since Peerless inshell almonds will be required to have inspection, the actual kernel weight will be determined, thus providing an accurate weight.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0071.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (61 FR 42990, August 20, 1996) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 981 which was published at 61 FR 42990 on August 20, 1996, is adopted as a final rule without change.

Dated: October 7, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–26346 Filed 10–11–96; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 3010

Office of the Chief Financial Officer; Organization and Function

AGENCY: Office of the Chief Financial Officer, USDA.

ACTION: Final rule.

SUMMARY: This document removes the Organization and Function regulation that deals with the internal structure of the Office of Finance and Management (OFM). Under the reorganization of the Department of Agriculture, OFM no longer exists. The OFM functions have been assigned to the Office of the Chief Financial Officer (OCFO) (60 FR 56392–56465, revising 7 CFR Part 2).

EFFECTIVE DATE: This final rule is effective October 15, 1996.

FOR FURTHER INFORMATION CONTACT:

Richard Guyer, Director, Fiscal Policy Division, Office of the Chief Financial Officer, USDA room 3022, South Building, 14th and Independence Avenue, S.W., Washington, DC 20250, (202) 690–0291.

SUPPLEMENTARY INFORMATION: In support of the Department of Agriculture's regulatory reform initiative, it has been determined that this regulation is unnecessary. It deals with the internal structure of an organization, OFM, that was eliminated in the recent reorganization of USDA. The duties of OFM were delegated to the newly established OCFO.

Authority: 5 U.S.C. 301, 552

Impact Analysis

This rule relates to internal agency management. Therefore, pursuant to U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. This action also is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and, thus is exempt from the provisions of those Acts. Finally, this rule does not contain any requirements for collection of information on financial or property matters within the scope of the Paperwork Reduction Act (45 U.S.C. 3501 *et seq.*)

List of Subjects in 7 CFR Part 3010

General statement, Organization, Functions.

PART 3010—[REMOVED]

For reason set forth in the summary, 7 CFR Part 3010 is removed and reserved.

Dated: October 4, 1996.

Irwin T. David,

Acting, Chief Financial Officer.

[FR Doc. 96–26249 Filed 10–11–96; 8:45 am]

BILLING CODE 3410–KS–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[EOIR No. 115I; A.G. Order No. 2058–96]

8 CFR Part 292

RIN 1125–AA16

Representation and Appearances: Law Students and Law Graduates

AGENCY: Executive Office for Immigration Review, Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule with request for comments revises two of the current restrictions supervising and compensating law students and law graduates who wish to represent aliens before the Immigration and Naturalization Service and the Executive Office for Immigration Review, including the Board of Immigration Appeals and the Immigration Courts. The number of immigration cases, and thus the number of representatives needed, has increased in recent years. This revision will expand the pool of law students and law graduates eligible to represent aliens in such hearings.

DATES: *Effective Date:* October 15, 1996.

Comments: Written comments must be received on or before December 16, 1996.

ADDRESSES: All comments concerning this interim rule should be addressed to both Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, and Janice B. Podolny, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Suite 6100, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470, or Janice B. Podolny, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Suite 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: This interim rule with request for comments amends 8 CFR part 292 by revising two of the current restrictions on law students and law graduates who wish to represent aliens before the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR), including the Board of Immigration Appeals and the Immigration Courts. Currently section 292.1(a)(2) requires that a law student who wishes to appear before INS and/or EOIR file a statement that he or she is participating, under the direct supervision of a faculty member or an attorney, in a legal aid program or clinic conducted by a law school. This interim rule amends this provision to also allow a law student to appear before INS and/or EOIR if he or she is under the direct supervision of an attorney in a legal aid program or clinic conducted, by a non-profit organization. This amendment merely permits law students, like law graduates, to appear while participating in an independent legal aid program.

In addition, sections 292.1(a) (ii) and (iii) of the current regulations require that law students and law graduates appear before INS and/or EOIR without direct or indirect remuneration. This interim rule amends this provision by requiring that law students and law graduates appear before INS and/or EOIR without direct or indirect remuneration from the alien who they represent.

This interim rule expands the pool of competent, properly supervised representatives for individuals who might otherwise be unable to obtain legal representation by removing these two restrictions upon law students and law graduates. The number of immigration cases completed in fiscal year 1995 totaled more than 168,000, and the need for individuals to represent these aliens has increased. Under this revised regulation, more law students and law graduates will be available to represent aliens in immigration proceedings because participants in legal aid clinics or programs sponsored by both law schools and non-profit organizations will be eligible. These law students and law graduates will also be able to accept compensation for their work so long as they are not paid, either directly or indirectly, by the alien whom they represent. This will allow law students and law graduates to work through legal aid clinics or programs which provide representation to aliens in immigration proceedings on a pro bono basis. The law student or law graduate still must have the permission of the official before whom he or she is appearing. A law student must be appearing under the direct supervision of a faculty member or licensed attorney. A law graduate may appear under the supervision of a licensed attorney or an accredited representatives. These safeguards ensure that those individuals who have yet to be admitted to a state bar are closely supervised by an experienced attorney, a professor, or an accredited representative while representing aliens.

EOIR's and INS's implementation of this rule as an interim rule, with provisions for post-promulgation public comment, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553 (b) and (d). The reasons and the necessity for immediate implementation of this interim rule are as follows: The immediate implementation of this rule will expand the pool of competent, properly supervised representatives while also maintaining the supervision requirement for law students and law graduates. This interim rule provides a benefit to aliens who seek legal representation by enabling them to more easily identify, retain, and afford such representation. A notice and comment period for a proposed rule therefore would have been unnecessary and contrary to the public interest.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule affects only individuals in need of legal representation before INS and/or EOIR and does not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

List of Subjects in 8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 292 of chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 292—REPRESENTATION AND APPEARANCES

1. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

2. In § 292.1, paragraphs (a)(2) (ii) and (iii) are revised to read as follows:

§ 292.1 Representation of others.

(a) * * *

(2) * * *

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of a faculty member or an attorney, in a legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents; and

* * * * *

Dated: October 7, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–26281 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. 28311]

Review of Existing Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Regulatory Review Program, disposition of comments and final guidelines.

SUMMARY: As provided for in its 1995 Strategic Plan, the Federal Aviation Administration (FAA) will undertake periodic reviews of its existing regulations. This action discusses and disposes of the comments received in response to the Federal Register notice of August 24, 1995, and sets forth the guidelines adopted by the FAA for the conduct of its Regulatory Review Program.

EFFECTIVE DATE: January 2, 1997.

FOR FURTHER INFORMATION CONTACT: Chris A. Christie, Director, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–9677, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 1994, the FAA published in the Federal Register (59 FR 1362) a notice proposing to initiate a short-term regulatory review in response to a recommendation from the President's National Commission to Ensure a Strong Competitive Airline Industry.

Similarly, in early 1992, pursuant to an Executive Order issued by then-President Bush, the Department of Transportation (DOT) and each of its modal administrations reviewed all existing regulations.

The FAA's experience with the above two reviews has shown there is great value in obtaining public input in setting the agency's regulatory agenda and priorities regardless of whether such input is an affirmation of the agency's direction or an indication of a need to alter course.

Comments

On August 24, 1995 the FAA issued a Request for Comments on the Proposed FAA Regulatory Review Program (60 FR 44142). The comment period closed on November 22, 1995. Twelve comments were received. The Airport Council International, Bishop International Airport Authority, New Orleans International Airport, National Air Transport Association, Air Transportation Association of America, Regional Airline Association, Air Line Pilots Association, and the American Association of Airport Executives all support a periodic regulatory review program. Aerospace Industries Association, GAMA, and Sue A. Critz do not support the concept.

The Airport Council International endorses the FAA's proposal with a 3-year cycle and a conclusion document containing both summary and disposition. Mr. William C. Sandifer, AAE, Assistant Airport Director—Bishop International Airport Authority also endorses the proposal with the 3-issue limitation. The Assistant Supervisor of Operations, Matthew R. Zaranski, New Orleans International Airport, with his endorsement recommends a bi-annual review process, building an agenda of the most critical items published every year. The National Air Transportation Association generally supports the proposal with a 3-issue limitation, but rather than publishing a document containing a summary of comments, he suggests the FAA should initiate rulemaking to address the significant areas addressed in the comments. Mr. James L. Casey, VP, Air Transportation Association of America and Mr. Rudy Rudolph, AAAE, both support the FAA's proposal. Mr. Rudolph would like to see annual reviews. He feels the rulemaking process should not take so long. With annual reviews, AAAE believes a priority system could be developed and resources deployed accordingly. Mr. Casey indicates limiting the review to 3 issues every 3 years may not produce an overall perspective.

The Regional Airline Association supports the proposal but would like the limitations expanded to 5 issues. Mr. John O'Brien, Director, Engineering & Air Safety, Airline pilots Association, generally supports the proposal and M. Theresa Coutu, Director, Regulatory Affairs, American Association of Airport Executives, endorses the proposal with the following input. The 3-year review system should not interfere with regulatory obligations, limitations should be expanded to 5 issues, and an annual status document should be processed during the 3-yr. cycle. She also recommends that the Aviation Rulemaking Advisory Committee (ARAC) review all comments as well as the FAA.

Those that did not support the proposal included Robert E. Roberson, Jr. VP, Civil Aviation, Aerospace Industries Association. Mr. Roberson feels ARAC and the petition for rulemaking process are sufficient and does not see an additional review having any added value to the process. Bill Schultz, VP Engineering & Maintenance, GAMA, would like to see more focus on improving the process and reinforces the input that ARAC is already industry's vehicle. He states that with the ARAC vehicle in place, any further process will be labor intensive for already scarce FAA resources. The final commentor, Sue A Critz, CFII, AGC, IGI does not support the FAA's proposal, stating it would create an unusual workload. She offers an alternate plan: A new form created, which the public would complete and return at 6-month intervals, thus creating a 6-month review of comments. On a regular basis, the FAA would formulate rule changes based upon these comments.

Conclusion

After review of all comments, there is general consensus that supports the concept of a review of existing rules on a 3-year cycle rather than on any other basis. Although there were a few suggestions for a 5-year cycle and the issue limitation be expanded to 5 issues, due to time constraint and limited resources, the FAA has determined a 3-issue, 3-year cycle will capture the input it is seeking from the public. A third of the commentors did not address the vehicle for concluding the review. Those who did supported a published summary and general disposition of

comments. This level of review will produce the input and support the agency is seeking, and should not overburden the existing regulatory process and obligations.

Therefore, the FAA has determined there is general support for the agency's plan to conduct periodic reviews of existing regulations as a means to obtain public input to the agency's regulatory agenda and priorities.

FAA Plan for Periodic Regulatory Reviews: Beginning January 1997, and every 3 years thereafter, the FAA will conduct comprehensive regulatory reviews. The review will be initiated with a published announcement in the Federal Register inviting the public to identify those regulations, issues, or subject areas that should be reviewed by the FAA. In order to focus on those areas of greatest interest and to effectively manage agency resources, commentors will be expected to limit their input to the 3 issues they consider most urgent. In addition, the public will be specifically requested to indentify rules having a significant impact on small entities that appear to be no longer necessary or that are overlapping, duplicative, or conflicting with other Federal regulations. The FAA will review these rules in accordance with Section 610 of the Regulatory Flexibility Act unless they have already been so reviewed. The FAA will review and analyze the issues addressed by the commentors against its regulatory agenda and rulemaking program efforts, and adjust its regulatory priorities consistent with its statutory authority and responsibilities. Each review will conclude with a published summary and general disposition of the comments and, where appropriate, indicate how regulatory priorities will be adjusted.

Issued in Washington, DC, on September 27, 1996.

Margaret Gilligan,

Deputy Associate Administrator for Regulation and Certification.

[FR Doc. 96–25419 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–CE–84–AD; Amendment 39–9780; AD 96–21–03]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA31, PA31P, PA31T, and PA42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft, Inc. (Piper) PA31, PA31P, PA31T, and PA42 series airplanes. This action requires inspecting for cracks beneath and in the area of the inboard aileron hinge bracket on the aileron spar and rib using dye penetrant methods, replacing any cracked aileron spar or rib, and replacing the inboard aileron hinge bracket with a hinge bracket of improved design. Several reports of cracks in the vicinity of the inboard aileron hinge bracket, aileron spar, and aileron rib prompted this proposed action. The actions specified by the proposed AD are intended to prevent structural failure of the aileron caused by cracks in the area of the inboard aileron hinge bracket, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective December 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 10, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–84–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION:

Events Leading to This Action

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA31, PA31P, PA31T, and PA42 series airplanes was published in the Federal Register on March 27, 1996 (61 FR 13468). The action proposed to require:

—inspecting the aileron spar beneath and in the area of the inboard aileron hinge bracket for cracks;

—if cracks are found in the area of the aileron spar, inspecting the aileron rib for cracks, and replacing the cracked spar assembly and any cracked rib;

—replacing the inboard aileron hinge brackets with part number (P/N) 74461–02 (left) and P/N 74461–03 (right).

Related Service Information

Accomplishment of the proposed action would be in accordance with Piper Service Bulletin (SB) No. 967, dated January 24, 1994 or Piper SB No. 974, dated October 19, 1994.

Comments

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

The first commenter recommends that the AD state specifically that prior compliance with the applicable service bulletin (SB) be considered compliance with the requirements of the AD. The commenter has complied with Piper SB 974 and adds that paragraph (a) should only be required on aircraft that have not installed the redesigned aileron hinge brackets. The commenter continues to state that paragraph (a) as presently worded may be interpreted to require inspection of the aileron spar on all affected aircraft regardless of the part number (P/N) of the inboard hinge installed on the aircraft.

The FAA concurs that additional clarification is justified. The inspection of the aileron spar is intended to be required for aircraft that have not previously installed P/N 74461–02 (left) and P/N 74461–03 (right) inboard hinges. The ''Applicability'' section in the AD will be changed to state, ''The following airplane models and serial numbers that are not equipped with part number (P/N) 74461–02 (left) and P/N 74461–03 (right) inboard aileron hinge brackets, certificated in any category.''

The second commenter recommends that the AD be applicable to aircraft with greater than 3,000 hours time-in-service (TIS). This commenter operates Piper airplane Models PA–31–350, a PA–31, and a PA–31P with 11,000, 8,600 and 2,000 hours TIS respectively, and states that based on their fleet experience, cracking is most likely to appear at or after 3,000 hours TIS and recommends the 3,000 hour TIS as the threshold for this AD.

The FAA concurs and points out that the proposed action already proposes what the commenter is recommending. The compliance time as proposed specifies compliance ''upon the accumulation of 3,000 hours TIS, or within the next 100 hours TIS, whichever occurs later.''

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections and the clarification of the ''Applicability'' section. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,501 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 7 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost $300 per airplane. Based on these figures, the total cost impact for the initial inspection and the modification required by this AD on U.S. operators is estimated to be $1,800,720 or $720 per airplane. This figure does not include the amount for repetitive inspections and is based on the assumption that all of the owners/operators of the affected airplanes have not inspected for cracks, repaired cracks, or incorporated the modification of this AD. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur before the modification is accomplished.

Piper has informed the FAA that parts have been distributed to equip approximately 1,250 airplanes. Assuming that these distributed parts are incorporated on the affected airplanes, the cost of the AD would be reduced by $900,000 from $1,800,720 to $900,720.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96–21–03 The New Piper Aircraft, Inc. : Amendment 39–9780; Docket No. 95–CE–84–AD.

Applicability: The following airplane models and serial numbers that are not equipped with part number (P/N) 74461–02 (left) and P/N 74461–03 (right) inboard aileron hinge brackets, certificated in any category:

Models	Serial Nos.
The following aircraft should reference Piper Service Bulletin No. 974, dated October 19, 1994	
PA31, PA31–300, and PA31–325.	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P–350	31P–8414001 through 31P–8414050.
PA31T3	31T–8275001 through 31T–8475001, and 31T–5575001.
The following aircraft should reference Piper Service Bulletin No. 967, dated January 24, 1994	
PA31P	31P–1 through 31P–7730012, and 31P–03.
PA31T	31T–7400002 through 31T–7400009, and 31T–7520001 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003, and 31T–1104004 through 31T–1104017.
PA31T2	31T–8166001 through 31T–8166076, and 31T–1166001 through 31T–1166008.
PA42	42–7800001 through 42–7800004, and 42–8001001 through 42–8001106.
PA42–720	42–8301001, 42–8301002, 42–5501003 through 42–5501023, 42–5501025 through 42–5501027, 42–5501029 through 42–5501031, 42–5501033, and 42–5501039 through 42–5501059.
PA42–720R	42–5501024, 42–5501028, 42–5501032, and 42–5501034 through 42–5501038.
PA42–1000	42–5527002 through 42–5527044.

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

Compliance: Upon the accumulation of 3,000 hours time-in-service (TIS), or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

To prevent structural failure of the aileron caused by cracks in the area of the inboard aileron hinge bracket, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect (using dye penetrant methods) the area beneath and in the area of the inboard aileron hinge bracket on the aileron spar for cracks in accordance with the INSTRUCTIONS section of Piper service bulletin (SB) No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, whichever service bulletin applies to the particular model and serial number.

(1) If cracks are found on the aileron spar:

(i) Prior to further flight, inspect the corresponding aileron rib at the inboard aileron hinge bracket location;

(ii) Prior to further flight, replace any cracked spar assembly and any cracked aileron rib in accordance with the applicable Maintenance Manual;

(iii) Prior to further flight, replace the inboard aileron hinge brackets with an inboard aileron hinge bracket of improved design, part number (P/N) 74461–02 (left) and P/N 74461–03 (right), in accordance with the INSTRUCTIONS section of Piper SB No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, as applicable.

(2) If no cracks are found, prior to further flight, replace the inboard aileron hinge brackets with a part of improved design P/N 74461–02 (left) and P/N 74461–03 (right), in accordance with the INSTRUCTIONS section of Piper SB No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, as applicable.

(b) If the inboard aileron hinge brackets, P/N 74461–02 (left) or P/N 74461–03 (right) have been ordered from the manufacturer but are not available, prior to further flight, and thereafter at intervals not to exceed 100 hours TIS, dye penetrant inspect beneath and in the vicinity of the inboard aileron hinge bracket for cracks in accordance with the INSTRUCTIONS section of Piper SB No. 967, dated January 24, 1994, or Piper SB No. 974, dated October 19, 1994, as applicable.

(c) If any one of the following occurs, prior to further flight, terminate the above repetitive inspections, replace any cracked aileron rib and any cracked spar assembly (if applicable), and replace the inboard aileron hinge bracket as specified in paragraph (a)(1)(iii) of this AD:

(1) Parts become available;

(2) An inboard aileron bracket hinge, aileron spar or aileron rib is found cracked; or

(3) 1,000 hours TIS are accumulated after the initial inspection required by this AD.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(f) The inspections and replacements required by this AD shall be done in accordance with Piper. Service Bulletin No. 967, dated January 24, 1994, or Piper. Service Bulletin No. 974, dated October 19, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9780) becomes effective on December 10, 1996.

Issued in Kansas City, Missouri, on October 4, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26047 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 95–CE–56–AD; Amendment 39–9781; AD 96–21–04]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) PA23, PA31, PA31P, PA31T, and PA42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 86–17–07, which currently requires replacing all hydraulic hoses with hydraulic hoses of an improved design on certain The New Piper Aircraft, Inc. (Piper) PA23, PA31, PA31P, PA31T, and PA42 series airplanes. This AD action will require inspecting for improperly manufactured hydraulic hoses replaced during a specific time frame and replacing all affected hydraulic hoses. An incorrect designation of a Piper Model PA31–310 and a Piper Model PA23–150 airplane prompted the proposed AD action. The actions specified by this AD are intended to prevent hydraulic hose failure which could cause loss of hydraulic capabilities resulting in a gear-up landing and possible loss of the airplane.

DATES: Effective December 10, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 10, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: : Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper PA23, PA31, PA31P, PA31T, and PA42 series airplanes was published in the Federal Register on May 3, 1996 (61 FR 19867). This action would supersede AD 86–17–07 with a new AD that would retain the same requirements as AD 86–17–07 and change the model designation in the Applicability section from Piper Model PA31–310 and PA23–150 airplanes to Piper Model PA31 and PA23 airplanes, respectively. With this in mind, the proposed action would not provide any additional cost impact upon U.S. operators over that already required by AD 86–17–07. Accomplishment of this action will be in accordance with Piper Service Bulletin (SB) No. 822, dated April 2, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 86–17–07, Amendment 39–5400, and by adding a new AD to read as follows:

96–21–04 The New Piper Aircraft, Inc.: Docket No. 95–CE–56–AD; Amendment No. 39–9781, Supersedes AD 86–17–07, Amendment 39–5400. Applicability: The following models and serial numbers, certificated in any category.

Models	Serial Nos.
PA23 and PA23–160.	23–1 through 23–2046.
PA23–235	27–505 through 27–622.
PA23–250	27–1 through 27–8154030.
PA31, PA31–300, and PA31–325.	31–2 through 31–8312019.
PA31–350	31–5001 through 31–8553002.
PA31P	31P–1 through 31P–7730012.
PA31P–350 ...	31P–8414001 through 31P–8414050.
PA31T	31T–7400002 through 31T–8120104.
PA31T1	31T–7804001 through 31T–8304003, and 31T–1104004 through 31T–1104017.
PA31T2	31T–8166001 through 31T–8166076 and, 31T–1166001 through 31T–1166008.
PA31T3	31T–8275001 through 31T–8475001 and, 31T–5575001.
PA42	42–7800001, 42–7800002, 42–7801003, 42–7801004, 42–8001001 through 42–8001106, 42–8301001, 42–8301002, 42–5501003 through 42–5501023, and 42–5501025.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required within 25 hours time-in-service (TIS) after September 2, 1986 (the effective date of AD 86–17–07) or within 10 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent hydraulic hose failure which could cause loss of hydraulic capabilities resulting in a gear-up landing and possible loss of the airplane, accomplish the following:

(a) Inspect and replace all hydraulic hoses identified as Piper part number (P/N) 17766–02 or 465–138 and having a smooth rubber surface and a blue colored end nut, with hoses of the same part number having a woven outer covering and black colored end nut, in accordance with the *INSTRUCTIONS* section of Piper Service Bulletin (SB) No. 822, dated April 2, 1986.

Note 2: These hoses were available for installation starting February 1, 1985, and may have been installed in newly manufactured airplanes or as spares at any subsequent time.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(d) Alternative methods of compliance approved in accordance with AD 86–17–07 (superseded by this action) are considered approved as alternative methods of compliance with this AD.

(e) The inspections and or replacements required by this AD shall be done in accordance with Piper Service Bulletin No. 822, dated April 2, 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft, Inc., Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida, 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment supersedes AD 86–17–07, Amendment 39–5400.

(g) This amendment (39–9781) becomes effective on December 10, 1996.

Issued in Kansas City, Missouri, on October 4, 1996.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26045 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Monensin Blocks

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADA's) filed by Cooperative Research Farms and PM Ag Products, Inc. The supplemental NADA's provide that use of monensin medicated free-choice feed blocks for pasture cattle weighing less than 400 pounds (lb) for increased rate of weight gain is no longer contraindicated.

EFFECTIVE DATE: October 15, 1996.

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

SUPPLEMENTARY INFORMATION: Cooperative Research Farms, P.O. Box 69, Charlotteville, NY 12036, is sponsor of NADA 119–253. PM Ag Products, Inc., 1055 West 175th St., Homewood, IL 60430, is sponsor of NADA 109–471. The firms filed supplemental NADA's that provide for removal of the limitation concerning use of the product for pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) weighing less than 400 lb for increased rate of weight gain. The supplemental NADA's are approved as of September 10, 1996, and the regulations are amended in 21 CFR 520.1448a(a)(4)(iii) and (d)(4)(iii) to reflect the approvals. The approval is based on the data included in Elanco's supplemental NADA 95–735 that removed the 400 lb limitation for use of monensin Type A articles to make monensin Type C feeds in 21 CFR 558.355(f)(3)(iii).

No new safety and effectiveness data were submitted to support approval of these supplemental applications. Therefore, a freedom of information (FOI) summary as described in 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii) is not required. The FOI summary for Elanco's supplemental NADA 95–735 may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals do not qualify for marketing exclusivity because the approvals do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) or new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(vi) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.1448a [Amended]

2. Section 520.1448a *Monensin blocks* is amended in paragraphs (a)(4)(iii) and (d)(4)(iii) by removing the phrase ''weighing more than 400 pounds.''

Dated: October 1, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–26374 Filed 10–11–96; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Chlortetracycline; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of July 10, 1996 (61 FR 36291). The document amended the animal drug regulations to reflect approval of Hoffmann-La Roches, Inc.'s, supplemental new animal drug application (NADA) 48–761 for use of chlortetracycline in animal feed. The document was published with a typographical error. This document corrects that error.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: In FR Doc. 96–17315 appearing on page 36291 in the Federal Register of July 10, 1996, the following correction is made:

§ 558.128 [Corrected]

On page 36291, in the third column, in § 558.128 *Chlortetracycline*, under amendment 2, in line 2, ''(c)(4)'' is corrected to read ''(c)(2)''.

Dated: October 2, 1996.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 96–26373 Filed 10–11–96; 8:45 am]

BILLING CODE 4160–01–F

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 228

RIN 0412–AA28

Rules on Source, Origin and Nationality for Commodities and Services Financed by the Agency for International Development

AGENCY: United States Agency for International Development (USAID), IDCA.

ACTION: Final rule.

SUMMARY: USAID published a proposed rule on February 5, 1996 (61 FR 4240) to add a new Part 228 to Title 22 of the CFR codifying USAID's rules on source, origin and nationality for commodities and services financed by USAID. This final rule adopts the provisions of the proposed rule with some changes which are discussed below in **SUPPLEMENTARY INFORMATION**.

DATES: The final rule is effective November 14, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen J. O'Hara, Office of Procurement, Procurement Policy Division (M/OP/P), USAID, Room 1600 A, SA–14, Washington, DC 20523–1435. Telephone (703) 875–1534, facsimile (703) 875–1243.

SUPPLEMENTARY INFORMATION: USAID received three sets of comments in response to its proposed rule on source, origin and nationality. The American Maritime Congress (AMC), commenting on behalf of a large number of maritime businesses and organizations, expressed concerns that the proposed rule on ocean freight eligibility was waiving U.S.-flag cargo preference laws, in contravention of legal requirements. USAID has no intention to waive or modify cargo preference requirements in any way; however, it is clear from AMC's comments that the regulation needs to explain that the ocean freight flag eligibility requirements apply in addition to cargo preference requirements. Cargo preference requirements are applicable to all ocean shipments of USAID-financed goods regardless of whether or not USAID finances the freight costs. The ocean freight flag eligibility requirements are applied to determine which freight costs USAID will finance. Section 228.21 on Ocean Transportation is revised to clarify that cargo preference requirements do apply.

AMC also expressed concern that the waiver criteria in Section 228.55 are

inappropriate, particularly Sec. 228.55(a)(1) which would allow for a waiver in order to obtain competitive pricing. Section 228.20 and Section 228.55(a) are amended to clarify that waivers will not reduce the Cargo Preference Act requirement that the applicable percentage of USAID cargoes be transported on U.S.-flag vessels under the waiver is based on a determination of non-availability. USAID has used these waiver criteria for many years. With the exception of the first one, these criteria are also used to determine non-availability for Cargo Preference purposes, and are very similar to those which the Maritime Administration uses to determine non-availability for Export-Import Bank transactions. The first waiver criterion was developed to encourage price competition for large, bulk shipments; however, it is always used in conjunction with the Cargo Preference requirements. USAID may have an agreement with a recipient country which limits financing to U.S. goods and services, including transportation services, which would mean that even after Cargo Preference requirements have been met, only U.S.-flag shipments would be eligible for USAID financing. By allowing non-U.S. flag vessels to compete for a portion of the cargo which is not required by Cargo Preference rules to be on U.S.-flag vessels, the purchaser may be able to obtain a better price. As the new language in Section 228.55(a) makes clear, this waiver will not affect Cargo Preference requirements in any way unless a determination of non-availability is also issued; and the competitive pricing criterion is not a criterion for determining non-availability.

Section 228.21, Ocean Transportation, is also revised to implement a change in policy on eligibility for USAID financing. Previously when Code 941 (the United States and developing countries excluding Foreign Policy Restricted countries [formerly the non-Free World]) was the authorized source for procurement, ocean freight eligibility was also restricted to vessels under flag registry of Code 941 countries. Since the ownership of a vessel generally does not relate to the country in which the vessel is registered, the Agency has decided that freight eligibility will be expanded to Code 935 (the United States and all other countries except Foreign Policy Restricted countries) when Code 941 is the authorized source for procurement.

Comments submitted by a Private Voluntary Organization suggested that the current policy which exempts individual commodity transactions not exceeding $5,000 from waiver requirements should be included. Omitting the exemption was an oversight, and Section 228.51 is amended to incorporate it. Also as a result of suggestions from the Private Voluntary Organization several other changes have been made. Sec. 228.02 is clarified to state that the rule applies to direct costs, not to indirect costs. The coverage on waivers in Sec. 228.56 is revised to indicate that contractors and recipients may contact the contract or agreement officer to request waivers. One suggestion the organization made was not adopted. They requested that the codification clearly state that nationality resides only with the immediate supplier. The rules, however, do apply to sub-suppliers, so the change was not made.

A third set of comments made a number of suggestions which have been adopted. These include: (1) A more specific definition of implementing document in Sec. 228.01; (2) clarifying the scope and application in Sec. 228.02 to state that the regulation applies to goods and services financed under the Foreign Assistance Act of 1961, as amended, and that if different conditions are authorized for a program, the implementing document will indicate the terms and conditions and will prevail in the event of conflict with Part 228; (3) revising the definition of the Geographic Code in Sec. 228.03 to remove the term ''non-Free World'' (the Agency now uses the term ''foreign policy restricted countries''); (4) revising the coverage in Sec. 228.11(e) to use the term ''systems'' instead of package installations; (4) adding language in Sec. 228.13(c) on the statutory prohibition on pharmaceutical patent infringement; (5) revising the language on suppliers of services in Secs. 228.30, 228.31, and 228.32 for clarity and consistency, though the content has not changed; and (6) adding a new section covering the special source rule for suppliers of construction and engineering services.

Other changes include revising the definition of motor vehicles to exclude vehicles which are not designed for general road travel, substituting the Procurement Executive for the Deputy Assistant Administrator for Management (DAA/M) for one approval since the DAA/M position is not occupied, and a number of editorial corrections.

USAID has determined that this rule is not a significant regulatory action under Executive Order 12866. The rule has been reviewed in accordance with the requirement of the Regulatory Flexibility Act. USAID has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities, and, therefore, a Regulatory Flexibility Analysis is not required. There are no information collection requirements in this rule as contemplated by the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 228

Administrative practice and procedure, Commodity procurement, Grant programs—foreign relations.

Accordingly, Part 228 is added to Title 22 of the Code of Federal Regulations to read as follows:

PART 228—RULES ON SOURCE, ORIGIN AND NATIONALITY FOR COMMODITIES AND SERVICES FINANCED BY USAID

Subpart A—Definitions and Scope of This Part

Sec.
228.01 Definitions.
228.02 Scope and application.
228.03 Identification of principal geographic code numbers.

Subpart B—Conditions Governing Source and Nationality of Commodity Procurement Transactions for USAID Financing

228.10 Purpose.
228.11 Source and origin of commodities.
228.12 Long-term leases.
228.13 Special source rules requiring procurement from the United States.
228.14 Nationality of suppliers of commodities.

Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing

228.20 Purpose.
228.21 Ocean transportation.
228.22 Air transportation.
228.23 Eligibility of marine insurance.
228.24 Other delivery services.
228.25 Incidental services.

Subpart D—Conditions Governing the Nationality of Suppliers of Services for USAID Financing

228.30 Purpose.
228.31 Individuals and privately owned commercial firms.
228.32 Nonprofit organizations.
228.33 Foreign government-owned organizations.
228.34 Joint ventures.
228.35 Construction services from foreign-owned local firms.
228.36 Ineligible suppliers.
228.37 Nationality of employees under contracts or subcontracts for services.
228.38 Miscellaneous service transactions.
228.39 Special source rules for construction and engineering services.

Subpart E—Conditions Governing Source and Nationality of Local Procurement Transactions for USAID Financing

228.40 Local procurement.

Subpart F—Waivers

228.50 General.
228.51 Commodities.
228.52 Suppliers of commodities.
228.53 Suppliers of services—privately owned commercial suppliers and nonprofit organizations.
228.54 Suppliers of services—foreign government-owned organizations.
228.55 Delivery services.
228.56 Authority to approve waivers.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended, E.O. 12163, Sept. 29, 1979, 44 FR 56673: 3 CFR 1979 Comp., p. 435.

Subpart A—Definitions and Scope of This Part

§ 228.01 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Commodity* means any material, article, supply, goods, or equipment.

(b) *Commodity-related services* means delivery services and/or incidental services.

(c) *Component* means any good that goes directly into the production of a produced commodity.

(d) *Cooperating country* means the country receiving the USAID assistance subject to this part 228.

(e) *Delivery* means the transfer to, or for the account of, an importer of the right to possession of a commodity, or, with respect to a commodity-related service, the rendering to, or for the account of, an importer of any such service.

(f) *Delivery service* means any service customarily performed in a commercial export transaction which is necessary to effect a physical transfer of commodities to the cooperating country. Examples of such services are the following: export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. ''Delivery services'' may also include work and materials necessary to meet USAID marking requirements.

(g) *Implementing document* means any document, such as a contract, grant, letter of commitment, etc., issued by USAID which authorizes the use of USAID funds for the procurement of services or commodities and/or commodity related services, and which specifies conditions which apply to such procurement.

(h) *Incidental services* means the installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment.

(i) *Mission* means the USAID Mission or representative in a cooperating country.

(j) *Origin* means the country where a commodity is mined, grown or produced. A commodity is produced when, through manufacturing, processing, or substantial and major assembling of components, a commercially recognized new commodity results that is significantly different in basic characteristics or in purpose of utility from its components.

(k) *Services* means the performance of identifiable tasks, rather than the delivery of an end item of supply.

(l) *Source* means the country from which a commodity is shipped to the cooperating country, or the cooperating country if the commodity is located therein at the time of the purchase. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, ''source'' means the country from which the commodity was shipped to the free port or bonded warehouse.

(m) *State* means the District of Columbia or any State, commonwealth, territory or possession of the United States.

(n) *Supplier* means any person or organization, governmental or otherwise, who furnishes services, commodities and/or commodity related services financed by USAID.

(o) *United States* means the United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including commonwealths, territories and possessions.

(p) *USAID* means the U.S. Agency for International Development or any successor agency, including when applicable, each USAID Mission abroad.

(q) *USAID Geographic Code* means a code in the USAID Geographic Code Book which designates a country, a group of countries, or an otherwise defined area. The principal USAID geographic codes are described in § 228.03.

(r) *USAID/W* means the USAID in Washington, DC 20523, including any office thereof.

§ 228.02 Scope and application.

This part is applicable to goods and services financed directly with program funds under the Foreign Assistance Act of 1961, as amended, unless otherwise provided by statute or regulation. If different conditions apply to a USAID-financed procurement, by statute or regulation, those conditions shall be incorporated in the implementing document and shall prevail in the event of any conflict with this part 228. The implementing documents will indicate the authorized source of procurement. The terms and conditions applicable to a procurement of goods or services shall be those in effect on the date of the issuance of a contract for goods or services by USAID or by the cooperating country.

§ 228.03 Identification of principal geographic code numbers.

The USAID Geographic Code Book sets forth the official description of all geographic codes used by USAID in authorizing or implementing documents, to designate authorized source countries or areas. The following are summaries of the principal codes:

(a) Code 000—*The United States:* The United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S.-associated sovereignty, including commonwealths, territories and possessions.

(b) Code 899—Any area or country, except the cooperating country itself and the following foreign policy restricted countries: Afghanistan, Libya, Vietnam, Cuba, Cambodia, Laos, Iraq, North Korea, Syria and People's Republic of China.

(c) Code 935—Any area or country including the cooperating country, but excluding the foreign policy restricted countries.

(d) Code 941—The United States and any independent country (excluding foreign policy restricted countries), except the cooperating country itself and the following: Albania, Andorra, Angola, Armenia, Austria, Australia, Azerbaijan, Bahamas, Bahrain, Belgium, Bosnia and Herzegovina, Bulgaria, Belarus, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia,* Malta, Moldova, Monaco, Mongolia, Montenegro,* Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia,* Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan,* Tajikistan, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, and Vatican City.

*Has the status of a ''Geopolitical Entity'', rather than an independent country.

Subpart B—Conditions Governing Source and Nationality of Commodity Procurement Transactions for USAID Financing

§ 228.10 Purpose.

Sections 228.11 through 228.14 set forth the rules governing the eligible source of commodities and nationality of commodity suppliers for USAID financing. These rules may be waived in accordance with the provisions in subpart F of this part.

§ 228.11 Source and origin of commodities.

(a) The source and origin of a commodity as defined in § 228.01 shall be a country or countries authorized in the implementing document by name or by reference to a USAID geographic code.

(b) Any component from a non-Free World country makes the commodity ineligible for USAID financing.

(c) When the commodity being purchased is a kit (e.g., scientific instruments, tools, or medical supplies packaged as a single unit), the kit will be considered a produced commodity.

(d) When spare parts for vehicles or equipment are purchased, each separate shipment will be considered a produced commodity, rather than each individual spare or replacement part. The parts must be packed in and shipped from an eligible country.

(e) Systems determination. When a system consisting of more than one produced commodity is procured as a single, separately priced item, USAID may determine that the system itself shall be considered a produced commodity.

(f) In order to be eligible for USAID financing, when items are considered produced commodities under paragraphs (c), (d), or (e) of this section, the total cost (to the system supplier) of the commodities making up the kit, spare parts, or system which were manufactured in countries not included in the authorized geographic code may not exceed 50 percent of the lowest price (not including ocean transportation and marine insurance) at which the supplier makes the final product available for export sale.

§ 228.12 Long-term leases.

Any commodity obtained under a long-term lease agreement is subject to the source and origin requirements of this subpart B. For purposes of this subpart B, a long-term lease is defined as a single lease of more than 180 days, or repetitive or intermittent leases under a single activity or program within a one-year period totalling more than 180 days, for the same type of commodity.

§ 228.13 Special source rules requiring procurement from the United States.

(a) Agricultural commodities and products thereof must be procured in the United States if the domestic price is less than parity, unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. (22 U.S.C. 2354)

(b) Motor vehicles must be manufactured in the United States to be eligible for USAID financing. Also, any vehicle to be financed by USAID under a long-term lease or where the sale is to be guaranteed by USAID must be manufactured in the United States. (22 U.S.C. 2396) For purposes of this section, motor vehicles are defined as self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles and utility vehicles. Excluded from this definition are industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks) and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above). Also, for purposes of this section, a long-term lease is defined as a single lease of more than 180 days, or repetitive or intermittent leases under a single activity or program within a one-year period totalling more than 180 days. In addition to the above requirements, passenger cars, light trucks, vans, minivans and utility vehicles must be manufactured by either Chrysler, Ford or General Motors and bear their nameplates, brand names or logos, to be eligible for financing by USAID. The nameplate, brand name or logo requirements do not apply when vehicles are procured under a source waiver.

(c) Pharmaceutical products must be manufactured in the United States in order to be eligible for USAID financing. USAID shall not finance any pharmaceutical product manufactured outside the United States if the manufacture of such product in the United States would involve the use of, or be covered by, a valid patent of the United States unless such manufacture is expressly authorized by the owner of such patent. (22 U.S.C. 2356)

§ 228.14 Nationality of suppliers of commodities.

(a) The rules on nationality of suppliers of commodities relate only to the suppliers, and not to the commodities they supply. The nationality of the supplier is an additional eligibility criterion to the rules on source, origin and componentry.

(b) A supplier providing commodities must fit one of the following categories for the transaction to be eligible for USAID financing:

(1) An individual who is a citizen or a lawfully admitted permanent resident of a country or area included in the authorized geographic source code, except as provided in paragraph (c) of this section;

(2) A corporation or partnership organized under the laws of a country or area included in the authorized geographic source code and with a place of business in such country;

(3) A controlled foreign corporation (within the meaning of section 957 et seq. of the Internal Revenue Code) as attested by current information on file with the Internal Revenue Service of the United States (on IRS Form 959, 2952, 3646, or on substitute or successor forms) submitted by shareholders of the corporation; or

(4) A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which are eligible under either paragraph (b) (1), (2) or (3) of this section.

(c) Citizens of any country or area, or firms or organizations located in, organized under the laws of, or owned in any part by citizens or organizations of any country or area not included in Geographic Code 935 are ineligible for financing by USAID as suppliers of commodities. Limited exceptions to this rule are:

(1) Individuals lawfully admitted for permanent residence in the United States are eligible, as individuals or owners, regardless of their citizenship; and

(2) The USAID Deputy Assistant Administrator for Management (DAA/M) may authorize the eligibility of organizations having minimal ownership by citizens or organizations of non-Geographic Code 935 countries.

Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing

§ 228.20 Purpose.

Sections 228.21 through 228.25 set forth the rules governing the eligibility of commodity-related services, both delivery services and incidental services, for USAID financing. These rules may be waived in accordance with the provisions in subpart F of this part. Waivers granted pursuant to subpart F

for individual shipments requiring ocean transportation which are not based on a determination of non-availability shall not reduce the requirement that the applicable percentage of USAID cargoes be transported on U.S.-flag vessels pursuant to the Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(b). The rules on delivery services apply whether or not USAID is also financing the commodities being transported. In order to be identified and eligible as incidental services, such services must be connected with a USAID-financed commodity procurement.

§ 228.21 Ocean transportation.

(a) The Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(b)(1), is applicable to ocean shipment of goods subject to this part.

(b) In addition to cargo preference requirements, ocean shipments of USAID-financed goods must meet the requirements in paragraph (c) of this section in order for the freight cost to be eligible for USAID financing.

(c) The eligibility of ocean transportation services is determined by the flag registry of the vessel.

(1) When the authorized source for procurement is Geographic Code 000 (U.S.A.), USAID will finance ocean transportation only on U.S. flag vessels.

(2) When the authorized source for procurement is Geographic Code 941 (selected Free World), USAID will finance ocean transportation on vessels under flag registry of any country in Code 935.

(3) When commodities whose eligibility is restricted to Geographic Code 000 are purchased under agreements which authorize Geographic Code 941 for the procurement of all other commodities, USAID will finance the ocean transportation in accordance with paragraph (c)(2) of this section.

(4) USAID will finance costs incurred on vessels under flag registry of any Geographic Code 935 country if the costs are part of the total cost on a through bill of lading that is paid to a carrier for initial carriage on a vessel which is eligible in accordance with paragraph (c) (1), (2) or (3) of this section.

§ 228.22 Air transportation.

(a) The eligibility of air transportation is determined by the flag registry of the aircraft. The term ''U.S. flag air carrier'' means one of a class of air carriers holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) authorizing operations between the United States or its territories and one or more foreign countries.

(b) For air transport financed under USAID grants, there is a U.S. Government statute that requires the use of U.S. flag air carriers for all international air travel and transportation, unless such service is not available. When U.S. flag air carriers are not available, any Geographic Code 935 flag air carrier may be used.

(c) Different requirements may be authorized in the implementing document if the transaction is financed under a USAID loan.

(d) The Comptroller General's memorandum (B–138942), dated March 31, 1981, entitled ''Revised Guidelines for Implementation of the Fly America Act'', established criteria for determining when U.S. flag air carriers are unavailable. See 48 CFR 47.403–1, or USAID Optional Standard Provision on ''Air Travel and Transportation'' for grants and cooperative agreement.

(e) While the Comptroller General's memorandum does not establish specific criteria for determining when freight service is unavailable, it is USAID's policy that such service is not available when the following criteria are met:

(1) When no U.S. flag air carrier provides scheduled air freight service from the airport serving the shipment's point of origin and a non-U.S. flag carrier does;

(2) When the U.S. flag air carrier(s) serving the shipment's point of origin decline to issue a through air waybill for transportation at the shipment's final destination airport;

(3) When use of a U.S.-flag air carrier would result in delivery to final destination at least seven days later than delivery by means of a non-U.S. carrier;

(4) When the total weight of the consignment exceeds the maximum weight per shipment which the U.S. flag air carrier will accept and transport as a single shipment and a non-U.S. flag air carrier will accept and transport the entire consignment as a single shipment;

(5) When the dimensions (length, width, or height) of one or more of the items of a consignment exceed the limitations of the U.S. flag aircraft's cargo door opening, but do not exceed the acceptable dimensions for shipment on an available non-U.S. flag scheduled air carrier.

§ 228.23 Eligibility of marine insurance.

The eligibility of marine insurance is determined by the country in which it is ''placed''. Insurance is ''placed'' in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country. Eligible countries for placement are governed by the authorized geographic code. However, if Geographic Code 941 is authorized, the cooperating country is also eligible to provide such services, unless the implementing document specified otherwise based on the following:

(a) If a cooperating country discriminates against marine insurance companies authorized to do business in any State of the United States, then all USAID-financed goods for that country must be insured in the United States against marine risk. The term ''authorized to do business in any State of the United States'' means that foreign-owned insurance companies licensed to do business in the United States (by any State) are treated the same as comparable U.S.-owned companies.

(b) The prima facie test of discrimination is that a cooperating country takes actions which hinder private importers in USAID-financed transactions from making cost, insurance and freight (C.I.F.) or cost and insurance (C.&I.) contracts with United States commodity suppliers, or which hinder importers in instructing such suppliers to place marine insurance with companies authorized to do business in the United States.

(c) When discrimination is found to exist and the cooperating country fails to correct the discriminatory practice, USAID requires that all commodities procured with USAID funds be insured in the United States against marine loss. The decision of any cooperating country to insure all public sector procurements locally with a government-owned insurance agency is not considered discrimination.

§ 228.24 Other delivery services.

No source or nationality rules apply to other delivery services, such as export packing, loading, commodity inspection services, and services of a freight forwarder. Such services are eligible in connection with a commodity which is financed by USAID.

§ 228.25 Incidental services.

Source and nationality rules do not apply to suppliers of incidental services specified in a purchase contract relating to equipment. However, citizens of firms of any country not included in USAID Geographic Code 935 are ineligible to supply incidental services, except that individuals lawfully admitted for permanent residence in the

U.S. are eligible regardless of their citizenship.

Subpart D—Conditions Governing the Nationality of Supplies of Services for USAID Financing

§ 228.30 Purpose.

Sections 228.31 through 228.37 set forth the nationality rules governing the eligibility for USAID financing of suppliers of services which are not commodity-related. These rules may be waived in accordance with the provisions in subpart F of this part.

§ 228.31 Individuals and privately owned commercial firms.

(a) In order to be eligible for USAID financing as a supplier of services, whether as a contractor or subcontractor at any tier, an individual must meet the requirements of paragraph (a)(1) of this section (except that individual personal services contractors are not subject to this requirement), and a privately owned commercial firm must meet the requirements in paragraph (a)(2) of this section. In the case of the categories described in paragraphs (a)(2) (i) and (ii) of this section, the certification requirements in paragraph (b) of this section must be met.

(1) An individual must be a citizen of and have a principal place of business in a country or area included in the authorized geographic code, or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States;

(2) A privately owned commercial (i.e., for profit) corporation or partnership must be incorporated or legally organized under the laws of a country or area included in the authorized geographic code, have its principal place of business in a country or area included in the authorized geographic code, and meet the criteria set forth in either paragraph (a)(2)(i) or (ii) of this section:

(i) The corporation or partnership is more than 50 percent beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code or non-U.S. citizens lawfully admitted for permanent residence in the United States. In the case of corporations, ''more than 50 percent beneficially owned'' means that more than 50 percent of each class of stock is owned by such individuals; in the case of partnerships, ''more than 50 percent beneficially owned'' means that more than 50 percent of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(ii) The corporation or partnership:

(A) Has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or requests for proposals,

(B) Has performed within the United States administrative and technical, professional, or construction services, similar in complexity, type and value to the services being contracted (under a contract, or contracts, for services) and derived revenue therefrom in each of the 3 years prior to the date described in paragraph (a)(2)(ii)(A) of this section,

(C) Employs United States citizens and non-U.S. citizens lawfully admitted for permanent residence in the United States in more than half its permanent full-time positions in the United States and more than half of its principal management positions, and

(D) Has the existing technical and financial capability in the United States to perform the contract.

(b) A duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or nonprofit organization meets either the requirements of paragraph (a)(2) (i) or (ii) of this section or § 228.32. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of paragraph (a)(2)(i) of this section, the certifying officer may presume citizenship on the basis of the stockholders' record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

§ 228.32 Nonprofit organizations.

(a) Nonprofit organizations, such as educational institutions, foundations, and associations, must meet the criteria listed in this section and the certification requirement in § 228.31(b) to be eligible as suppliers of services, whether as contractors or subcontractors at any tier. Any such institution must:

(1) Be organized under the laws of a country or area included in the authorized geographic code;

(2) Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and

(3) Have its principal facilities and offices in a country or area included in the authorized geographic code.

(b) International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the USAID Assistant Administrator, Global Bureau, are considered to be of U.S. nationality.

§ 228.33 Foreign government-owned organizations.

Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by foreign governments or agencies thereof are not eligible for financing by USAID as contractors or subcontractors, except if their eligibility has been established by a waiver approved by USAID in accordance with § 228.54. This does not apply to foreign government ministries or agencies.

§ 228.34 Joint ventures.

A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with §§ 228.31, 228.32, or 228.33.

§ 228.35 Construction services from foreign-owned local firms.

(a) When the estimated cost of a contract for construction services is $5 million or less and only local firms will be solicited, a local corporation or partnership which does not meet the test in § 228.31(a)(2)(i) for eligibility based on ownership by citizens of the cooperating country (i.e., it is a foreign-owned local firm) will be eligible if it is determined by USAID to be an integral part of the local economy. However, such a determination is contingent on first ascertaining that no United States construction company with the required capability is currently operating in the cooperating country or, if there is such a company, that it is not interested in bidding for the proposed contract.

(b) A foreign-owned local firm is an integral part of the local economy provided:

(1) It has done business in the cooperating country on a continuing basis for not less than three years prior to the issuance date of invitations for bids or requests for proposals to be financed by USAID;

(2) It has a demonstrated capability to undertake the proposed activity;

(3) All, or substantially all, of its directors of local operations, senior staff and operating personnel are resident in the cooperating country;

(4) Most of its operating equipment and physical plant are in the cooperating country.

§ 228.36 Ineligible suppliers.

Citizens of any country or area not included in Geographic Code 935, and firms and organizations located in, organized under the laws of, or owned in any part by citizens or organizations of any country or area not included in Geographic Code 935 are ineligible for financing by USAID as suppliers of services, or as agents in connection with the supply of services. The limited exceptions to this rule are:

(a) Individuals lawfully admitted for permanent residence in the United States are eligible, as individuals or owners, regardless of their citizenship, and

(b) The Procurement Executive may authorize the eligibility of organizations having minimal ownership by citizens or organizations of non-Geographic Code 935 countries.

§ 228.37 Nationality of employees under contracts or subcontracts for services.

(a) The rules set forth in §§ 228.31 through 228.36 do not apply to the employees of contractors or subcontractors. Such employees must, however, be citizens of countries included in Geographic Code 935 or, if they are not, have been lawfully admitted for permanent residence in the United States.

(b) When the contractor on a USAID-financed construction project is a United States firm, at least half of the supervisors and other specified key personnel working at the project site must be citizens or permanent legal residents of the United States. Exceptions may be authorized by the USAID Mission in writing if special circumstances exist which make compliance impractical.

§ 228.38 Miscellaneous service transactions.

This section sets forth rules governing certain miscellaneous services.

(a) *Commissions.* The nationality rules in subparts C and D of this part, with the exception of § 228.36, do not apply to the payment of commissions by suppliers. A commission is defined as any payment or allowance by a supplier to any person for the contribution which that person has made to securing the sale or contract for the supplier or which that person makes to securing on a continuing basis similar sales or contracts for the supplier.

(b) *Bonds and guarantees.* The nationality rules in subparts C and D of this part, with the exception of § 228.36, do not apply to sureties, insurance companies or banks who issue bonds or guarantees under USAID-financed contracts.

(c) *Liability insurance under construction contracts.* The nationality rules in subparts C and D of this part, with the exception of § 228.36, do not apply to firms providing liability insurance under construction contracts.

§ 228.39 Special source rules for construction and engineering services.

Advanced developing countries, eligible under Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services are not eligible to furnish USAID-financed construction and engineering services. There is no waiver of this provision. (22 U.S.C. 2354)

Subpart E—Conditions Governing Source and Nationality of Local Procurement Transactions for USAID Financing

§ 228.40 Local procurement.

Local procurement in the cooperating country involves the use of appropriated funds to finance the procurement of goods and services supplied by local businesses, dealers or producers, with payment normally being in the currency of the cooperating country. Unless otherwise specified in an implementing document, or a waiver is approved by USAID in accordance with subpart F of this part, local procurement is eligible for USAID financing only in the following situations:

(a) Locally available commodities of U.S. origin, which are otherwise eligible for financing, if the value of the transaction is estimated not to exceed the local currency equivalent of $100,000 (exclusive of transportation costs).

(b) Commodities of Geographic Code 935 origin if the value of the transaction does not exceed $5,000.

(c) Professional services contracts estimated not to exceed the local currency equivalent of $250,000.

(d) Construction services contracts, including construction materials required under the contract, estimated not to exceed the local currency equivalent of $5,000,000.

(e) Under a fixed-price construction contract of any value, the prime contractor may procure locally produced goods and services under subcontracts.

(f) The following commodities and services which are only available locally:

(1) Utilities, including fuel for heating and cooking, waste disposal and trash collection;

(2) Communications—telephone, telex, facsimile, postal and courier services;

(3) Rental costs for housing and office space;

(4) Petroleum, oils and lubricants for operating vehicles and equipment;

(5) Newspapers, periodicals and books published in the cooperating country;

(6) Other commodities and services (and related expenses) that, by their nature or as a practical matter, can only be acquired, performed, or incurred in the cooperating country, e.g., vehicle maintenance, hotel accommodations, etc.

Subpart F—Waivers

§ 228.50 General.

USAID may expand the authorized source in order to accomplish project or program objectives by processing a waiver. When a waiver is processed to include a new country, area, or geographic code, procurement is not limited to the added source(s), but may be from any country included in the authorized geographic code. All waivers must be in writing.

§ 228.51 Commodities.

(a) *Waiver criteria.* Any waiver must be based upon one of the criteria listed in this section. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (a) (2) or (3) of this section may only be authorized on a case-by-case basis.

(1) Commodities required for assistance are of a type that are not produced in and available for purchase in the United States, and for waivers to Code 899 or Code 935, also not in the cooperating country, or any country in Code 941.

(2) It is necessary to permit procurement in a country not otherwise eligible in order to meet unforeseen circumstances, such as emergency situations.

(3) It is necessary to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(4) For waivers to authorize procurement from Geographic Code 941 or the cooperating country:

(i) For assistance other than commodity import programs, when the lowest available delivered price from the United States is reasonably estimated to be 50 percent or more higher than the delivered price from a

country or area included in Geographic Code 941 or the cooperating country.

(ii) For assistance other than commodity import programs, when the estimated cost of U.S. construction materials (including transportation and handling charges) is at least 50 percent higher than the cost of locally produced materials.

(iii) For commodity import programs or similar sector assistance, an acute shortage exists in the United States for a commodity generally available elsewhere.

(iv) Persuasive political considerations.

(v) Procurement in the cooperating country would best promote the objectives of the foreign assistance program.

(vi) Such other circumstances as are determined to be critical to the success of project objectives.

(b) *Additonal requirements.* A waiver to authorize procurement from outside the United States of agricultural commodities, motor vehicles, or pharmaceuticals (see § 228.13, ''Special source rules requiring procurement from the United States,'') must also meet requirements established in USAID directives on commodity eligibility. (USAID's Automated Directives System Chapter 312.)

(c) Any individual transaction not exceeding $5,000 (not including transportation) does not require a waiver.

§ 228.52 Suppliers of commodities.

Geographic code changes authorized by waiver with respect to the source of commodities automatically apply to the nationality of their suppliers. A waiver to effect a change in the geographic code only with respect to the nationality of the supplier of commodities, but not in the source of the commodities, may be sought if the situation requires it based on the appropriate criteria in § 228.51.

§ 228.53 Suppliers of services—privately owned commercial suppliers and nonprofit organizations.

Waiver criteria. Any waiver must be based upon one of the criteria listed in this section. Waivers to Geographic Code 899 or Code 935 which are justified under paragraph (b) or (c) of this section may only be authorized on a case-by-case basis.

(a) Services required for assistance are of a type that are not available for purchase in the United States, and for waivers to Code 899 or Code 935, also not in the cooperating country, or any country in Code 941.

(b) It is necessary to permit procurement in a country not otherwise eligible in order to meet unforeseen circumstances, such as emergency situations.

(c) It is necessary to promote efficiency in the use of United States foreign assistance resources, including to avoid impairment of foreign assistance objectives.

(d) For waivers to authorize procurement from Geographic Code 941 or the cooperating country:

(1) There is an emergency requirement for which non-USAID funds are not available and the requirement can be met in time only from suppliers in a country or area not included in the authorized geographic code.

(2) No suppliers from countries or areas included in the authorized geographic code are able to provide the required services.

(3) Persuasive political considerations.

(4) Procurement of locally available services would best promote the objectives of the foreign assistance program.

(5) Such other circumstances as are determined to be critical to the achievement of project objectives.

§ 228.54 Suppliers of services—foreign government-owned organizations.

A waiver to make foreign government-owned organizations, described in § 228.33, eligible for financing by USAID must be justified on the basis of the following criteria:

(a) The competition for obtaining a contract will be limited to cooperating country firms/organizations meeting the criteria set forth in §§ 228.31 or 228.32.

(b) The competition for obtaining a contract will be open to firms from countries or areas included in the authorized geographic code and eligible under the provisions of §§ 228.31 or 228.32, and it has been demonstrated that no U.S. firm is interested in competing for the contract.

(c) Services are not available from any other source.

(d) Foreign policy interests of the United States outweigh any competitive disadvantage at which United States firms might be placed or any conflict of interest that might arise by permitting a foreign government-owned organization to compete for the contract.

§ 228.55 Delivery services.

(a) Ocean transportation. A waiver to expand the flag eligibility requirements to allow the use of vessels under flag registry of the cooperating country, or Geographic Code 899 or 935 countries may be authorized under the circumstances provided for in this section. Any waiver granted under this section for a particular shipment which is not based on a determination of non-availability does not reduce the pool of cargo from which the applicable percentage required to be shipped on U.S.-flag vessels under the Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(b), is determined. A waiver to expand the flag registry of any Code 935 country may be authorized when:

(1) It is necessary to assure adequate competition in the shipping market in order to obtain competitive pricing, particularly in the case of bulk cargoes and large cargoes carried by liners;

(2) Eligible vessels provide liner service, only by transshipment, for commodities that cannot be containerized, and vessels under flag registry of countries to be authorized by the waiver provide liner service without transshipment;

(3) Eligible vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment would increase costs or significantly delay receipt of the cargo;

(4) Eligible vessels are found unsuitable for loading, carriage, or unloading methods required, or for the available port handling facilities;

(5) Eligible vessels do not provide liner service from the port of loading stated in the procurement's port of export delivery terms, provided the port is named in a manner consistent with normal trade practices; or

(6) Eligible vessels decline to accept an offered consignment.

(b) Air transportation. The preferences for use of United States flag air carriers or for use of United States, other Geographic Code 941 countries, or cooperating country flag air carriers are not subject to waiver. Other free world air carriers may be used only as provided in § 228.22.

§ 228.56 Authority to approve waivers.

The authority to approve waivers of established policies on source, origin and nationality are delegated authorities within USAID, as set forth in the Automated Directives System Chapter 103 and any redelegations. USAID contractors or recipients of assistance agreements shall request any necessary waivers through the USAID contract or agreement officer.

Dated: September 27, 1996.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 96–26246 Filed 10–11–96; 8:45 am]

BILLING CODE 6116–71–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Rate for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in November 1996.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest rates and factors. These interest rates and factors are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest rates and factors are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest rates and factors for valuing benefits in plans with valuation dates during November 1996.

For annuity benefits, the interest rates will be 6.20 percent for the first 20 years following the valuation date and 4.75 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which benefits are in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The annuity interest assumptions represent a decrease (from those in effect for October 1996) of .10 percent for the first 20 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent a decrease (from those in effect for October 1996) of .25 percent for the period during which benefits are in pay status and for the seven years directly preceding that period; they are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during November 1996, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is hereby amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 37 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

Table I.—Annuity Valuations

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * *	*	*	*	*		
November 1996	.0620	1–20	.0475	>20	N/A	N/A

Table II.—Lump Sum Valuations

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*			
37	11–1–96	12–1–96	5.00	4.25	4.00	4.00	7	8

Issued in Washington, DC, on this 9th day of October 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–26345 Filed 10–11–96; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 144; NJ22–1–7069a, FRL–5554–9]

Approval and Promulgation of Implementation Plans; New Jersey Transportation Control Measures

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a request by the State of New Jersey to revise its State Implementation Plan (SIP) to incorporate transportation control measures (TCMs) as part of the State's effort to attain the national ambient air quality standard for ozone. EPA finds that New Jersey adequately demonstrated in its November 15, 1993 SIP that growth in emissions from growth in vehicle miles traveled will not increase and, therefore, offsetting emission reduction measures are not required. In its November 15, 1993 SIP revision, the State submitted a list containing 136 TCMs as part of the plan to reduce emissions of volatile organic compounds by 15 percent between 1990 and 1996.

DATES: This rule is effective on December 16, 1996, unless adverse or critical comments are received by November 14, 1996. If adverse comments are received, this notice will be withdrawn in the Federal Register prior to the effective date of this rule.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, 20th Floor, New York, New York 10007–1866.

Copies of New Jersey's submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 20th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

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

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Background

Section 182(d)(1)(A) of the Clean Air Act Amendments of 1990 requires states containing ozone nonattainment areas classified as ''severe'' pursuant to Section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation strategies to offset growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission requirements) as necessary to comply with the Act's Reasonable Further Progress (RFP) milestone and attainment requirements. The requirements for establishing a VMT offset program are discussed in the April 16, 1992 General Preamble to Title I of the Act (57 FR 13498), in addition to Section 182(d)(1)(A) of the Act. The VMT offset provision requires that states submit by November 15, 1992 specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

EPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of ozone national ambient air quality standards (NAAQS) create a timing problem of which Congress was perhaps not fully aware. As discussed in EPA's April 16, 1992 General Preamble to Title I, ozone nonattainment areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15 percent RFP milestone until November 15, 1993, and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP demonstrations due on November 15, 1993, and on November 15, 1994 are broader in scope than growth in VMT or trips in that they necessarily address emission trends and control measures for non-motor vehicle emission sources and, in the case of attainment demonstrations, complex photochemical modeling studies.

EPA does not believe that Congress intended the VMT offset provision to advance dates for these broader submissions. Further, EPA believes that the November 15, 1992 date would not allow sufficient time for states to have fully developed specific sets of measures that would comply with all of the elements of the VMT offset requirements of Section 182(d)(1)(A) over the long term. Consequently, EPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of elements of the VMT offset SIP.

Under this interpretation, the three required elements of Section 182(d)(1)(A) are separable, and can be divided into three separate submissions on different dates. Section 179(a) of the Act, in establishing how EPA would be required to apply mandatory sanctions if a state fails to submit a full SIP also provides that the sanctions clock starts if a state fails to submit one or more SIP elements, as determined by the Administrator. EPA believes that this language provides EPA the authority to determine that the different elements of a SIP submission are separable. Moreover, given the continued timing problems addressed earlier, EPA believes it is appropriate to allow states to separate the VMT offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset

growth in emissions; (2) the requirement to comply with the 15 percent Rate of Progress requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment of the ozone NAAQS.

Under this approach, the first element, the emissions offset element, was due on November 15, 1992. The EPA believes this element is not necessarily dependent on the development of the other elements. A state could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset requirement. As submitting this element in isolation does not introduce the timing problems of advancing deadlines for RFP and attainment demonstrations, EPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT offset SIP to comply with the 15 percent RFP requirement of the Act, was re-scheduled to be due on November 15, 1993, which is the same date on which the 15 percent RFP SIP itself was due under Section 182(b)(1) of the Act. EPA believes it is reasonable to extend the deadline for this VMT offset element from November 15, 1992 to the date on which the entire 15 percent SIP was due, as this allows states to develop the comprehensive strategy to address the 15 percent requirement and assure that the TCM elements required under Section 182(d)(1)(A) are consistent with the remainder of the 15 percent demonstration. Indeed, EPA believes that only upon submittal of the broader 15 percent plan can a state have had the necessary opportunity to coordinate its VMT strategy with its 15 percent plan.

The third element, which requires the VMT offset SIP to comply with the post-1996 RFP and attainment requirements of the Act, was rescheduled to be due on November 15, 1994, the statutory deadline for those broader submissions. EPA believes it is reasonable to similarly extend the deadline for this VMT element to the date on which the post-1996 RFP and attainment SIPs are due for the same reason it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a state to make the showing required by Section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the state. Moreover, allowing states to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations will result in a better program for reducing emissions in the long term.

Section 182(d)(1)(A) of the Act requires New Jersey to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent a growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. EPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle VOC emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline, and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling level is defined, therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of federal measures such as new motor vehicle standards, phase II RVP controls, and reformulated gasoline, as well as the Act-mandated SIP requirements.

State Submittal

On November 15, 1992, and November 15, 1993, New Jersey submitted to EPA requests to revise its SIP for ozone. These submittals had undergone public hearings on October 27, October 29 and November 5, 1992 and on October 14 and October 19, 1993. In addition, these submittals underwent significant public review as part of the process initiated by three New Jersey metropolitan planning organizations (MPOs); the North Jersey Transportation Planning Authority (NJTPA), the Delaware Valley Regional Planning Commission (DVRPC) and the South Jersey Transportation Planning Organization (SJTPO).

EPA is taking direct final approval action for the TCM SIP revision submitted by the State of New Jersey to revise its SIP to incorporate TCMs as part of the effort to attain the national ambient air quality standard for ozone. In its original VMT offset SIP submission, New Jersey included public transit programs, high occupancy vehicle (HOV) facilities, traffic flow improvements, park and ride projects, ridesharing, pedestrian programs, roadway pricing, and others. New Jersey has subsequently indicated in its submittal of November 15, 1993 that motor vehicle emissions will not at any time increase from those of the previous year. Therefore, the State is not required to implement any measures to offset growth in emissions due to growth in VMT. EPA is approving New Jersey's November 15, 1993 submittal as fulfilling the requirements of the first element of Section 182(d)(1)(A).

To meet the second element of the VMT SIP, due on November 15, 1993, New Jersey opted to include 136 TCMs in its 15 percent SIP submittal under Section 182(b) of the Act. The remainder of this notice discusses these TCMs.

As part of the 15 Percent Plan, New Jersey included TCMs which will be implemented and which will result in emission reductions. EPA will be taking action on New Jersey's 15 Percent Plan in another Federal Register notice in the future, but the TCMs, which are the subject of this Federal Register notice, can be incorporated into the SIP at this time.

A total of 136 TCMs are being implemented throughout the State as part of the MPO process, these are as follows:

Park and Ride Lots (25)

Summit—Springfield Ave: 30 spaces
Clinton—I–78 & Route 31: 50 spaces
Branchburg—Route 202: 67 spaces
Suburban Bus—New Brunswick—Route 27: 30 spaces
Netcong Railroad Station: 132 spaces
Beverwyck—Parsippany/Troy Hills—Route 46: 300 spaces
Newton—Routes 206 & 94: 200 spaces
Westwood: 46 spaces
Stockholm—Hardyston—Routes 23 & 515: 50 spaces
Flemington Outlet—Route 202—Raritan: 100 spaces
Farmers Market—I–95 & Route 413 (Pennsylvania): 100 spaces
Plauderville—Atwater Lane—Railroad Station: 200 spaces
Route 9 Bus—Middlesex/Monmouth Counties: unknown
Orange Bus Terminal: unknown
Turnpike Int 8A—Route 130 & 32—S. Brunswick: 500 spaces
Turnpike Int 10—Edison: 750 spaces

Turnpike—Vince Lombardi Service Area—Bergen: 1000 spaces
Interchange 153—Passaic: unknown
Montvale Expansion—Bergen: 152 spaces
Interchange 109—Middletown: 65 spaces
Jefferson/Mullica Hill—Route 45—Harrison Township: 40 spaces
Malage—Route 40/Dutch Mill Road—Franklin: 50 spaces
Woodbury—Route 45 & Cooper Street: 50 spaces
Aberdeen—Monmouth County: 400 spaces
Trenton Rail Station: 900 Spaces

Transit Improvements (Sponsored by NJ Transit) (39)

Waterfront Connection—Hudson, Essex, Middlesex, Monmouth Counties
Kearny Connection—Morris, Somerset, Essex, Union Counties
Hackettstown Booton Line Extension—Warren County
Hoboken Transit Hub—Hudson County
Transit Station Bike Lockers and Racks—Statewide
Existing Park and Ride Facilities Program—Select Stations
Summer shore Express Service—North Jersey Coast Line
Atlantic City Rail Line Extension to Philadelphia
Jersey Shore Line Passenger Service to Cape May locations
Route 67 Modified Bus service—Toms River/Lakewood via US 9
Route 303 Broad Street Station—Penn Station Shuttle
Expanded Bus Service Strategies—Statewide
Expanded Service Strategies—Port Newark/Elizabeth
Cape May City Ferry Bus Service
Atlantic City Garage in Egg Harbor
Atlantic County Experimental Services
Weehawken Ferry Terminal Parking
Redesign Plaza at Exchange Place PATH Station for Drop Offs
Gateway Park and Ride shuttle

Traffic Flow Improvements (66)

Closed Loop Signal System (Several Projects Statewide noted as one)
Magic I Motorist Advisory System
Island Beach State Park Motorist Information System
Service Patrols—Morris, Essex, Passaic, and Bergen Counties
I–80 High Occupancy Vehicle Lane
Turnpike High Occupancy Vehicle Lane from Exit 11 to 14
Turnpike Traffic Surveillance and Control System—Exit 8A to GWB
Incident Management Radio System—Statewide
Incident Management State Police Communications Center—Cranbury
Signal Upgrade—Essex County (5 projects)
Interchange Improvements—Garden State Parkway—Statewide
Atlantic City Computerized Signal System
Turning Lanes and Signal Improvements in Cape May (3 projects)
Bridge Motorist Information System—Tacony and Betsy Ross Bridges
Traffic Operations Center—Camden and Burlington Counties
Incident Management—Camden Area Service Patrol
One Way Tolls—Delaware River Crossings (3 Projects)
Burlington County Signal Upgrades and Improvements (21 Projects)
Cumberland County—Arterial Signal System
Mercer County—Intersection and Signalization Improvements
Essex County—Turn Lanes and Signal Modification (6 projects)
Ocean County—Traffic Signal Retiming and Turn Lanes (11 projects)
Atlantic County—Intersection Improvements

Other (6)

Employer Trip Reduction—Statewide
Bayshore Waterfront Bike/Pedestrian way
Traction Line Bikeway—Morris Township
Meadows Path Bikeway—Hudson and Bergen Counties
North Bergen Trail—Pedestrian/Bicycle
Sussex Trails—Pedestrian/Bicycle

The 136 TCMs are predicted to result in a Statewide reduction of 1.4 tons per day of VOCs, out of a total of 209 tons/day for the entire 15 percent plan. Therefore, the TCMs represent 0.7 percent of the needed reduction. The reductions attributed to the TCMs are broken down by the three nonattainment areas in New Jersey, as follows: 0.9 tons in northern New Jersey, 0.3 tons in the Philadelphia metropolitan area of New Jersey, and 0.2 tons in the Atlantic City area. This equals 1.4 tons Statewide.

The 136 TCMs fall into the following four broad categories. The percentages represent the portion of the 1.4 tons of reduction attributed to each category.

Traffic Flow Improvements: 66 projects; 48.6 percent.

Transit Projects: 39 projects; 42.2 percent.

Park and Ride Projects: 25 projects, 7.7 percent.

ETR/Bicycle & Pedestrian Projects: 6 projects. 1.5 percent.

The projects contained in the SIP submittal are being implemented as part of the Clean Air Act requirement to reduce VOC emissions by 15 percent between 1990 and 1996. The projects will be implemented by 1996 and will assist New Jersey in attaining the NAAQS for ozone.

Implementation of these projects will be tracked and ensured through the transportation conformity process as required by the federal transportation conformity regulation (40 CFR Part 93; 1290). Transportation Improvement Programs (TIPs) which contain TCMs are developed annually by the three MPOs in the State. This is accomplished in coordination with several state and federal agencies. The transportation conformity regulation requires that all TIPs be consistent with the SIP. Since these projects are contained in the SIP, failure to include them in the TIP will cause the TIP to not conform. This could result in transportation projects being halted. Such a decision is made by the Federal Highway Administration in consultation with EPA.

There was a significant opportunity for public comment throughout the TIP development process. MPOs provide access to all information and utilize public outreach as an important component of the transportation process. In addition, the development of the 15 percent plan underwent the public hearing process as required for all SIP amendments.

In March of 1992, EPA released a document entitled *Transportation Control Measure Information Documents,* as required by Section 108(f) of the Clean Air Act Amendments (prepared for EPA by Cambridge Systematics, Inc). This document includes a detailed description of the impacts of implementing several distinct types of TCMs, but does not provide a means to calculate specific emissions reductions from TCM implementation. New Jersey used this information to evaluate various TCMs. Chapters include information on employer programs, public transit, HOV projects, and pedestrian programs. This document is available through the National Technical Information Service, document reference number PB92–173–566.

A significant portion of these types of projects were utilized by New Jersey even though the State is not required to implement any specific TCMs. Furthermore, any state can implement viable TCMs that are not included in this list.

Conclusion

The benefits associated with these projects were calculated using best transportation planning practices. EPA believes that New Jersey modeled these

projects to the best of its ability using the best practices available, and, therefore, approves the project analysis conducted by the State of New Jersey.

The rationale for EPA's direct approval is that these TCMs were subject to the extensive public participation process discussed earlier. The TCMs will effectively reduce VMT and related VOC emissions, thereby reducing ground level ozone. Therefore, EPA is approving this revision incorporating these TCMs into New Jersey's SIP.

Regarding the first VMT offset element, New Jersey has identified and evaluated TCMs to reduce VMT, and has shown that VMT growth will not result in a growth of motor vehicle emissions that will negate the effects of the reductions required under the Act and there will not be an upturn of motor vehicle emissions. Regarding the second element, New Jersey has submitted a complete 15 percent SIP that contains 136 TCMs which contribute to its showing that the 15 percent reduction will be achieved. While EPA is not prepared to take action on New Jersey's 15 percent plan at this time, EPA does not believe that it is necessary to delay taking action on the second element of the VMT SIP, since to do so would merely delay action on New Jersey's TCMs into its SIP. However, if in approving the 15 percent plan approval it is determined that New Jersey would in fact have to implement additional TCMs to meet the 15 percent RFP requirement, and a subsequent submission of a revised 15 percent SIP is required, EPA would have to reevaluate its approval of the second element of the VMT SIP.

New Jersey has met the first and second requirements of the VMT offset plan. The third requirement is for New Jersey to use TCMs as necessary to achieve attainment of the ozone NAAQS and meet post-1996 RFP requirements. This third requirement will be addressed in future rulemaking after EPA receives and evaluates New Jersey's attainment and post-1996 RFP SIP submissions.

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

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective December 16, 1996, unless, by November 14, 1996, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective December 16, 1996. (See 47 FR 27073 and 59 FR 24059).

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

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

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a federal mandate that may result in estimated annual costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182(d) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose any mandate upon State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these regulations under state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated annual costs of $100 million or more to state, local, or tribal governments in the aggregate or to the private sector.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 29, 1996.

William J. Muszynski,

Deputy Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding paragraphs (e) and (f) to read as follows:

§ 52. 1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(e) The November 15, 1993 SIP revision adds 136 transportation control measures to the SIP which will contribute emission reductions towards meeting the 15 Percent requirement of the ozone SIP.

(f) The November 15, 1993 SIP revision provides a 1993 demonstration that growth in emissions from growth in vehicle miles traveled will not increase through 2007 and that offsetting emission reductions are not required.

[FR Doc. 96–26202 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MA–29–01–6537; A–1–FRL–5613–3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendment to Massachusetts' SIP (for Ozone and for Carbon Monoxide) for Establishment of a South Boston Parking Freeze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the Boston Air Pollution Control Commission (BAPCC) and the Massachusetts Port Authority (Massport) to control the growth of parking spaces in the South Boston neighborhood of Boston. The effect of controlling parking growth is anticipated to be a decrease in vehicle miles travelled (VMT), thereby holding automobile usage to levels within the practical capacity of the local street network. Vehicular emissions of carbon monoxide, hydrocarbons and nitrogen oxides will be reduced compared with their expected levels if parking is not constrained. These pollutants contribute to the carbon monoxide and ozone air pollution problems in the Boston urbanized area. This SIP revision adds the South Boston Parking Freeze Area to ongoing parking management plans in the Metropolitan Boston Area. The intended effect of this action is to approve the changes to Massachusetts' SIP. This action is being taken in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This rule is effective on November 14, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, (617) 565–3508.

SUPPLEMENTARY INFORMATION: On October 3, 1994 (59 FR 50211–50214), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed approval of a revision to Massachusetts Department of Environmental Protection (DEP) State Implementation Plan (SIP) by adding or amending four definitions in 310 CMR 7.00, and inserting provisions for a City of Boston/South Boston Parking Freeze at 310 CMR 7.33. The formal SIP revision was submitted by Massachusetts on July 30, 1993.

Air Quality Impacts

The South Boston Parking Freeze is designed to reduce the growth of VMT and travel-related air emissions by controlling the growth of parking spaces serving South Boston. The freeze will result in air quality improvements beyond those which would occur in the future without this measure.

For the three South Boston zones, DEP expects the proposed freeze to reduce total future trips by 15,220 per day or 19 percent of the approximately 80,105 trips forecast with unconstrained parking. This is a 5.3 percent reduction in the future year trips without the freeze in the Central Artery Study area, and a 0.3 percent reduction overall in Eastern Massachusetts.

Without the South Boston freeze, the amount of VMT increases in the South Boston zones are large. On average in the three South Boston zones, DEP expects trips to rise by about 35 percent between now and the year 2010. Based on vehicle trip reductions and the related VMT change, a reduction of 8.06 percent in VMT is obtained below the level which would otherwise occur with unconstrained parking within the Central Artery Study area, and 0.3 percent over the entire region.

Using EPA's Mobile Emission Factor Model (MOBILE4.1, the current version at the time of the DEP's analysis) and the Central Artery Traffic Model, the South Boston Parking Freeze would reduce emissions of volatile organic compounds (VOCs) by approximately 74.86 kilograms per day by the year 2010 within the Central Artery Study area. Carbon Monoxide emissions would be reduced by 558.50 kilograms per day within the Central Artery Study area.

Using the EPA MOBILE4.1 emission Model and the Central Transportation Planning Staff (CTPS) regional transportation model, the South Boston Parking Freeze will reduce emissions of VOCs by 269.79 kilograms per day, and of carbon monoxide (CO) by approximately 1,663.91 kilograms per day within Eastern Massachusetts. The regional model also accounts for the secondary effects of reducing traffic, which will in turn reduce congestion and emissions elsewhere in the region.

EPA supports the South Boston Parking Freeze Plan as a means to reduce VMT and ultimately eliminate motor vehicle emissions associated with reduced VMT. The VMT reduction anticipated with implementing the South Boston Parking Freeze Plan will be accounted for through Highway Performance Monitoring System's (HPMS) statistical sampling of VMT within the Boston Metropolitan area. VMT reductions resulting from the South Boston freeze will be documented by Massachusetts in their emission inventories and regional emission analysis (prepared for transportation conformity) and result in improved ambient air quality. Specific emission credit associated with the South Boston Parking Freeze Plan is not being assigned in the SIP. In addition, because Massachusetts will account for VMT and emission benefits in the base scenario for their ozone SIP, Massachusetts' Reasonable Further Progress Plan does not identify the South Boston Parking Freeze as an

emission reduction element or as a contingency measure.

Specific requirements of the South Boston Parking Freeze and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Public comments received on the NPR are addressed below:

Public Comment

Four public comments were received on the NPR. On November 2, 1994, the Conservation Law Foundation (CLF) submitted comments generally supporting approval of the South Boston Parking Freeze rule into the SIP. On November 3, 1994 the City of Boston Environmental Department (BED) and the Boston Air Pollution Control Commission (BAPCC) submitted comments questioning the potential air quality benefits associated with a South Boston Parking Freeze. However, the City of Boston's comments declared that the City is ready to administer the South Boston Freeze and that the City's comments were an effort to improve this Freeze. On November 14, 1994, the Dorchester Avenue Taxpayers Association (DATA) submitted comments asserting that the South Boston Parking Freeze will be a detriment to businesses and the economic viability of South Boston. Finally, on November 16, 1994 the Boston Redevelopment Authority (BRA) submitted comments concurring on the BED and BAPCC comment letter of November 2, 1994.

The specific comments and EPA's responses are presented below. A memorandum summarizing these comments and EPA's response is also available at the address listed above.

1. CLF had recommended at the SIP development phase that the BAPCC be designated as the ''sole governing authority'' of the freeze program rather than divide implementation between BAPCC and Massport.

Response: 1. DEP has found that BAPCC possess adequate administrative and enforcement authority to administer the South Boston Parking freeze on private, public, and city property. Similarly DEP has determined that under state law the Massport Authority has the power of enforcement for the parking freeze on property owned or leased by Massport. Indeed each of these entities is currently administering the freezes in the Boston area. See e.g. 310 CMR 7.30 and 7.31. While it might be simpler to have the South Boston Parking Freeze administered by one entity, the CAA does not authorize EPA to second-guess DEP's choice for structuring the freeze, absent a finding that the local or regional entities lack the authority to implement the freeze. See CAA Section 110(a)(2)(E). EPA believes that the proposed South Boston Parking Freeze SIP can be implemented and is legally enforceable, even though the administration is divided as proposed between BAPCC and Massport. Consistent with CAA Section 110(a)(2)(E)(iii) DEP retains authority to implement the freeze if BAPCC or Massport fail to do so.

2. CLF raised their concern that approval of the South Boston Parking Freeze as a Transportation Control Measure (TCM) in the SIP, would add additional conformity criteria that must be satisfied before a conformity determination could be made. Specifically, once the parking freeze is approved in the SIP, the Boston Transportation Improvement Program (TIP) or Boston Transportation Plan would not be able to conform to the SIP unless the parking freeze is being implemented in a timely manner, with a commitment of adequate funds for implementing the freeze. CLF then expanded on the requirements of conformity to ensure timely implementation of TCMs found at 40 CFR Section 51.418.

Response: 2. In order to make a positive transportation conformity determination, in accordance with requirements set forth by section 51.418(c)(1), The Boston Metropolitan Planning Organization must affirm whether past obstacles to implementation of TCMs in the SIP (including the Boston, the East Boston/Logan, the Cambridge and the new South Boston Parking Freezes) which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs.

3. The City of Boston believes that the addition of a parking freeze covering South Boston is not a viable air quality measure as proposed and may actually be counterproductive. The City raises its concern that reductions in vehicle trips to and from South Boston may be more than outweighed by VMT growth that would result if development is displaced to the suburbs. Suburban vehicle trips tend to be longer with lower vehicle occupancy rates and there are negligible mass transit shares in the typical development in ''suburban sprawl'' locations. In order to determine the full environmental impact of the South Boston Freeze, the applicability of MEPA/NEPA notwithstanding, a detailed environmental impact report with wide circulation and an opportunity for comment may be the best method for testing assumptions about freezes and would provide a chance for review of the methodology.

Response: 3. EPA believes that there is a substantial history of parking freeze management regulations in the Boston area to support beneficial mobile source emission reductions. DEP submitted a careful modeling analysis of VMT reductions that result from the freeze. Although the City of Boston's assertions about possible development impacts may be valid concerns, they are not substantiated well enough for EPA to overrule DEP's determination that the Freeze will yield VMT reductions and air quality benefits. Pursuant to CAA requirements for a state public hearing on all SIP actions, there have been significant opportunities for the public to review and comment on the South Boston Parking Freeze Regulation.

4. The city of Boston questions the efficacy of such a labor intensive and complex bureaucracy for the sake of a .03%, at best, VMT reduction region wide. For what it will cost to implement this plan, the Boston Environmental Department believes compliance with existing ride sharing regulations, development of Transportation Management Associations (TMAs), and revision of cities and towns zoning requirements would result in more significant VMT reductions.

Response: 4. EPA endorses cost efficiency and the greatest possible emission reductions of nonattainment pollutants. The SIP process under the CAA leaves it to the States, however, to choose from a wide variety of programs to develop a strategy to attain clean air and achieve the National Ambient Air Quality Standards, as well as achieving all state air quality standards and state air quality guidelines. The state has the flexibility to include a South Boston Parking Freeze and Management Program as part of their overall strategy to attain clean air goals. Indeed EPA has no authority to disapprove a state's choice of control measure solely because EPA disagrees with the state's assessment of its cost-effectiveness. *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). Furthermore, this parking freeze will complement existing Parking Freeze Programs in the Metropolitan Boston Area.

5. The City of Boston believes where the air quality problem is regional in nature, such as ground-level ozone, a regional solution is the only reasonable approach. The City of Boston Environmental Department and Air Pollution Control Commission oppose to the South Boston Parking Freeze

because it is a local approach better suited to localized pollution problems, such as carbon monoxide.

Response: 5. The Boston Environmental Department letter agrees with EPA that VMT reduction strategies such as parking freezes may be useful as one component of an overall traffic control program to reduce localized air quality problems, such as high carbon monoxide levels at intersections. EPA further believes that the parking freeze program would influence current single occupant vehicle commuters. Such trips originate from within Boston's large interstate commuting area (from the States of Rhode Island, Maine, and New Hampshire, as well as from central and western Massachusetts) and commuters now park in South Boston. The freeze will eventually create incentives for commuters to form carpools and utilize existing bus and mass transit options. Such a change in commuting habits would result in reduced regional VMT and would contribute to attainment of the ozone standard in the region.

6. The South Boston Parking Freeze Regulation was changed from the version DEP first proposed, to give Massport administrative control over the freeze as it applies to Massport property. Since that change, the City of Boston has opposed the South Boston Parking Freeze in the belief that the freeze merely duplicates existing land use controls such as the Restricted Parking District zoning and other regulatory controls. The City of Boston believes the freeze should apply to Massport.

Response: 6. The existing state regulation now being approved will place a cap on parking spaces under the jurisdiction of both the City of Boston and Massport. The overall number of spaces allowed under the freeze has not changed as a result of giving Massport control over spaces it operates. There has been no relaxation of the parking freeze regulation as it applies to Massport property. EPA cannot require DEP to adopt a specific structure for implementing the freeze, as long as the freeze is structured so that DEP may implement it if the City of Boston or Massport fail to do so, consistent with CAA section 110(a)(2)(E)(iii). Furthermore, it is EPA's opinion that the parking freeze regulation will compliment existing land use controls such as the Restricted Parking District Zoning and other regulatory controls by adding federal and state enforcement provisions to controls that have been effective at limiting parking growth in South Boston.

7. Several commenters believed that the definition of ''motor vehicle'' in the state regulation is ambiguous especially as to trucks, buses, construction equipment and other vehicles.

Response: 7. The definition for motor vehicle and parking space clearly covers passenger vehicles using parking spaces within the South Boston Parking Freeze area, which is the overwhelming bulk of the parking supply that Massachusetts seeks to regulate. However, the definition of motor vehicles is not clear when one thinks about trucks, busses and commercial vehicles that park on streets or odd corners of lots. Massachusetts agrees with EPA that the application of the South Boston Parking Freeze Regulation to commercial vehicles (trucks, busses and the like) is unclear in the existing regulation. EPA understands that DEP will address this implementation question in the near future through operational guidance. In any case, the rule is clear as to passenger vehicles, and will address the vast majority of vehicles using South Boston for parking.

8. The Boston Redevelopment Authority (BRA) identified two economic initiatives that in their opinion required a delay in the SIP amendment until the impact of the parking freeze could be determined. The first initiative is a City report calling for a major exposition center to be developed in the South Boston Industrial Zone or in the Piers Zone. The second initiative is a June 29, 1994 Boston Empowerment Zone application, which calls for much of the area under the South Boston Parking Freeze to be the location for major public and private investment in economic development and job opportunities for poor residents of the City.

Response 8: EPA does not envision the endorsement of the existing State regulation to impose any new developmental constraints or to have any derogatory effect on BRA's proposed development plans. In fact, many of the Federal government's recent actions in South Boston to fund public transit projects and mass transit improvements, modify the approaches and connecting roads to the Third Harbor Tunnel (Ted Williams Tunnel), and undertake the construction of a new Federal Courthouse in South Boston have all been consistent with BRA's development plans for South Boston. Furthermore, EPA has no authority to disapprove the proposed SIP amendment because of possible development plans that may be implemented in the future.

9. Several commenters raised concern that the South Boston Parking Freeze might place South Boston businesses and industries at a competitive disadvantage to suburban locations, in part, because of the perception of yet another regulatory hurdle placed in the way of new investment. At a time when Boston Harbor and the Port of Boston is being revitalized, an additional regulatory initiative targeting this neighborhood threatens to drive out existing business and frighten off the financial community, stifling the rebirth of this industrial, commercial and residential community.

Response: 9. The state regulation for South Boston Parking Freeze has been in place since April 9, 1993, with no reports of adverse economic impact. Since that time considerable federal, state, city and local funds have supported projects in South Boston including: Boston Harbor clean-up and improvement; the Port of Boston; the new Federal Courthouse; planning and future implementation of the South Boston Piers Transitway Project; rail and road enhancement projects associated with the Central Artery/Third Harbor Tunnel construction in South Boston; and new business start ups in South Boston. Moreover, the CAA SIP process leaves decisions about the economic impact of SIP control measures to the State. As discussed above, EPA has no authority to disapprove a state's SIP proposal for reasons of economic hardship. *Union Electric,* supra.

10. Several commenters raised a concern regarding funds and funding source(s) necessary for the City of Boston to implement the Freeze.

Response: 10. At the request of the City of Boston, the Massachusetts' State Auditor has determined that the South Boston Parking Freeze need not be carried out by the City until funding is provided by the State. This ruling is based on the Local Mandate Law [General Laws Chapter 29, Section 27c, so-called ''Proposition 2½''], which allows for the City of Boston to request a compliance exemption from a State imposed unfunded mandate. Here the City argues and the Massachusetts Auditor agrees that the State's South Boston Parking Regulation imposes an unfunded state mandate on Boston. Such an action could: one, force the State to provide funds that the City may determine necessary to implement the freeze; or two, force the State to implement the freeze itself. However, neither action would change the requirement to implement and enforce the South Boston Parking Freeze as a federally approved SIP control measure. Note that while approving the freeze into the SIP does make it federally enforceable, the freeze is not a federally required control program under the

Clean Air Act and EPA's SIP approval does not impose any new requirements beyond those already included in the state regulations.

11. DATA commented that the public notification process by DEP was flawed.

Response: 11. EPA regrets that DATA did not learn about the Commonwealth's November 30, 1992 public meeting/hearing on the South Boston Parking Freeze. However, DEP followed state regulations and policy regarding public participation and outreach throughout the development of 310 CMR 7.33, and has submitted ample documentation that it met the procedural requirements of CAA section 110(l) and 40 CFR sections 51.102 and 51.104(f). DATA submitted a comment letter dated November 10, 1994 (received November 16) to EPA which EPA is now addressing. EPA notes that DATA has since participated in the implementation of the South Boston Parking Freeze when several of its members testified during a July 8, 1994 public hearing held by DEP on the parking freeze plan and inventory.

12. DATA commented that the South Boston Parking Freeze is arbitrary and that the regulations will not resolve the regional air quality problem.

Response: 12. The South Boston Parking Freeze is a transportation control measure chosen by the Commonwealth of Massachusetts as one of its strategies to attain clean air. The South Boston area was part of the Boston moderate carbon monoxide (CO) nonattainment area, which was redesignated by EPA to attainment for CO on April 1, 1996. Since CO is a pollutant of local concern the reduction of motor vehicle emissions will assist the state in attaining and maintaining the CO ambient air quality standard. In fact, the Boston CO redesignation effort and the Boston CO maintenance plan both assume the implementation of the current South Boston parking freeze regulation. The South Boston area is also part of the eastern Massachusetts serious ozone (O_3) nonattainment area, where a reduction in vehicle miles traveled will reduce mobile source emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X), both precursors for the formation of ozone. Much of the VMT reduction may well be outside of the parking freeze limits, but ozone is a regional pollutant which forms over time and often at significant distances from the original source of the ozone precursors. VMT reductions will support other efforts within the Northeast Ozone Transport Region to reduce ozone concentrations and episodes. Projected emissions reductions calculated by DEP are detailed in the Technical Support Document which is contained in the docket supporting this action.

13. DATA commented that the parking freeze will impact South Boston's business community negatively, in light of the fact that the Pier and Industrial Zones of South Boston are not presently served by adequate public transportation.

Response: 13. The South Boston Piers/Fort Point Channel Transit Project will soon be built in South Boston through participation of the Federal Transit Administration, supplementing existing MBTA Bus service. See 310 CMR 7.36(2)(g). Indeed, this freeze works in conjunction with transit and high occupancy vehicle lane measures provided for in 310 CMR sections 7.36 and 7.37 as an integrated plan to encourage commuters to avoid single occupancy car trips.

14. DATA asserted that the parking freeze is unnecessary because existing zoning regulation will provide effective parking control.

Response: 14. The South Boston Parking Freeze will work in tandem with existing land use and zoning regulations. There may be future changes to the zoning regulations and individual waivers from zoning regulations, undertaken without carefully accounting for potential impacts on VMT or air quality. The SIP-approved parking freeze will provide additional assurance that efforts to restrict motor vehicle miles traveled and motor vehicle emissions in South Boston will not be relaxed without an analysis of the impacts on air quality.

15. DATA believes that the parking freeze is the wrong approach for improving air quality. A better way to improve the air quality is by increasing the levels of public transit and accessibility, by improving vehicle design to reduce emissions, and by using alternative fuels.

Response: 15. The Commonwealth is actively exploring other measures to attain and maintain air quality standards. Their current approach includes implementing the South Boston Parking Freeze, maintaining and enhancing existing mass transit services, including the South Boston Piers Transit project, conducting a statewide vehicle inspection and maintenance program, encouraging introduction of electric vehicles into the motor vehicle fleet, and encouraging the use of alternative fuels including reformulated fuels, methanol, compressed natural gas, and propane.

16. The BRA concurred in many of objections to the freeze described above, and added the point that Boston has submitted an empowerment zone application for the area covered by the freeze. The BRA maintains that the freeze imposes constraints on development inconsistent with the goals of an empowerment zone. The BRA cited to federal regulations (24 CFR Part 597) establishing the empowerment zone program which BRA asserts require that the federal government will work with communities that complete the nomination process for an empowerment zone ''to overcome programmatic regulations and statutory impediments to encourage more effective economic, physical, environmental and community development activities.''

Response: 16. EPA does not necessarily agree with BRA's assertion that the freeze is inconsistent with the development of an economically vibrant urban empowerment zone. The freeze is broadly consistent with the goals of fostering dense development, served by mass transit, with responsible measures designed to avoid automobile urban gridlock. More importantly, however, once the Commonwealth has decided that the freeze is its choice for a SIP control measure, the CAA does not give EPA authority to contradict a state's choice even if EPA believed the measure was not the most economically efficient way to control air emissions. *Union Electric,* supra.

Final Action

EPA is approving the South Boston Parking Freeze SIP Amendment as a revision to the Massachusetts SIP. Today's action makes final the action proposed on October 3, 1994 (59 FR 50211).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements because such sources are already subject to these regulations

under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: September 10, 1996.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(111) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(111) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on July 30, 1993.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated July 30, 1993 submitting a revision to the Massachusetts State Implementation Plan.

(B) Massachusetts Air Pollution Control Regulation 310 CMR 7.33, entitled ''City of Boston/South Boston Parking Freeze,'' and the following amendments to 310 CMR 7.00, entitled ''Definitions,'' which consist of adding or amending four definitions; motor vehicle parking space; off-peak parking spaces; remote parking spaces; and restricted use parking, effective in the Commonwealth of Massachusetts on April 9, 1993.

For the State of Massachusetts:

3. In § 52.1167 Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 7.00 Definitions; and by adding new state citations for 310 CMR 7.33 City of Boston/South Boston Parking Freeze to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS.

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.00 ...	Definitions	7/30/93	October 15, 1996.	[Insert FR citation from published date].	111	Adding or amending the following definitions: motor vehicle parking space; off-peak parking spaces; remote parking spaces; and restricted use parking.

TABLE 52.1167.—EPA-APPROVED RULES AND REGULATIONS.—Continued

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*		*	*	* *
310 CMR 7.33 ...	City of Boston/ South Boston Parking Freeze.	7/30/93	October 15, 1996.	[Insert FR citation from published date].	111	Applies to the parking of motor vehicles within the area of South Boston, including Massport property in South Boston.
*	*	*		*	*	* *

[FR Doc. 96–26201 Filed 10–11–96; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[TN–158–1–9632a; FRL–5619–6]

Approval and Promulgation of Implementation Plans State: Approval of Revisions to the Knox County Portion of the State of Tennessee's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Knox County portion of the Tennessee State Implementation Plan (SIP) to allow the Knox County Department of Air Pollution Control (Knox County) to utilize permits-by-rule for the purpose of limiting potential to emit (PTE) criteria pollutants for certain source categories to less than the title V permitting major source thresholds. EPA is also approving under section 112(l) of the Clean Air Act several source categories of the submitted regulations for limiting PTE of hazardous air pollutants (HAP) to less than title V permitting major source thresholds. These permits-by-rule provide a way for sources to accept limitations on their operations without the added burden of obtaining source-specific permits for the following source categories: fuel-burning equipment burning natural gas/liquified petroleum gas (LPG) and/or distillate oil, fuel burning equipment burning natural gas/LPG and/or residual oil, on-site power generation, concrete mixing plants, coating operations, printing operations, and fiberglass molding and forming operations. On May 23, 1995, Knox County through the Tennessee Department of Environment and Conservation submitted a SIP revision fulfilling the requirements necessary to utilize exclusionary rules to limit PTE of air pollutants in a federally enforceable manner.

DATES: This final rule is effective December 16, 1996 unless adverse or critical comments are received by November 14, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN158–1–9632. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Scott Miller, 404/562–9120.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

Knox County Department of Air Pollution Control, Suite 339, City-County Building, 400 West Main Street, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562–9120.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On May 23, 1995, the Knox County Department of Air Pollution Control through the Tennessee Department of Environment and Conservation submitted SIP revisions designed to allow Knox County to utilize permits-by-rule for the purpose of limiting PTE for fuel-burning equipment burning natural LPG and/or distillate oil, fuel burning equipment burning natural gas/LPG and/or residual oil, on-site power generation, concrete mixing plants, coating operations, printing operations, and fiberglass molding and forming operations. Permits-by-rule are designed to create federally enforceable limits on a facility's PTE in a manner that does not require a facility-specific evaluation of emissions and limiting conditions. As such, permits-by-rule are appropriate for the purpose of limiting PTE when a facility has one type of emission source. EPA is approving all source category permits-by-rule submitted for purposes of limiting PTE for criteria pollutants. EPA is approving under section 112(l) of the CAA, Knox County Air Pollution Control (KCAPC) regulations Section 25.10.7, Section 25.10.8, and Section 25.10.10 for purposes of limiting PTE of HAP from coating operations, printing operations, and fiberglass molding and forming operations. For a description of this and other ways to limit PTE for a facility see the EPA guidance document entitled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)'' dated January 25, 1995, from John Seitz to the EPA Regional Air Division Directors.

These permits-by-rule were designed to meet criteria listed in the EPA guidance memorandum entitled ''Guidance for State Rules for Optional Federally Enforceable Emissions Limits Based on Volatile Organic Compound Use'' dated October 15, 1993, from D. Kent Barry to the EPA Regional Air Division Directors, an EPA guidance document entitled ''Approaches to Creating federally-Enforceable Emissions Limits'' dated November 3, 1993, and the January 25, 1995, guidance memorandum referenced above. These guidance documents set out specific guidelines for permit-by-rule development regarding applicability, compliance determination and certification, monitoring, reporting, record keeping, public involvement, practical enforceability, and the requirement that a facility cannot rely on emission limits or caps contained in

a permit-by-rule to justify violation of any rate-based emission limits or other applicable requirements.

A permit-by-rule applies to facilities which agree to limit their annual emissions to less than major source thresholds for criteria and/or hazardous air pollutant (HAP) emissions. A permit-by-rule must also provide that a facility owner or operator specifically apply for coverage under the permit-by-rule. KCAPC regulation Section 25.10.C.5 requires that a facility operating under a permit-by-rule must submit a written statement verifying this status to the Department. The source categories covered by the permit-by-rule regulations are fuel-burning equipment burning natural LPG and/or distillate oil, fuel burning equipment burning natural gas/LPG and/or residual oil, on-site power generation, concrete mixing plants, coating operations, printing operations, and fiberglass molding and forming operations. As such, these regulations meet the guidelines specified in the October 15, 1993, and the January 25, 1995, guidance documents that require a permit-by-rule to clearly identify the category of sources that qualify for the rule's coverage.

The October 15, 1993, and the January 25, 1995, guidance documents suggest that facilities be required to show compliance with the permit-by-rule on a yearly basis by requiring monthly record keeping of the relevant variable causing emissions and showing compliance using the monthly record of the relevant variable affecting emissions. The January 25, 1995, guidance document stipulates that where monitoring cannot be used to determine emissions directly, limits on appropriate operating parameters must be established for the units or source, and monitoring must verify compliance with those limits. In the case of the Knox County regulations, a facility is required to keep records of the use of or processing of a product or substance that produces the emissions. For instance, KCAPC Regulation Section 25.10.B.8 requires printing operations to keep monthly records of materials including but not limited to inks, thinners, and solvents if they contain any VOC or HAP. The printing facility must then show compliance with the 20,000 pounds per year limitation during any twelve consecutive month period. EPA believes that the permit-by-rule submitted by Knox County meets guidelines outlined in the October 15, 1993, and January 25, 1995, guidance documents for purposes of detailing specific compliance monitoring to show compliance with the relevant limit resulting from a permit-by-rule.

The October 15, 1993, guidance document recommends that all submittals that result from permit-by-rule be certified for truth, accuracy, and completeness. KCAPAC regulation Section 25.10.C.3 requires that each facility which chooses to be covered by a permit-by-rule must submit annual reports and compliance certifications addressing the applicable requirements, and terms and conditions of each standard. Therefore, EPA believes that the permit-by-rule regulations submitted by Knox County meet requirements outlined in the October 15, 1993, guidance document for purposes of certification with respect to truth, completeness, and accuracy.

The October 15, 1993, guidance document recommends that reporting requirements should vary based on how close the facility emissions are to the relevant major source threshold. For facilities that are close to the major source threshold, the guidance recommends that a state or local air pollution control agency require more frequent reporting of the variable affecting emissions (e.g. gasoline throughput). KCAPC Regulation Section 25.10.C.3 requires all facilities to report emissions information or the variable directly affecting emissions on an annual basis. While under ideal circumstances, Knox County would require more frequent reporting as the relevant variable affecting emissions approached major source levels for title V, EPA believes that coupled with the requirement found in KCAPC Regulation Section 25.10.C.4, which requires that any exceedance of any applicable limitation be reported by one week after occurrence, Knox County's permit-by-rule regulations meet requirements outlined in the October 15, 1993, guidance document for purposes of reporting the relevant variable affecting emissions from the process. The October 15, 1993, guidance document also requires that a facility report any exceedance of an exclusionary rule within one week after its occurrence. The Knox County regulations satisfy this requirement by a verbatim incorporation of this requirement in KCAPC Regulation Section 25.10.C.4. Therefore, EPA believes that the Knox County regulations meet the requirements set out in the above-listed guidance documents for reporting.

The October 15, 1993, and the January 25, 1995, guidance documents specify that record keeping is required by a facility to show that the facility is eligible for the permit-by-rule and that the facility is in compliance with the relevant permit-by-rule. The October 15, 1993, guidance document requires that record keeping be maintained on site and available to the permitting authority upon demand. The October 15, 1993, guidance document also requires that a facility be required to retain records for a period sufficient to support enforcement efforts. The Knox County regulations require that copies of all records required to be kept for permit-by-rule purposes be kept on site. The permit-by-rule regulations submitted by Knox County require that records be kept for a period of five years from the date of last entry. EPA believes that a five year time period is an adequate time period for a facility subject to a permit-by-rule to maintain records in order to support enforcement efforts.

The November 3, 1993, and the January 25, 1995, guidance documents set out requirements for public involvement in the development and application of permit-by-rule regulations. The November 3, 1993, guidance document states that if permit-by-rule regulations are sufficiently reliable and replicable, EPA and the public need not be involved with their application to individual sources, as long as the protocols themselves have been subject to notice and opportunity to comment and have been approved by EPA into the SIP. The January 25, 1995, guidance document provides that source category standards approved into the SIP or under section 112(l) of the Clean Air Act, if enforceable as a practical matter, can be used as federally enforceable limits on PTE. Once a specific source qualifies under the applicability requirements of the source-category rule, additional public participation is not required to make the limits federally enforceable as a matter of legal sufficiency since the rule itself underwent public participation and EPA review. The Knox County permit-by-rule underwent public participation at the local level when these rules were made locally-effective. EPA has had an opportunity to review these regulations and is publishing this notice to take comment on these regulations at the national level. Later in this Federal Register document, practical enforceability of Knox County's permit-by-rule regulations will be addressed. EPA believes that with this Federal Register document and other public process received at the local level that the Knox County permit-by-rule regulations satisfy requirements for public participation outlined in the November 3, 1993, and the January 25, 1995, guidance documents.

The January 25, 1995, guidance document sets out requirements for a permit-by-rule to be practically enforceable. These requirements stem from past precedence in what the EPA has required for a permit to be considered enforceable as a practical matter. See 54 FR 27274 (June 28, 1989) and a June 13, 1989, EPA policy memorandum entitled ''Limiting Potential to Emit in New Source Permitting.'' The criteria include clear statements as to the applicability, specificity as to the standard that must be met, explicit statements of the compliance time frames (e.g. hourly, daily, monthly, or 12-month averages, etc.), that the time frame and method of compliance employed must be sufficient to protect the standard involved, record keeping requirements must be specified, and equivalency provisions must meet specific requirements. In general, practical enforceability means that the provision must specify; (1) a technically accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation; and (3) the method to determine compliance including appropriate monitoring, record keeping, and reporting. All of these elements have been discussed prior to this paragraph in this Federal Register with the exception of (2) above. The Knox County regulations require facilities subject to the permit-by-rule to keep records on a monthly basis and to determine compliance with a yearly limit on a calendar monthly rolling average basis. This method for determining compliance with the permit-by-rule was addressed specifically as one practically enforceable way to show compliance with a permit limit in the June 13, 1989, guidance document entitled ''Limiting Potential to Emit in New Source Permitting.'' As such, EPA believes the Knox County permit-by-rule regulations meet the requirements necessary for a permit-by-rule to be enforceable as a practical matter.

Finally, the October 15, 1993, guidance document stipulates that a facility cannot rely on emission limits or caps contained in a permit-by-rule to justify violation of any rate-based emission limits or other applicable requirements. This requirement for title V permitting is fulfilled by inclusion of KCAPC Regulation Section 25.10.C.5 which stipulates that non-compliance with provisions of the permit-by-rule regulations will be subject to an enforcement action unless the facility has first obtained a formal release through a part 70 permit or some other federally enforceable permit from Knox County.

Eligibility for federally enforceable permit-by-rule limitations extends not only to certifications made after the effective date of this rule, but also to certifications issued under the current Knox County rule prior to the effective date of this rulemaking. If Knox County followed its own permit-by-rule regulation, it received certifications that established a limiting condition on a facility's PTE. EPA will consider all such permit-by-rule certifications which were submitted in a manner consistent with the Knox County regulations as federally enforceable upon the effective date of this action.

II. Final Action

In this action, EPA is approving the Knox County permit-by-rule regulations found at KCAPC Regulations: Section 25.10 into the Knox County portion of the Tennessee SIP. EPA is approving KCAPC Regulations Section 25.10.A, 25.10.B.7, 25.10.B.8, 25.10.B.10, 25.10.C for purposes of limiting PTE of HAP under section 112(l) of the CAA. The EPA is publishing this document without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 16, 1996 unless, by November 14, 1996, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective December 16, 1996.

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

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

III. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section

205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides.

Dated: August 29, 1996.

Robert F. McGhee,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart RR—Tennessee

2. Section 52.2220, (c) is amended by adding paragraph (c)(140) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(140) Permit-by-rule regulations for Knox County Department of Air Pollution Control submitted by the Knox County Department of Air Pollution Control through the Tennessee Department of Environment and Conservation on May 23, 1995 as part of Knox County's portion of the Tennessee SIP.

(i) Incorporation by reference.

(A) Regulation Section 25.10 of the Knox County portion of the Tennessee SIP as adopted by the Knox County Air Pollution Control Board on April 12, 1995.

(ii) Other material. None.

[FR Doc. 96–26199 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[ME–001–3567a; A–1–FRL–5620–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on July 24, 1995. This revision includes requirements for controlling volatile organic compound (VOC) emissions from bulk gasoline terminals and gasoline dispensing facilities. The intended effect of this action is to approve these regulations into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This action is effective December 16, 1996, unless EPA receives adverse or critical comments by November 14, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On July 26, 1995, EPA received a formal State Implementation Plan submittal from the Maine Department of Environmental Protection (DEP) containing the following VOC regulations:

Chapter 100: Definitions Regulation
Chapter 112: Bulk Terminal Petroleum Liquid Transfer Requirements
Chapter 118: Gasoline Dispensing Facilities Vapor Control

These regulations had been recently revised pursuant to the reasonable further progress (RFP) requirements of the Clean Air Act (CAA) [Section 182(b)(1)].

Background

On November 15, 1990, amendments to the 1977 Clean Air Act were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 182(b)(1) of the amended Act requires that states with ozone nonattainment areas classified as moderate and above develop reasonable further progress (RFP) plans to reduce VOC emissions by 15 percent within these areas by 1996 when compared to 1990 baseline emission levels. The State of Maine contains three moderate ozone nonattainment areas 56 FR 56694 (Nov. 6, 1991). EPA, however, determined that RFP plans were not required in the Lewiston-Auburn moderate ozone nonattainment area and the Knox and Lincoln counties moderate ozone nonattainment area (60 FR 29763, (June 6, 1995)). Therefore, Maine adopted and submitted to EPA an RFP Plan for the Portland moderate ozone nonattainment area only. The revisions to Maine's Chapter 112 and Chapter 118 were adopted in order to generate VOC

emission reductions which are included in Maine's RFP Plan for the Portland area.

Also, Section 184(b)(2) of the amended Act requires that states in the Ozone Transport Region (OTR) adopt Stage II or comparable measures within one year of EPA completion of a study identifying control measures capable of achieving emissions reductions comparable to those achievable through Section 182(b)(3) Stage II vapor recovery controls. On January 13, 1995, EPA completed its study ''Stage II Comparability Study for the Northeast Ozone Transport Region'' (EPA–452/R–94–011). Therefore, states in the OTR must adopt Stage II or comparable measures and submit them to EPA as a SIP revision by January 13, 1996. Maine has not yet submitted its Stage II comparability SIP revision to EPA, however, the reductions resulting from Maine's revisions to Chapters 112 and 118 may be used by the State in meeting the Stage II comparability requirement.

Maine's regulation revisions are briefly summarized below.

Summary of Regulation Revisions

Chapter 100: Definitions Regulation

The definition of ''volatile organic compound (VOC)'' was revised. Acetone, parachlorobenzotriflouride, and volatile methyl siloxanes are now included on the list of compounds that are exempted from the definition of VOC because of their negligible photochemical reactivity.

Chapter 112: Bulk Terminal Petroleum Liquid Transfer Requirements

The emission limit for bulk gasoline terminals was lowered from 80 mg/l to 35 mg/l. Compliance with the new lower limit is required by August 31, 1996.

Chapter 118: Gasoline Dispensing Facilities Vapor Control

New Stage II vapor recovery requirements for gasoline dispensing facilities were added to this regulation.

Gasoline dispensing facilities in the Portland ozone nonattainment area which dispense 1,000,000 gallons of gasoline or more per year must install Stage II controls by November 15, 1996.

Maine's revisions will reduce VOC emissions. VOCs contribute to the production of ground level ozone and smog. These revisions were adopted as part of an effort to achieve the National Ambient Air Quality Standards for ozone. The following is EPA's evaluation of Maine's submittal.

Evaluation of Maine's Submittal

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. The specific guidance relied on for this action is referenced within the technical support document and this notice. For the purpose of assisting State and local agencies in developing VOC rules, EPA prepared a series of Control Techniques Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms for reasonably available control technology (RACT) for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in, but not limited to, the following: (1) The proposed Post-1987 ozone and carbon monoxide policy, 52 FR 45044 (November 24, 1987); (2) the document entitled, ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice,'' otherwise known as the ''Blue Book'' (notice of availability was published in the Federal Register on May 25, 1988); and (3) the ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology,'' (Model VOC RACT Rules) issued as a staff working draft in June of 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

Also, under Section 182(b)(3) of the Act, EPA was required to issue guidance as to the effectiveness of Stage II vapor recovery systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement. In addition, on April 16, 1992, EPA published the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

EPA has evaluated Maine's revisions to its Chapter 100 and 112 regulations and has found that these revisions are generally consistent with EPA model regulations, 40 CFR Part 51.100(s), 40 CFR Part 60 Subpart XX, and the following EPA guidance document: ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals'' (EPA–450/2–77–026). EPA has also evaluated the Stage II vapor recovery provisions which were added to Maine's Chapter 118 regulation and has found that these provisions are generally consistent with the following EPA guidance documents: ''Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities'' (EPA–450/3–91–022); and ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs'' (October 1991).

There is, however, one provision of Chapter 118 which is unique to Maine's Stage II program. This provision is briefly summarized below.

Maine's Market-Based Exemption

Section 12 of Maine's revised Chapter 118 includes a ''market-based exemption'' provision which states that a gasoline dispensing facility may apply for an exemption from the Stage II requirements of the regulation if the facility installs Stage II controls at substituting facilities not otherwise subject to the rule (i.e., gasoline dispensing facilities whose gasoline throughput is less than the 1,000,000 gallons per year applicability threshold of the regulation). The substituting facilities must be located in the Portland ozone nonattainment area and have a total combined throughput which is greater than the throughput of the facility requesting the exemption. In addition, ''All substituting facilities participating in the market-based exemption are subject to all Stage II requirements specified in Section 4 (Standards for Stage II vapor recovery systems), Section 7 (Testing for Stage II vapor recovery systems), Section 8 (Training and Public Education), Section 9 (Recordkeeping and Reporting), and Section 10 (Registration of the Stage II vapor recovery systems).'' This ''market-based exemption'' provision may be viewed as an economic incentive program in which participation is limited to gasoline dispensing facilities.

In order for EPA to grant approval of a state's economic incentive program certain criteria must be met. These criteria are outlined in EPA's Economic Incentive Program (EIP) rule which was promulgated on April 7, 1994 (59 FR 16690) and is codified at 40 CFR Part 51 Subpart U. Specifically, the EIP rule requires that trading programs contain specific source requirements, replicable

emissions quantification methods, audit/reconciliation procedures, and an additional environmental benefit beyond that which would be achieved through a traditional regulatory program. EPA has evaluated Maine's Stage II market-based exemption provision and has found that this provision, in conjunction with the state's Stage II implementation policy (as stated in a letter to EPA dated May 6, 1996), satisfies the criteria outlined in the EIP rule.

A detailed discussion of Maine's Chapter 100, Chapter 112, and Chapter 118 revisions and EPA's evaluation are contained in a memorandum dated June 19, 1996, entitled ''Technical Support Document—Maine—Stage II Vapor Recovery.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is publishing this action without prior proposal in order to expedite the Agency's approval and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 16, 1996 unless adverse or critical comments are received by November 14, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on December 16, 1996.

Final Action

EPA is approving Maine's revised Chapter 100 ''Definitions Regulation,'' Maine's revised Chapter 112 ''Bulk Terminal Petroleum Liquid Transfer Requirements,'' and Maine's revised Chapter 118 ''Gasoline Dispensing Facilities Vapor Control.''

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

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

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this State Implementation Plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Sections 182 and 184 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

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

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).) Any such petition must be based on objections raised with reasonable specificity as a public comment, unless it was impracticable to do so. Section 307(b)(7)(B). Therefore, interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

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

Dated: September 23, 1996.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraphs (c)(42) and (c)(43) to read as follows:

§ 52.1020 Identification of plan.

* * * * * *

(c) * * *

(42) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on July 24, 1995.

(i) Incorporation by reference.

(A) Two letters from the Maine Department of Environmental Protection dated July 24, 1995 submitting revisions to the Maine State Implementation Plan.

(B) Chapter 100 of the Maine Department of Environmental Protection Regulations, ''Definitions Regulation,'' definition of ''volatile organic compounds (VOC)'' effective in the State of Maine on July 25, 1995.

(C) Chapter 112 of the Maine Department of Environmental Protection Regulations, ''Bulk Terminal Petroleum Liquid Transfer Requirements,'' effective in the State of Maine on July 25, 1995.

(ii) Additional materials

(A) Nonregulatory portions of the submittal.

(43) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on July 24, 1995.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated July 24, 1995 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 118 of the Maine Department of Environmental Protection Regulations, ''Gasoline Dispensing Facilities Vapor Control,'' effective in the State of Maine on July 25, 1995.

(ii) Additional materials

(A) Letter from the Maine Department of Environmental Protection dated May 6, 1996.

(B) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding new entries to existing state citations for Chapters 100, 112, and 118 to read as follows:

§ 52.1031 EPA—Approved Maine Regulations.

* * * * *

TABLE 52.1031—EPA—APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*		*	*	*	*
100	Definitions	7/19/95	October 15, 1996.	[Insert *FR* citation from published date].	(c)(42)	Definition of ''VOC'' revised.
*	*		*	*	*	*
112	Gasoline Bulk Terminals.	7/19/95	October 15, 1996.	[Insert *FR* citation from published date].	(c)(42)	Emission limit lowered from 80 mg/l to 35 mg/l
*	*		*	*	*	*
118	Gasoline Dispensing Facilities.	7/19/95	October 15, 1996.	[Insert *FR* citation from published date].	(c)(43)	Stage II vapor recovery requirements added.

[FR Doc. 96–26197 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[LA–27–1–7166a, NM–30–1–7299a, FRL–5612–7]

Clean Air Act (Act) Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration (PSD); Louisiana and New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving revisions to the PSD permitting regulations which were submitted as revisions to the State Implementation Plans (SIP) for Louisiana and New Mexico. The revisions were submitted to address the replacement of the total suspended particulate (TSP) increments, with increments for PM–10 (particulate matter 10 micrometers or less in diameter). The EPA is approving the SIP revisions because they are consistent with the corresponding Federal regulations. The EPA is also removing the TSP area designation tables and revising and/or adding PM–10 area designation tables in 40 CFR part 81 for these States. With the PM–10 increments becoming effective in these areas, the TSP area designations no longer serve any useful purpose relative to PSD.

DATES: This action is effective on December 16, 1996, unless notice is postmarked by November 14, 1996 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register (FR).

ADDRESSEES: Comments should be mailed to Jole C. Luehrs, Chief, Air Permits Section (6PD–R), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's submittal and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

New Mexico Environment Department, Air Monitoring and Control Strategy Bureau, 1190 St. Francis Drive, Room So. 2100, Santa Fe, New Mexico 87503

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810

Anyone wishing to review this information at the Region 6 EPA office

should contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel R. Mitz, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8370.

SUPPLEMENTARY INFORMATION:

Background

In this document, EPA is acting on revisions to the PSD permitting programs for the States of Louisiana and New Mexico. The revisions were generally made to address the following changes in the Federal PSD permitting requirements in 40 CFR 51.166:

A. The replacement of the TSP increments with increments for PM–10, which were promulgated by EPA on June 3, 1993 (58 FR 31622–31638); and

B. The promulgation of revisions to the Federal PSD permitting requirements regarding utility pollution control projects that States could voluntarily adopt into their PSD regulations, which were promulgated by EPA on July 21, 1992 (57 FR 32314–32339).

Specifically, the following submittals were made:

The Governor of Louisiana submitted revisions to Louisiana Administrative Code 33:III. Chapter 5, Section 509 on March 22, 1995, to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

The Governor of New Mexico submitted revisions to 20 New Mexico Administrative Code 2.74 on June 26, 1995, to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

This document evaluates the States' submittals for conformity with the corresponding Federal regulations and the requirements of the Act. In addition, this document provides justification regarding the removal of the TSP designation tables in 40 CFR part 81 for Louisiana and New Mexico.

This Action

A. Analysis of State Submissions

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

Public hearings to entertain public comment of the initial PSD SIP revisions were held by Louisiana on November 29, 1994, and by New Mexico on April 21, 1995. After these respective public hearings, the rule revisions were adopted by each State. The rule revisions were formally submitted to EPA for approval on March 8, 1995, from Louisiana and June 26, 1995, from New Mexico. Each SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittals were found to be complete, and letters dated July 20, 1995, were forwarded to Louisiana and New Mexico indicating the completeness of each submittal and the next steps to be taken in the processing of each SIP submittal.

2. Evaluation of States' Submittals

a. PM–10 Increment Revisions. As discussed above, EPA promulgated increments for PM–10 on June 3, 1993 (see 58 FR 31622–31638). The EPA promulgated revisions to the Federal PSD permitting regulations in 40 CFR 52.21, as well as the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166. The EPA or its delegated State programs were required to begin implementation of the increments by June 3, 1994, while the implementation date for States with SIP-approved PSD permitting programs (including Louisiana and New Mexico) will be the date on which EPA approves each revised State PSD program containing the PM–10 increments. In accordance with 40 CFR 51.166(a)(6)(i), each State with SIP-approved PSD programs was required to adopt the PM–10 increment requirements within nine months of the effective date (or by March 3, 1995). For further background regarding the PM–10 increments, see the June 3, 1993, FR document.

(1) Louisiana's Submittal. In order to address the PM–10 increments, the State of Louisiana revised the following sections of its PSD permitting regulations in the Regulation Louisiana Administrative Code: 33:III.Chapter 5, Section 509. The EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993.

(2) New Mexico's Submittal. In order to address the PM–10 increments, the State of New Mexico revised the following sections of its PSD permitting regulations in the 20 New Mexico Administrative Code 2.74. The EPA has reviewed these revisions and has found that the revisions address all of the required regulatory revisions for PM–10 increments promulgated by EPA on June 3, 1993. Note that the State elected not to adopt 40 CFR 51.166(i)(12), which provides an exemption from addressing the new PM–10 increments for sources who have submitted a PSD permit application which the State has determined to be complete before the PM–10 increments take effect. New Mexico's rules do not contain this grandfathering clause, which is acceptable.

b. TSP Area Deletions. Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which, (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, EPA published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as ''section 107 areas''), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments).

The EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM–

10 indicator. However, EPA did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM–10 promulgated at that time.[1] States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM–10 increments replaced the TSP increments. With the State adoption and implementation of the PM–10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM–10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, i.e., ''PSD areas,'' and to provide the geographic link necessary for implementation of the PM–10 increments.[2]

Thus, in the June 3, 1993, FR document in which EPA promulgated the PM–10 increments, EPA stated that, for States with SIP-approved PSD programs, EPA would delete the TSP area designations at the same time EPA approves the revision to a State's plan incorporating the PM–10 increments. For delegated PSD programs or in States where EPA administers the PSD program, the TSP area designations were to be deleted after the PM–10 increments became effective in those States (i.e., June 3, 1994). In deleting any State's TSP area designations, EPA must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM–10 NAAQS.

(1) Louisiana's TSP Areas. As stated above, Louisiana has adopted and submitted adequate PSD revisions for PM–10 increments. In addition, Louisiana had no TSP areas designated as nonattainment. Thus, deletion of the TSP area designations will not result in relaxation of any TSP controls that would impact the PM–10 NAAQS. Since Louisiana also has no PM–10 nonattainment areas designated in the State, there is no PM–10 designation table currently in 40 CFR part 81 for Louisiana. Therefore, EPA is deleting the TSP area designation table and is creating a PM–10 area designation table in 40 CFR 81.319. The EPA will retain for PM–10 the three section 107 areas listed in the current TSP table for Louisiana, consistent with the June 3, 1993, FR document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 51.166.

(2) New Mexico's TSP Areas. New Mexico has one area listed in 40 CFR part 81 as nonattainment for the TSP standards but which is not designated nonattainment for PM–10. Portions of the City of Albuquerque were designated nonattainment for the primary TSP standard. The City of Albuquerque is located in Bernalillo County, which is under the jurisdiction of the Albuquerque/ Bernalillo County Air Quality Board. Consequently, the TSP designations for areas in Bernalillo County will be retained until EPA has approved PM–10 increments for Bernalillo County. All remaining areas in New Mexico are in attainment status for TSP. Consequently, EPA believes it is appropriate at this time to delete the TSP designations for these areas. If the State subsequently revises any of the particulate matter control strategies currently in the SIP for these areas, it must submit a SIP revision to EPA for approval that must meet all applicable requirements of the Act. The EPA will retain for PM–10 this section 107 area listed in the current TSP table for New Mexico, consistent with the June 3, 1993, FR document which requires retention of the TSP baseline areas for PM–10 unless revised by the State in accordance with 40 CFR 51.166.

As stated above, the State has adopted adequate provisions in its PSD program for the implementation of the PM–10 increments. Therefore, EPA is deleting all parts of the State's existing TSP designation table in 40 CFR 81.332 except for those parts addressing areas in Bernalillo County.

Final Action

Based on the review and justification provided in this document, EPA is approving the SIP revisions regarding PSD permitting submitted by the States of Louisiana and New Mexico on March 22, 1995, and June 26, 1995, respectively.

In addition, EPA is deleting the TSP area designation tables and revising the PM–10 area designation tables in 40 part 81 as follows:

A. For Louisiana, EPA is deleting the TSP area designation table and is creating a PM–10 designation table listing the ''AQCR 019'' area, the ''AQCR 022'' area, and the ''AQCR 106'' area as unclassifiable for PM–10 in 40 CFR 81.319.[3]

B. For New Mexico, EPA is deleting all parts of the State's existing TSP designation table in 40 CFR 81.332 except for those parts addressing areas in Bernalillo County.

In these States' PM–10 area designation tables, EPA is clarifying that the ''Rest of State'' areas denote a single area designation for PSD baseline area purposes.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this FR publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective December 16, 1996, unless adverse or critical comments are postmarked by November 14, 1996. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action will be effective December 16, 1996.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, under 5 U.S.C. 605(b), EPA may certify that the rule will not have a significant impact on a substantial number of small entities (see 46 FR 8709). Small entities include small businesses, small not-for-profit enterprises, and governmental entities

[1] The EPA did not promulgate new PM–10 increments simultaneously with the promulgation of the PM–10 NAAQS. Under section 166(b) of the Act, EPA is authorized to promulgate new increments ''not more than 2 years after the date of promulgation of * * * standards.'' Consequently, EPA temporarily retained the TSP increments, as well as the section 107 areas for TSP.

[2] Note that 40 CFR part 81 does not presently list all section 107 areas for PM–10. Only those areas designated ''nonattainment'' appear in the State listings. This is because under the listing published by EPA in the Federal Register on November 6, 1991, EPA's primary objective was to identify nonattainment areas designated as such by operation of law upon enactment of the 1990 Amendments. For States having no PM–10 nonattainment areas designated by operation of law, EPA did not include a new PM–10 listing. Nevertheless, section 107(d)(4)(B)(iii) mandates that all areas, not designated nonattainment for PM–10 by operation of law, are designated unclassifiable. The PM–10 increments apply in any area designated unclassifiable for PM–10.

[3] At this time, the EPA is designating the PM–10 areas as unclassifiable, rather than attainment, to be consistent with section 107(d)(4)(B) of the Act which stated that any area which was not initially designated as nonattainment for PM–10 shall be designated unclassifiable. The EPA will consider redesignating these areas to ''attainment'' status at a later date. Both ''unclassifiable'' and ''attainment'' areas have the same status for PSD purposes.

with jurisdiction over populations of less than 50,000. The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA from basing its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 16, 1996. Filing a petition for reconsideration of this final rule by the Administrator does not affect the finality of this rule for purposes of judicial review; nor does it extend the time within which a petition for judicial review may be filed, or postpone the effectiveness of this rule. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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

Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this SIP or plan revision approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 110 of the Act. The rules and commitments approved in this action may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules and commitments being approved by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments, either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Submission to Congress and the General Accounting Office

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

Office of Management and Budget (OMB) Review

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 27, 1996.

Jerry Clifford,

Acting Regional Administrator (6RA–D).

40 CFR Parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(69) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(69) The Governor of Louisiana submitted revisions to Regulation Louisiana Administrative Code on March 22, 1995 to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

(i) Incorporation by reference.

(A) Revisions to Regulation Louisiana Administrative Code 33:III.Chapter 5, Section 509, effective February 20, 1995: Section B. Definitions: Baseline Date; Section B. Definitions: Net Emissions Increase; Section D. Ambient Air Increments; Section E.8.a.; Section K.2.; and Section P.4.

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Subpart GG—New Mexico

3. Section 52.1620 is amended by adding paragraph (c)(62) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(62) The Governor of New Mexico submitted revisions to 20 New Mexico Administrative Code 2.74 on June 26, 1995, to incorporate changes in the Federal PSD permitting regulations for PM–10 increments.

(i) Incorporation by reference.

(A) Revisions to 20 New Mexico Administrative Code 2.74, effective July 20, 1995.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

§§ 81.319, 81.332 [Amended]

2. Section 81.319 is amended by removing the TSP table.

3. Section 81.319 is further amended by adding a new table for PM–10 to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
AQCR 019	11/15/90	Unclassifiable		
AQCR 022	11/15/90	Unclassifiable		
AQCR 106	11/15/90	Unclassifiable		

4. Section 81.332 is amended by revising the TSP table to read as follows:

§ 81.332 New Mexico.

* * * * *

NEW MEXICO—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 152:				
Bernalillo County:				
Portions of City of Albuquerque	X			
Remainder of County				X

[FR Doc. 96–26204 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–75; RM–8781]

Radio Broadcasting Services; Reynoldsville, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Priority Communications, Inc., substitutes Channel 293A for Channel 258A at Reynoldsville, Pennsylvania, and modifies Station WDSN(FM)'s license accordingly. *See* 61 FR 18540, April 26, 1996. Channel 293A can be can be allotted to Reynoldsville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's authorized site. The coordinates for Channel 293A at Reynoldsville are North Latitude 41–08–41 and West Longitude 78–52–41. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 18, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 96–75, adopted September 27, 1996, and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Pennsylvania, is amended by removing Channel 258A and adding Channel 293A at Reynoldsville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26364 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 95–163; RM–8715]

Radio Broadcasting Services; Wilson Creek, WA and Pendleton, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Wilson Creek Communications, LLC, substitutes Channel 278C1 for Channel 277C3 at Wilson Creek, Washington, and modifies Station KVYF(FM)'s license accordingly. To accommodate the substitution, we also substitute Channel 279C1 for Channel 278C1 at Pendleton, Oregon, and modify Station KWHT(FM)'s license accordingly. *See* 60 FR 56034, November 6, 1995. Channel 278C1 can be allotted at Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) south to avoid a short-spacing to the proposed allotment site for Channel 279B, Rock Creek, British Columbia. The coordinates for Channel 278C1 at Wilson Creek are North Latitude 47–24–49 and West Longitude 119–07–15. Additionally, Channel 279C1 can be allotted to Pendleton, Oregon, in compliance with the Commission's minimum distance separation requirements at Station KWHT(FM)'s presently licensed site. *See* Supplementary Information, *infra*.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–163 adopted August 30, 1996, and released September 25, 1996, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The coordinates for Channel 279C1 at Pendleton are North Latitude 45–47–51 and West Longitude 118–22–17. Since the Wilson Creek is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

Section 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 277C3 and adding Channel 278C1 at Wilson Creek.

3. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 278C1 and adding Channel 279C1 at Pendleton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26361 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 95–81; RM–8649]

Radio Broadcasting Services; Temecula, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277A to Temecula, California, as that community's second local FM service, in response to a petition for rule making filed on behalf of BEXT, Inc. *See* 60 FR 32130, June 20, 1995. Temecula is located within 320 kilometers (199 miles) of the United States-Mexico border and therefore, concurrence of the Mexican government in this proposal was obtained. Coordinates used for Channel 277A at Temecula are 33–29–37 North Latitude and 117–08–51 West Longitude. With this action, the proceeding is terminated.

DATES: Effective November 18, 1996. The window period for filing applications will open on November 18, 1996, and close on December 19,1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 277A at Temecula, California, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 95–81, adopted September 27, 1996, and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 277A at Temecula.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26363 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–F

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47 CFR Part 73

[MM Docket No. 96–11; RM–8742]

Television Broadcasting Services; Waverly, NY and Altoona, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WSKG Public Telecommunications Council, allots UHF TV Channel *57– to Waverly, New York, and reserves it for noncommercial educational use, as the community's first local television service. In addition, the reference coordinates for vacant and unapplied-for UHF TV Channel *57+ at Altoona, Pennsylvania, are modified. *See* 61 FR 6336, February 20, 1996. Channel *57– can be allotted to Waverly in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.1 kilometers (3.1 miles) north to avoid a short-spacing to Station WGBY-TV, Channel 57+, Springfield, MA, Station WNYS-TV, Channel 43+, Syracuse, NY, and Station CITY-TV, Channel 57, Toronto, Ontario, Canada, at coordinates 42–03–20 North Latitude and 76–32–05 West Longitude. The reference coordinates for Channel *57+ at Altoona are changed to 40–24–01; 78–32–42, to reflect a transmitter site 18 kilometers (11.2 miles) southwest. Canadian concurrence in the allotment at Waverly and reference coordinate change at Altoona has been obtained since both communities are located within 400 kilometers (250 miles) of the U.S.-Canadian border. The allotment at Waverly is not affected by the temporary freeze imposed by the Commission on new television allotments in certain metropolitan areas but Altoona lies within the freeze zone of Pittsburgh, PA. Therefore, the freeze on applications with respect to Channel *57+ at Altoona will continue in effect. With this action, this proceeding is terminated.

DATES: Effective November 12, 1996. The period for filing applications will open on November 12, 1996. If no acceptable applications are filed by December 13, 1996, there will be no additional opportunity to file applications for this channel allotment.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 96–11, adopted September 20, 1996, and released September 27, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under New York, is amended by adding Waverly, Channel *57–.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26362 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF AGRICULTURE

Procurement and Property Management

48 CFR Parts 401 through 453

RIN 0599–AA00

Agriculture Acquisition Regulation; Revision

AGENCY: Procurement and Property Management, Agriculture.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is publishing a revised Agriculture Acquisition Regulation (AGAR) as a final rule. We are revising the AGAR to reflect changes in acquisition law and regulations since the AGAR's last major revision in 1988, to update organizational references throughout the AGAR, and to streamline the AGAR as part of the President's Regulatory Reform Initiative.

EFFECTIVE DATE: This regulation is effective November 14, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph J. Daragan, (202) 720–5729.

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of comments
III. Procedural Requirements
A. Executive Order Nos. 12866 and 12988.
B. Regulatory Flexibility Act.
C. Paperwork Reduction Act.
D. Small Business Regulatory Enforcement Fairness Act.

I. Background

The AGAR implements the Federal Acquisition Regulation (FAR) (48 CFR Ch. 1) where further implementation is needed, and supplements the FAR when coverage is needed for subject matter not covered by the FAR. The AGAR is being revised as part of the National Performance Review (NPR) program to eliminate unnecessary regulations and improve those that remain in force.

As an initial step in the NPR regulatory review initiative, the Department of Agriculture (USDA) identified parts of the AGAR which required updating or streamlining. USDA's review indicated that almost all parts required revision. Accordingly, USDA has reviewed and made revisions to substantially all parts of the AGAR. In an Advance Notice of Proposed Rulemaking (61 FR 7456, February 28, 1996), USDA sought comments and suggestions from the public concerning what changes should be made to the AGAR. In a Notice of Proposed Rulemaking (61 FR 37032, July 16, 1996), USDA announced that the proposed revision of the AGAR was available for public review and comment during a 60 day comment period. The proposed rule was made available in hard copy, as an electronic file, and as a file on the Internet. The Department of Agriculture received comments on the proposed rule from 4 Departmental agencies. No comments were received from individuals, private business concerns (large or small), state or local governments, or other Federal agencies. In this rulemaking document, the Department of Agriculture is finalizing the proposed revision to the AGAR, with changes made to reflect certain comments received as well as recent amendments to the FAR.

II. Analysis of Comments

As noted, the Department of Agriculture has carefully considered the comments submitted in response to the Notice of Proposed Rulemaking and, as discussed below, is modifying a few portions of the rule as proposed in adopting it as final. The discussion below is focused on the major areas of comment regarding the proposed rule changes.

One USDA agency commented that it was unclear why the public would need more than the FAR to understand USDA acquisition policy and procedures. We believe that an agency supplement to the FAR provides an accessible source of information about agency acquisition policies which may have an effect on businesses dealing with USDA. An agency supplement may also inform the public in general terms about which official or level of authority may control acquisition decisions within the agency. Furthermore, FAR subpart 1.3 requires that agency acquisition regulations be published in the Federal Register when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. The FAR also may require that FAR policies be implemented in accordance with agency regulations (see FAR 3.301), or may provide that agencies may deviate from FAR procedures if specified in agency acquisition regulations (see FAR 5.303(a)). USDA maintains the AGAR to provide implementing and supplementing regulations in accordance with these provisions of the FAR.

One USDA agency commented that the AGAR, whenever possible, designate the contracting officer as the official responsible for making acquisition determinations and carrying out responsibilities outlined in the FAR and the AGAR. Where this is not possible, the agency commented that the head of the contracting activity (HCA) should be designated as the responsible official with authority to redelegate to any level. We do not disagree that authority to conduct acquisitions and to manage contracts should be delegated to the lowest appropriate level. We have sought to do this throughout the AGAR to the extent permitted by the FAR. In some cases, we have sought to delegate authority to an intermediate level between the contracting officer and the HCA, such as the chief of the contracting office. ''Chief of the contracting office'' is a term used in the FAR and in the current AGAR, and may be applied by contracting activities to a level of authority consistent with their organizational structure. Accordingly, while we have corrected some references to authority levels which were inconsistent or confusing, we

otherwise have not adopted this comment.

Two agencies commented concerning proposed AGAR 419.201–71(d), which requires small business coordinators (OSDBU coordinators) to ensure that purchases ''under the simplified acquisition threshold'' are reserved for small business concerns. Both agencies noted that this paragraph is inconsistent with the FAR, which establishes a small business reserve for purchases between the $2,500 micropurchase threshold and the simplified acquisition threshold. We have corrected AGAR 419.201–71(d) to conform to the FAR.

One agency commented that AGAR 433.103, Protests to the Agency, did not imply that protests should be filed with the HCA, and recommended that protests be filed with the contracting officer. AGAR 433.103 establishes USDA's procedure for agency protests. It designates the HCA as an alternate forum for resolution of agency protests. Contractors may file protests either with the contracting officer or the HCA. Accordingly, we have not adopted this comment. However, the comment did suggest one potential ambiguity in this section. To clarify the protest procedure, we have added a requirement that the protester provide a copy of the protest to the contracting officer if the protest is filed with the HCA.

The following additional changes have been made to the rule. These changes were made either to incorporate agency suggestions or to reflect changes in the FAR.:

(a) AGAR 401.602–3(b) is amended to delegate ratification authority to the Chief of the Contracting Office.

(b) AGAR 403.408, Evaluation of the SF 119, has been removed to reflect an amendment to the FAR.

(c) AGAR subpart 406.5 has been amended to designate the Chief, Procurement Policy Division, Procurement and Property Management, as Departmental Competition Advocate.

(d) AGAR part 413 has been revised to reflect an amendment to the FAR.

(e) AGAR 416.404–2 has been amended to provide that the head of the contracting activity may designate a fee determination official for award fee contracts.

(f) AGAR 416.505 has been added to designate the Chief, Procurement Policy Division, Procurement and Property Management, as Departmental Delivery/Task Order Ombudsman.

(g) AGAR subpart 422.70, Compliance with the Immigration and Nationality Act, has been removed because the issue is now addressed in FAR subpart 9.4.

(h) AGAR 425.102(b) and 425.202(b), concerning Buy American Act nonavailability determinations, have been removed because they duplicate material in the FAR.

(i) AGAR 425.7, Restrictions on Certain Foreign Purchases, has been removed to reflect an amendment to the FAR.

(j) AGAR 436.203 has been amended to clarify when construction cost estimates may be disclosed by the contracting officer.

(k) AGAR 449.111 has been amended to allow contracting activities to establish procedures for review of termination settlements

III. Procedural Requirements

A. Executive Order Nos. 12866 and 12988

A work plan was prepared for this regulation and submitted to the Office of Management and Budget pursuant to Executive Order No. 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order No. 12866. Therefore, the proposed rule has not been reviewed by the Office of Management and Budget. This rule has been reviewed in accordance with Executive Order No. 12988.

B. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601–611, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. The AGAR is issued to implement or supplement the FAR, and does not materially add to the impact of the FAR regulations it implements or supplements. USDA certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared. However, comments from small entities concerning the impact of the proposed rule were solicited in the Notice of Proposed Rulemaking which announced the availability of the proposed rule for comment (61 FR 37032, July 16, 1996). No comments from small entities were received.

C. Paperwork Reduction Act

Information collection and recordkeeping required by the AGAR have been approved by the OMB. OMB control numbers 0505–0010, 0505–0011, 0505–0013, 0505–0014, 0505–0015, and 0505–0016 apply to the AGAR. No additional information collection or recordkeeping requirements are imposed on the public by this final rule. Accordingly no OMB clearance is required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, et. seq., or OMB's implementing regulation at 5 CFR Part 1320.

D. Small Business Regulatory Enforcement Fairness Act

This final rule has been submitted to each House of Congress and the Comptroller General in accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, *et seq.*

List of Subjects in 48 CFR Parts 401 Through 453

Government contracts, Government procurement.

For the reasons set out in the preamble, 48 CFR chapter 4 (parts 401 through 453) is revised as set forth below:

W.R. Ashworth,

Director, Procurement and Property Management.

Agriculture Acquisition Regulation

SUBCHAPTER A—GENERAL

Part 401—Agriculture Acquisition Regulation System
Part 402—Definitions of Words and Terms
Part 403—Improper Business Practices and Personal Conflicts of Interest
Part 404—Administrative Matters

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

Part 405—Publicizing Contract Actions
Part 406—Competition Requirements
Part 407—Acquisition Planning
Part 408—Required Sources of Supplies and Services
Part 409—Contractor Qualifications
Part 410—[Reserved]
Part 411—Describing Agency Needs
Part 412—Acquisition of Commercial Items

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Part 413—Simplified Acquisition Procedures
Part 414—Sealed Bidding
Part 415—Contracting by Negotiation
Part 416—Types of Contracts
Part 417—Special Contracting Methods
Part 418—[Reserved]

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Part 419—Small Business Programs
Part 420—[Reserved]
Part 421—[Reserved]
Part 422—Application of Labor Laws to Government Acquisitions
Part 423—Environment, Conservation, Occupational Safety, and Drug-Free Workplace
Part 424—Protection of Privacy and Freedom of Information
Part 425—Foreign Acquisition
Part 426—[Reserved]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Part 427—Patents, Data, and Copyrights
Part 428—Bonds and Insurance
Part 429—[Reserved]
Part 430—Cost Accounting Standards Administration
Part 431—Contract Cost Principles and Procedures
Part 432—Contract Financing
Part 433—Protests, Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

Part 434—Major System Acquisition
Part 435—Research and Development Contracting
Part 436—Construction and Architect-Engineer Contracts
Part 437—Service Contracting
Part 438—[Reserved]
Part 439—[Reserved]
Part 440—[Reserved]
Part 441—Acquisition of Utility Services

SUBCHAPTER G—CONTRACT MANAGEMENT

Part 442—Contract Administration
Part 443—[Reserved]
Part 444—[Reserved]
Part 445—Government Property
Part 446—Quality Assurance
Part 447—Transportation
Part 448—[Reserved]
Part 449—Termination of Contracts
Part 450—Extraordinary Contractual Actions
Part 451—[Reserved]

SUBCHAPTER H—CLAUSES AND FORMS

Part 452—Solicitation Provisions and Contract Clauses
Part 453—Forms

SUBCHAPTER A—GENERAL

PART 401—AGRICULTURE ACQUISITION REGULATION SYSTEM

Sec.
401.000 Scope of part.

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.
401.103 Authority.
401.104 Applicability.
401.105 Issuance.
401.105–1 Publication and code arrangement.
401.105–2 Arrangement of regulations.
401.105–3 Copies.
401.106 OMB approval under the Paperwork Reduction Act.

Subpart 401.2—Administration

401.201 Maintenance of the FAR.
401.201–1 The two councils.

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.
401.304 Agency control and compliance procedures.
401.370 Exclusions.
401.371 AGAR Advisories.
401.372 Departmental directives.

Subpart 401.4—Deviations From the FAR and AGAR

401.402 Policy.
401.403 Individual deviations.
401.404 Class deviations.

Subpart 401.6—Contracting Authority and Responsibilities

401.601 General.
401.602 Contracting officers.
401.602–3 Ratification of unauthorized commitments.
401.603 Selection, appointment, and termination of appointment.
401.603–1 General.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

401.000 Scope of part.

This part presents basic policies and general information about the Department of Agriculture's (USDA) Acquisition Regulation, subsequently referred to as the AGAR. The AGAR is an integral part of the Federal Acquisition Regulations System.

Subpart 401.1—Purpose, Authority, Issuance

401.101 Purpose.

(a) The AGAR provides for the codification and publication of uniform policies and procedures for acquisitions by contracting activities within USDA.

(b) The purpose of the AGAR is to implement the Federal Acquisition Regulation (FAR), where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The AGAR is not by itself a complete document, as it must be used in conjunction with the FAR.

401.103 Authority.

The AGAR and amendments thereto are issued under 5 U.S.C. 301 and 40 U.S.C. 486(c). The Senior Procurement Executive (SPE) has the delegated authority to promulgate Departmental acquisition regulations.

401.104 Applicability.

The FAR and AGAR apply to all USDA acquisitions of supplies and services (including construction) which obligate appropriated funds, unless otherwise specified in this chapter or excepted by law.

401.105 Issuance.

401.105–1 Publication and code arrangement.

(a) The AGAR is codified in the Code of Federal Regulations (CFR) as Chapter 4 of Title 48, Federal Acquisition Regulations System, to implement and supplement Chapter 1 which constitutes the FAR. Parts 400 through 499 have been assigned to USDA by the Office of the Federal Register.

(b) The AGAR and its subsequent changes are published in:

(1) Daily issues of the Federal Register,

(2) Cumulative form in the CFR, and

(3) Loose-leaf form for distribution within USDA.

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. OFPP Policy Letter 83–2 requires rulemaking for substantive acquisition rules but allows discretion in the matter for other than significant issues meeting the stated criteria. The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act and OFPP Policy Letter 83–2.

401.105–2 Arrangement of regulations.

AGAR coverage parallels the FAR in format, arrangement, and numbering system. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

401.105–3 Copies.

Copies of the AGAR published in CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference Chapter 4 of Title 48 CFR.

401.106 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to USDA solicitations and specified information collections within the AGAR:

AGAR segment	OMB Control No.
411.170	0505–0014
415.4	0505–0013
436.575	0505–0011
437.110	0505–0015
437.270	0505–0016
452.211–1	0505–0014
452.215–71	0505–0013
452.236–75	0505–0011
452.237–74	0505–0015
452.237–76	0505–0016

Subpart 401.2—Administration

401.201 Maintenance of the FAR.

401.201–1 The two councils.

(a) USDA's representative on the Civilian Agency Acquisition Council is designated by the SPE.

(b) The Procurement Policy Division will coordinate proposed FAR revisions with interested contracting activities.

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.

(a) The SPE, subject to the authorities in 401.103 and FAR 1.301, may issue and publish Departmental regulations, that together with the FAR, constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between USDA (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated head of a contracting activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the Federal Register. HCA's shall ensure that the guidance, procedures, or instructions issued—

(1) Are consistent with the policies and procedures contained in this chapter;

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this chapter; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A [Reserved].
4B Agricultural Research Service.
4C Farm Service Agency.
4D Rural Development (mission area).
4E Food Safety and Inspection Service.
4F [Reserved].
4G Forest Service.
4H [Reserved].
4I Natural Resources Conservation Service.
4J [Reserved].
4K Food and Consumer Service.
4L Animal and Plant Health Inspection Service.
4M [Reserved].
4N Office of Operations.
4O [Reserved].
4P [Reserved].
4R Office of Inspector General.
4S [Reserved].

401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisition regulations published in the Federal Register to assure compliance with FAR part 1.

(b) The SPE is also responsible for review and issuance of unpublished, Department-wide internal guidance under the AGAR System.

(c) HCA's are responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the SPE for further action.

401.370 Exclusions.

Subject to the policies of FAR subpart 1.3, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which is effective for a period less than 12 months.

(b) Subject matter which is instituted on an experimental basis for a reasonable period.

(c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, OMB Circular, or OFPP Policy Letter.

401.371 AGAR Advisories.

The SPE may issue AGAR Advisories, consistent with the policies of the FAR and the AGAR, for the following purposes:

(a) To communicate Department-wide policy and/or procedural guidance to contracting activities;

(b) To delegate to procurement officials authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,

(c) To establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.

401.372 Departmental directives.

Subject to the policies of FAR 1.3, USDA from time to time may issue internal directives to establish procedures, standards, guidance, or methods of performing duties, functions, or operations. Such directives include Departmental Regulations (DR's), Departmental Notices, and Secretary's Memoranda.

Subpart 401.4—Deviations from the FAR and AGAR

401.402 Policy.

Requests for authority to deviate from the provisions of the FAR or the AGAR shall be submitted in writing as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(a) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR and AGAR;

(b) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(c) If applicable, the name of the contractor and identification of the contract affected;

(d) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(e) A description of the intended effect of the deviation;

(f) A statement of the period of time for which the deviation is needed; and

(g) Any pertinent background information which will contribute to a full understanding of the desired deviation.

401.403 Individual deviations.

In individual cases, deviations from either the FAR or the AGAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Except for cost principles, HCA's may approve individual deviations from the AGAR, after coordinating with the General Counsel and the SPE. No deviations from the FAR or AGAR may be authorized at the contracting office level. A copy of each deviation and its supporting documentation shall be provided to the SPE. Deviations from the FAR shall not be made unless such action is authorized by the SPE after consultation with the Office of the General Counsel and any other appropriate office, on the basis of a written justification stating clearly the special circumstances involved.

401.404 Class deviations.

Where deviations from the FAR or AGAR are considered necessary for classes of contracts, requests for authority to deviate shall be submitted in writing to the SPE for approval. The SPE may authorize class deviations from the FAR without consulting the Chairperson of the Civilian Agency Acquisition Council where urgency precludes consultation. The SPE shall subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

Subpart 401.6—Contracting Authority and Responsibilities

401.601 General.

(a) The authority and responsibility vested in the Secretary to manage USDA's acquisition function is delegated through the Assistant Secretary for Administration to the SPE. This broad authority includes, but is not limited to, the following responsibilities:

(1) Prescribing and publishing Departmental acquisition policies, regulations, and procedures.

(2) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions.

(3) Designating contracting officers.

(4) Establishing clear lines of contracting authority.

(5) Evaluating and monitoring the performance of USDA's acquisition system.

(6) Managing and enhancing career development of the contracting work force.

(7) Participating in the development of Government-wide acquisition policies, regulations, and standards; and determining specific areas where government-wide performance standards should be established and applied.

(8) Determining areas of Department-unique standards and developing unique Department-wide standards.

(9) Certifying to the Secretary that the acquisition system meets approved standards.

(b) The SPE may delegate contracting authority to the Heads of Contracting Activities (HCA's) and the responsibility to manage their acquisition function.

(c) Unless prohibited by the FAR, the AGAR, or by other applicable statutes and regulations, the SPE may redelegate to HCA's the authority to make determinations as the agency head in order to implement the policies and procedures of the FAR. Such delegations shall be in writing, but need not be published.

(d) Unless prohibited by the FAR, the AGAR, or by other applicable statutes or regulations, each HCA may designate one individual from the contracting activity to carry out the functions of the HCA (HCAD). The HCAD may exercise all authority delegated to the HCA.

401.602 Contracting officers.

401.602–3 Ratification of unauthorized commitments.

(a) *Definitions.* ''Ratification,'' as used in this section, means the signed, documented action taken by an authorized official to approve and sanction a previously unauthorized commitment.

''Unauthorized commitment,'' as used in this section, means an agreement made by a Government representative who lacked the authority to enter into a contract on behalf of the Government.

(b) *Policy.* The HCA may delegate ratification authority to the chief of the contracting office.

(c) *Procedure.* Whenever an official of the cognizant contracting activity who is authorized to ratify unauthorized commitments learns that a person or firm has assumed work as a result of an unauthorized commitment, that official shall take the following actions:

(1) Immediately inform any person who is performing work as a result of an unauthorized commitment that the work is being performed at that person's risk;

(2) Inform the individual who made the unauthorized commitment of the seriousness of the act and the possible consequences;

(3) Ensure that the individual who made the unauthorized commitment furnishes all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to: a statement as to why a contracting officer was not used; why the vendor was selected and a list of sources considered; a description of work to be performed or products to be furnished; the estimated or agreed price; whether an appropriation is available for the work; and whether performance has begun. Under exceptional circumstances, such as when the individual who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the ratifying official may waive these requirements; and

(4) Decide whether ratification is proper and proceed as follows:

(i) If ratification is not justifiable, provide the cognizant program office, contracting office, and the unauthorized contractor with an explanation of the decision not to ratify.

(ii) If ratification appears adequately justified, ratify the action and retain or assign the contract to a successor contracting officer if necessary.

(iii) Maintain related approval, decisional, and background documents in the contract file for audit purposes.

(iv) Notify the cognizant program supervisor or line officer about the final disposition of the case; the notification may include a recommendation that the unauthorized commitment should be further considered a violation of USDA's employee conduct regulations.

401.603 Selection, appointment, and termination of appointment.

401.603–1 General.

An HCA may delegate contracting authority to the extent authorized by the SPE in a general delegation of acquisition authority, by appointing qualified individuals as contracting officers, in accordance with the USDA Contracting Officer Warrant System, Departmental Regulation 5001–1.

PART 402—DEFINITIONS OF WORDS AND TERMS

Sec.
402.000 Scope of part.

Subpart 402.1—Definitions

402.101 Definitions.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

402.000 Scope of part.

As used throughout this chapter, the following words and terms are used as defined in this subpart unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular part or portion of a part.

Subpart 402.1—Definitions

402.101 Definitions.

Acquisition official means an individual who has been delegated authority to manage or to exercise acquisition functions and responsibilities.

Agency head or *Head of the Agency* means the Secretary of Agriculture, Deputy Secretary, or the Assistant Secretary for Administration.

Head of the contracting activity (HCA) means the official who has overall responsibility for managing the contracting activity (i.e., Chief, Forest Service; Administrator, Agricultural Research Service; etc.), or the individual designated by such an official to carry out the functions of the HCA.

Senior Procurement Executive (SPE) means the agency official appointed as such by the head of the agency pursuant to Executive Order 12931. The Director, Procurement and Property Management, Policy Analysis and Coordination Center, has been designated as the USDA SPE.

PART 403—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 403.1—Safeguards

Sec.
403.101 Standards of conduct.
403.101–3 Agency regulations.
403.104 Procurement integrity.
403.104–5 Disclosure, protection, and marking of proprietary and source selection information.
403.104–11 Processing violations or possible violations.

Subpart 403.2—Contractor Gratuities to Government Personnel

403.203 Reporting suspected violations of the gratuities clause.
403.204 Treatment of violations.

Subpart 403.3—Reports of Suspected Antitrust Violations

403.303 Reporting suspected antitrust violations.

Subpart 403.4—Contingent Fees

403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by them

403.602 Exceptions.
403.603 Responsibilities of the contracting officer.

Subpart 403.8—Limitation on the Payment of Funds to Influence Federal Transactions

403.806 Processing suspected violations

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 403.1—Safeguards

403.101 Standards of conduct.

403.101–3 Agency regulations.

(a) The standards of conduct for USDA procurement officials are the uniform standards established by the Office of Government Ethics in 5 CFR Part 2635, *Standards of Ethical Conduct for Employees of the Executive Branch,* and FAR 3.104, *Procurement integrity*.

(b) Procurement officials and other employees who require advice concerning the application of standards of conduct to any acquisition issue shall obtain ethics advisory opinions from ethics advisory officials in their agency personnel offices.

403.104 Procurement integrity.

403.104–5 Disclosure, protection, and marking of proprietary and source selection information.

For contracts and contract modifications in excess of $100,000, the contracting officer shall assure that the information listed in FAR 3.104–5(d)(2) is maintained in the contract file.

403.104–11 Processing violations or possible violations.

(a) The contracting officer shall forward information concerning any violation or possible violation of the Procurement Integrity Act (41 U.S.C. 423) to the chief of the contracting office.

(b) Heads of contracting activities (HCA's) or their designees who receive information concerning any violation or possible violation of the Act shall take action in accordance with FAR 3.104–11(b)(1), (2), (3), or (4).

Subpart 403.2—Contractor Gratuities to Government Personnel

403.203 Reporting suspected violations of the gratuities clause.

A suspected violation of the contract clause, FAR 52.203–3, Gratuities, shall be reported immediately to the cognizant contracting officer in writing, stating the circumstances surrounding the incident(s), the date(s), and names of all parties involved. The contracting officer shall review the report for completeness, add any additional information deemed necessary and a recommendation for action, and submit the report to the HCA.

403.204 Treatment of violations.

The HCA shall review the report and consult with the Offices of General Counsel and Inspector General to determine whether further action should be pursued. If it is found that the facts and circumstances warrant further action, the HCA shall give the contractor a formal written notice which summarizes the reported violation and affords the contractor the opportunity to make a written or oral response within a reasonable, specified period after receipt of the notice. The notice shall be sent by certified mail with return receipt requested. Oral presentations shall follow the procedures outlined in FAR 3.204(b). The HCA shall furnish copies of any adverse determination to the contracting officer and the Department Debarring Officer for their subsequent considerations under FAR 3.204(c)(1) and (2), respectively.

Subpart 403.3—Reports of Suspected Antitrust Violations

403.303 Reporting suspected antitrust violations.

Contracting officers shall report the circumstances of suspected violations of antitrust laws to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

Subpart 403.4—Contingent Fees

403.409 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) A suspected misrepresentation or violation of the Covenant Against Contingent Fees shall be documented in writing by the contracting officer and reported immediately to the chief of the contracting office. The chief of the contracting office shall determine if a violation has occurred and report any violation to the Office of Inspector General. The chief of the contracting office shall take action in accordance with FAR 3.409(b).

(b) If the chief of the contracting office decides to refer the case to the Department of Justice, it should be referred through the Office of Inspector General with a copy of the report and referral submitted through the HCA to the Senior Procurement Executive.

Subpart 403.5—Other Improper Business Practices

403.502 Subcontractor kickbacks.

Contracting officers shall report the circumstances of suspected violations of the Anti-Kickback Act (41 U.S.C. 51–54) to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

Subpart 403.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

403.602 Exceptions.

The HCA is authorized to accept a contract from the policy in FAR 3.601.

403.603 Responsibilities of the contracting officer.

The contracting officer, when requesting authorization under 403.602, shall prepare a written determination and findings for the signature of the HCA. The determination shall document compliance with FAR 3.603, specifying the compelling reason(s) for award, and shall be placed in the contract file.

Subpart 403.8—Limitation on the Payment of Funds to Influence Federal Transactions

403.806 Processing suspected violations.

Suspected violations of the requirements of 31 U.S.C. 1352 shall be referred to the Office of Inspector General in accordance with procedures in Departmental Regulations (1700 series).

PART 404—ADMINISTRATIVE MATTERS

Subpart 404.4—Safeguarding Classified Information Within Industry

Sec.
404.403 Responsibilities of contracting officers.

Subpart 404.6—Contract Reporting

404.601 Record requirements.
404.602 Federal Procurement Data System.

Subpart 404.8—Contract Files

404.870 Document numbering system.
404.870–1 Purchase order/delivery order numbering system.
404.870–2 Contract numbering system.

Subpart 404.70—Precontract Notices

404.7001 Solicitation provision.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 404.4—Safeguarding Classified Information Within Industry

404.403 Responsibilities of contracting officers.

When a proposed solicitation is likely to require access to information classified by USDA, the contracting officer shall consult with the Director of Human Resources Management within the Policy Analysis and Coordination Center of the Office of Assistant Secretary for Administration, regarding the procedures that must be followed.

Subpart 404.6—Contract Reporting

404.601 Record requirements.

The Senior Procurement Executive (SPE) manages an automated procurement reporting system for USDA. This system provides the Federal Procurement Data System with all required contracting information.

404.602 Federal Procurement Data System.

Contracting activities shall report contract actions into the USDA Procurement Reporting System in accordance with the instructions issued or distributed by the SPE.

Subpart 404.8—Contract Files

404.870 Document numbering system.

404.870–1 Purchase order/delivery order numbering system.

USDA purchasing activities shall number their purchase/delivery orders in accordance with *NFC Procedures Manual*, ''Purchase Orders,'' Title II, Section 5.1.

404.870–2 Contract numbering system.

Contracting offices shall assign an 8 to 12-digit number to all contracts. Contract numbers will be divided into four data elements and formatted as follows:

(1) Transaction Code	(2) Ordering Office	(3) Fiscal Year	(4) Control Number
XX	XXXX	X	X to XXXXX

(a) *Transaction code*. This two-position code identifies the contract as being one of the following types:

(1) Code 50—construction contract;
(2) Code 51—[Reserved]
(3) Code 52—tree planting/thinning contract;
(4) Code 53—service contract;
(5) Code 54—supply contract;
(6) Code 55—aircraft rental (for fire-fighting purposes only) contract;
(7) Code 56—personal equipment rental (rental of vehicular equipment for firefighting purposes only) contract;
(8) Code 57—leasehold interest in real property contract.

(b) *Ordering office.* This four-position code corresponds to the last four characters of the contracting office's GSA assigned FEDSTRIP requisitioner number.

(c) *Fiscal year.* This one-position code corresponds to the last digit of the fiscal year in which the contract becomes effective.

(d) *Control number.* This up-to-five position code (from one to five characters may be used) will be assigned by the contracting office. While contracts will generally be numbered consecutively (1 through 99999), contracting offices may assign codes in any manner of their choosing. Codes may not be repeated, however, unless one of the preceding data elements (transaction code, ordering office, or fiscal year) changes. Alpha characters as well as numerals may be used in any one or more of the five positions.

Subpart 404.70—Precontract Notices

404.7001 Solicitation Provision.

The contracting officer shall insert the provision at 452.204–70, Inquiries, in all solicitations.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 405—PUBLICIZING CONTRACT ACTIONS

Subpart 405.3—Synopses of Contract Awards

Sec.
405.303 Announcement of contract awards.

Subpart 405.4—Release of Information

405.403 Requests from Members of Congress.
405.404 Release of long-range acquisition estimates.
405.404–1 Release procedures.

Subpart 405.5—Paid Advertisements

405.502 Authority.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 405.3—Synopses of Contract Awards

405.303 Announcement of contract awards.

Contracting officers shall make information available on any contract award with an estimated total value over $1 million (including options) to their agency congressional liaison office in sufficient time for the agency to announce it by 5:00 p.m. Washington, DC time on the day of award. The agency congressional liaison office shall, concurrent with the public announcement, provide the award announcement information to the USDA Congressional Relations Office.

Subpart 405.4—Release of Information

405.403 Requests from Members of Congress.

The head of the contracting activity (HCA) is the agency head designee pursuant to FAR 5.403(a).

405.404 Release of long-range acquisition estimates.

405.404–1 Release procedures.

(a) HCA's shall establish written procedures to control the release of long-range acquisition estimates, as authorized under FAR 5.404–1.

(b) Classified information shall not be released without the approval of the USDA Security Officer, Policy Analysis and Coordination Center—Human Resources Management. Departmental Manual and Regulation (3400 series) contain guidance on classified information.

Subpart 405.5—Paid Advertisements

405.502 Authority.

(a) The authority vested in the agency head to authorize publication of paid advertisements in newspapers (44

U.S.C. 3702) is delegated, with power of redelegation, to HCA's. HCA redelegation of this authority shall be in writing.

(b) Policies and procedures regarding prior authorization required for media other than newspapers are contained in USDA Departmental Regulations 1400 series.

Part 406—Competition Requirements

Subpart 406.2—Full and Open Competition After Exclusion of Sources

Sec.
406.202 Establishing or maintaining alternative sources.

Subpart 406.3—Other Than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.
406.302–70 Otherwise authorized by law.

Subpart 406.5—Competition Advocates

406.501 Requirements.

Authority: 5 U.S.C. and 40 U.S.C. 486(c).

Subpart 406.2—Full and Open Competition After Exclusion of Sources

406.202 Establishing or maintaining alternative sources.

The Senior Procurement Executive is authorized to make determinations pursuant to FAR 6.202(a) and sign the determination and findings required by FAR 6.202(b).

Subpart 406.3—Other than Full and Open Competition

406.302 Circumstances permitting other than full and open competition.

406.302–70 Otherwise authorized by law.

(a) *Authority.* Section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318) (the Act) authorizes the Secretary of Agriculture to award contracts, without competition, to further research, extension, or teaching programs in the food and agricultural sciences.

(b) *Limitations.* The use of this authority is limited to those instances where it can be determined that contracting without full and open competition is in the best interest of the Government and necessary to the accomplishment of the research, extension, or teaching program. Therefore:

(1) Contracts under the authority of the Act shall be awarded on a competitive basis to the maximum practicable extent.

(2) When full and open competition is not deemed appropriate, the contracting officer shall make a written justification on a case-by-case basis in accordance with procedures in FAR 6.303 and 6.304.

Subpart 406.5—Competition Advocates

406.501 Requirements.

(a) The Chief, Procurement Policy Division, Procurement and Property Management, Policy Analysis and Coordination Center, has been designated as the Competition Advocate for USDA.

(b) Each HCA shall designate a competition advocate for the contracting activity.

PART 407—ACQUISITION PLANNING

Subpart 407.1—Acquisition Plans

Sec.
407.103 Agency-head responsibilities.
407.170 Advance acquisition plans.

Subpart 407.3—Contractor Versus Government Performance

407.302 General.

Subpart 407.5—Inherently Governmental Functions

407.503 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C.

Subpart 407.1—Acquisition Plans

407.103 Agency-head responsibilities.

Heads of Contracting Activities (HCA's) shall develop procedures to comply with FAR 7.103.

407.170 Advance acquisition plans.

Each HCA shall implement an advance acquisition planning system in accordance with procedures in Departmental Directives (5000 series).

Subpart 407.3—Contractor Versus Government Performance

407.302 General.

The requirements of FAR subpart 7.3 and OMB Circular A–76 are implemented by Departmental Directives (2100 series).

Subpart 407.5—Inherently Governmental Functions

407.503 Policy.

(a) HCA's shall establish procedures to ensure that requesting activities provide the written determination required by FAR 7.503(e), when submitting requests for procurement of services.

(b) In the event of a disagreement as to whether the functions to be performed are inherently governmental, the HCA may refer the matter to the Senior Procurement Executive (SPE) for resolution. When submitting disagreements to the SPE for resolution the HCA shall provide a summary of the areas of disagreement, supported by the following:

(1) The HCA's assessment of whether the services are ''inherently governmental'';

(2) The basis for that assessment (include references to the definition and policy in FAR subpart 7.5 and/or Office of Federal Procurement Policy letter 92–1);

(3) A copy of the statement of work; and,

(4) The requesting activity written determination in accordance with FAR 7.503(e).

(c) Such disagreements shall be resolved prior to issuance of the solicitation.

PART 408—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 408.4—Federal Supply Schedules

Sec.
408.404 Using schedules.
408.404–3 Requests for waivers.

Subpart 408.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Handicapped

408.701 Definitions.
408.705 Procedures.
408.705–2 Direct order process.
408.705–3 Allocation process.
408.705–4 Compliance with orders.
408.706 Purchase exemptions.
408.707 Prices.
408.711 Quality complaints.
408.712 Specification changes.
408.714 Communications with the central nonprofit agencies and the Committee.

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

Subpart 408.11—Leasing of Motor Vehicles

408.1103 Contract requirements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 408.4—Federal Supply Schedules

408.404 Using schedules.

408.404–3 Requests for waivers.

A copy of the request for a waiver and the approval shall be placed in the contract file to support the acquisition of items off schedule.

Subpart 408.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Handicapped

408.701 Definitions.

Committee Member is the Presidential appointee representing USDA as a member of the Committee for Purchase

from People Who Are Blind or Severely Disabled.

Organization head is the head of the contracting activity (HCA), the head of a USDA corporation (as described in 31 U.S.C. 9101), or the head of a USDA staff office.

408.705 Procedures.

(a) The organization head shall appoint one person as Javits-Wagner-O'Day Act (JWOD) Advocate to represent the organization and to coordinate the organization's actions with the Committee Member.

(b) JWOD advocates may represent more than one organization. Advocates need not be acquisition officials.

(c) The organization head shall issue and maintain an action plan to promote and enhance the organization's acquisitions from JWOD participating nonprofit agencies.

(d) The action plan shall:

(1) Announce the organization's support for the JWOD Act;

(2) Establish a promotion program for the products and services provided by the JWOD participating nonprofit agencies;

(3) Provide for the JWOD Advocate's role in acquisition planning;

(4) Establish measurable program goals for growth or other accomplishment in the organization's JWOD program actions; and

(5) Establish an awards program for successful participation in the JWOD program.

408.705–2 Direct order process.

(a) The chief of a contracting office may apply to a central nonprofit agency for authorization to order specific supplies or services directly from a JWOD participating nonprofit agency.

(b) A copy of the application should be provided to the JWOD Advocate who will inform the USDA Committee Member.

408.705–3 Allocation process.

(a) The chief of a contracting office may apply to a central nonprofit agency for a production allocation of specific supplies or services to a JWOD participating nonprofit agency.

(b) A copy of the application should be provided to the JWOD Advocate who will inform the USDA Committee Member.

408.705–4 Compliance with orders.

Prior to attempting to resolve a failure to perform by a participating nonprofit agency with the Committee, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.706 Purchase exemptions.

Prior to applying to the Committee for a purchase exemption, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.707 Prices.

Prior to applying for a price revision, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.711 Quality complaints.

Prior to attempting to resolve a complaint regarding the quality of goods or services provided by participating nonprofit agency with the Committee, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.712 Specification changes.

Prior to providing 90-days advance notification to the Committee on actions that affect supplies and services on the Procurement List, the chief of the contracting office should provide advance notice to the JWOD Advocate who will inform the USDA Committee Member.

408.714 Communications with the central nonprofit agencies and the Committee.

Any matter requiring referral to the Committee shall be provided to the JWOD Advocate who will coordinate the matter with the Committee Member.

Subpart 408.8—Acquisition of Printing and Related Supplies

408.802 Policy.

(a) The Director, Office of Communications (OC) has been designated as the central printing authority in USDA, with the authority to represent the USDA before the Joint Committee on Printing (JCP), the Government Printing Office, and other Federal and State agencies on all matters related to printing.

(b) Prior to contracting for any of the items defined in FAR 8.801, the contracting officer shall verify that the requisite approval has been received by the publication liaison officer or requisitioner.

(c) The approval from OC or the approval authority designated by OC shall be maintained in the contract file.

Subpart 408.11—Leasing of Motor Vehicles

408.1103 Contract requirements.

If the requirement includes the need for the vendor to provide operational maintenance such as oil and other fluid changes or replenishment, the contracting officer shall include in the contract:

(1) A requirement for fluids containing the maximum available amounts of recovered materials; and

(2) A preference for either retreaded tires meeting the Federal retread specifications or retreading services for the tires on the vehicle.

PART 409—CONTRACTOR QUALIFICATIONS

Subpart 409.4—Debarment, Suspension and Ineligibility

Sec.
409.403 Definitions.
409.404 List of parties excluded from Federal procurement and nonprocurement programs.
409.405 Effect of listing.
409.405–1 Continuation of current contracts.
409.405–2 Restrictions on subcontracting.
409.406 Debarment.
409.406–3 Procedures.
409.407 Suspension.
409.407–3 Procedures.
409.470 Appeals.

Subpart 409.5—Organizational and Consultant Conflicts of Interest

409.503 Waiver.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 409.4—Debarment, Suspension and Ineligibility

409.403 Definitions.

Debarring official. The Senior Procurement Executive (SPE) is designated as the debarring official (Department Debarring Officer) pursuant to the Secretary's delegations of authority in 7 CFR 2.24. However, for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c), the Department Debarring Officer has delegated debarring authority to the Agricultural Marketing Service (AMS).

409.404 List of parties excluded from Federal procurement and nonprocurement programs.

The Department Debarring Officer is USDA's single point of contact with GSA for debarment and suspension actions taken under this subpart. The debarring official for AMS shall notify the Department Debarring Officer of each debarment and suspension action by promptly submitting a copy of the debarment or suspension notice and any later changes to the debarment or suspension status. The Department Debarring Officer will forward a copy of each notice to GSA for inclusion in the Government-wide list.

409.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The SPE is authorized to make the determinations under FAR 9.405. Requests for such determinations shall be submitted through the head of the contracting activity (HCA) to the SPE.

409.405–1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405–1.

409.405–2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

409.406 Debarment.

409.406–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceeding.* For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings shall be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment. The contractor shall be provided a copy of a transcript of the proceedings under the conditions established in FAR 9.406–3(b)(2)(ii).

409.407 Suspension.

409.407–3 Procedures.

(a) *Investigation and referral.* When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case shall be immediately referred through the HCA to the debarring official. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter shall be referred to the HCA who should consult with the Office of Inspector General to determine if further investigation is required prior to referring it to the debarring official.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of Inspector General and Office of the General Counsel, as appropriate, the debarring official determines suspension is justified, the debarring official shall initiate the proposed suspension in accordance with FAR 9.407–3(c) and notify the HCA of the action taken.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.407–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in 409.406–3(c).

409.470 Appeals.

A debarred or suspended contractor may appeal the debarring official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the U.S. Department of Agriculture Board of Contract Appeals, Washington, D.C. 20250. A copy of the notice of appeal shall be furnished to the debarring officer from whose decision the appeal is taken. Appeals under subpart 409.4 shall be governed by the rules and procedures of the U.S. Department of Agriculture Board of Contract Appeals set forth in 7 CFR part 24.

Subpart 409.5—Organizational and Consultant Conflicts of Interest

409.503 Waiver.

(a) The HCA, on a non-delegable basis, is authorized to waive any general rule or procedure in FAR 9.5 when in the Government's interest.

(b) Each request for waiver shall include:

(1) The general rule or procedure proposed to be waived;

(2) An analysis of the potential conflict, including the benefits and detriments to the Government and prospective contractors;

(3) A discussion of why the conflict cannot be avoided, neutralized, or mitigated; and

(4) Advice of counsel obtained under FAR 9.504(b).

PART 411—DESCRIBING AGENCY NEEDS

Subpart 411.1—Selecting and Developing Requirements Documents

Sec.
411.103 Market acceptance.
411.105 Purchase descriptions for service contracts.
411.170 Brand name or equal.
411.171 Solicitation provisions and contract clauses.

Subpart 411.2—Using and Maintaining Requirements Documents

411.202 Maintenance of standardization documents.

Subpart 411.4—Delivery or Performance Schedules

411.404 Contract clauses.

Subpart 411.6—Priorities and Allocations

411.600 Scope of subpart.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 411.1—Selecting and Developing Requirements Documents

411.103 Market acceptance.

(a) The head of the contracting activity (HCA) may determine that offerors must demonstrate, in accordance with FAR 11.103(a), the market acceptability of their items to be offered.

(b) The contracting officer shall place a copy of this determination, signed by the HCA, in the solicitation file.

411.105 Purchase descriptions for service contracts.

When contract personnel are to be used, the requiring official shall record on the requisition his or her determination whether harm to the Government might occur should contractor personnel fail to identify themselves as non-Government officials.

411.170 Brand name or equal.

(a) A ''brand name or equal'' purchase description shall include the following type of information:

(i) Identification of the item by generic description.

(ii) Make, model number, catalog designation, or other description, and identification of a commercial catalog where it is listed.

(iii) Name of manufacturer, producer, or distributor of the item and complete address.

(iv) All salient characteristics of the ''brand name or equal'' product or products which have been determined by the requisitioner to be essential to the Government's minimum requirements.

411.171 Solicitation provisions and contract clauses.

(a) Contracting officers shall insert the provision at 452.211–1, Brand Name or Equal, in solicitations, other than those for construction, where ''brand name or equal'' purchase descriptions are used.

(b) Contracting officers shall insert the clause at 452.211–2, Equal Products Offered, in solicitations, other than those for construction, where the provision at 452.211–1 is included.

(c) Contracting officers shall insert the clause at 452.211–3, Statement of Work/Specifications, when the description (statement of work) or specification(s) is included in Section J of the solicitation.

(d) Contracting officers shall insert the clause at 452.211–4, Attachment to Statement of Work/Specifications, when there are attachments to the description (statement of work) or specifications.

Subpart 411.2—Using and Maintaining Requirements Documents

411.202 Maintenance of standardization documents.

Recommendations for changes to standardization documents are to be submitted through the Senior Procurement Executive, who will coordinate the submission of these recommendations to the cognizant preparing activity.

Subpart 411.4—Delivery or Performance Schedules

411.404 Contract clauses.

(a) The contracting officer shall insert the clause at 452.211–5, Period of Performance, when it is necessary to specify a period of performance, beginning on the date of award, date of receipt of notice of award, or a specified date.

(b) The contracting officer shall insert the clause at 452.211–6, Effective Period of the Contract, when it is necessary to specify the effective period of the contract.

Subpart 411.6—Priorities and Allocations

411.600 Scope of subpart.

The Defense Priorities and Allocation System (DPAS) excludes USDA activities (see 15 CFR 700.18(b)). USDA Contracting Officers are not authorized to place rated orders under DPAS.

Part 412—ACQUISITION OF COMMERCIAL ITEMS

Subpart 412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.
412.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 412.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

412.302 Tailoring of provisions and clauses for the acquisition of commercial items.

The head of the contracting activity is authorized to approve waivers in accordance with FAR 12.302(c). The approved waiver may be either for an individual contract or for a class of contracts for the specific item. The approved waiver and supporting documentation shall be incorporated into the contract file.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 413—SIMPLIFIED ACQUISITION PROCEDURES

Subpart 413.1—General

Sec.
413.103 Policy.

Subpart 413.4—Imprest Fund

413.401 General.

Subpart 413.5—Purchase Orders

413.505 Purchase order and related forms.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 413.1—General

413.103 Policy.

USDA policy and procedures on use of the Governmentwide commercial purchase card are established in Departmental Regulation Series 5000.

Subpart 413.4—Imprest Fund

413.401 General.

Departmental Regulation 2000 series sets policies and guidelines for the use of imprest funds within USDA. Departmental Regulation 5000 series establishes policies and procedures for the use of the Third Party Draft System in USDA.

Subpart 413.5—Purchase Orders

413.505 Purchase order and related forms.

(a) Form AD–838, Purchase Order, is prescribed for use by USDA in lieu of Optional Forms 347 and 348.

(b) The Standard Form 44 (and the previously prescribed USDA Form AD–744) is not authorized for use within USDA.

PART 414—SEALED BIDDING

Subpart 414.2—Solicitation of Bids

Sec.
414.201 Preparation of invitations for bids.
414.201–6 Solicitation provision.

Subpart 414.4—Opening of bids and Award of Contract

414.404 Rejection of bids.
414.404–1 Cancellation of invitations after opening.
414.407 Mistakes in bids.
414.407–3 Other mistakes disclosed before award.
414.407–4 Mistakes after award.
414.409 Information to bidders.
414.409–2 Award of classified contracts.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 414.2—Solicitation of Bids

414.201 Preparation of invitations for bids.

414.201–6 Solicitation provisions.

The contracting officer shall insert the provision 452.214–70, Award by Lot, when multiple items are segregated into clearly identifiable lots and the contracting officer wants to reserve the right to award by item within a lot, if award in that manner would be advantageous to the Government.

Subpart 414.4—Opening of Bids and Award of Contract

414.404 Rejection of bids.

414.404–1 Cancellation of invitations after opening.

An acquisition official at a level above the contracting officer is authorized to make the determinations under FAR 14.404–1(c) and (e)(1).

414.407 Mistakes in bids.

414.407–3 Other mistakes disclosed before award.

The authority to make the determinations under FAR 14.407–3(a), (b), and (d) is delegated, without power of redelegation, to the head of the contracting activity. The authority to

make the determination under FAR 14.407–3(c) is delegated to the contracting officer. Each determination pursuant to FAR 14.407–3 shall have the concurrence of the Office of the General Counsel (OGC).

414.407–4 Mistakes after award.

If a mistake in bid is disclosed after award, the contracting officer shall make a final determination in accordance with the provisions of FAR 14.407–4 (b) and (c) and shall coordinate each proposed determination with OGC. Such coordination shall, at a minimum, consist of the contracting officer providing the proposed determination and the case file to OGC for comment.

414.409 Information to bidders.

414.409–2 Award of classified contracts.

Disposition of classified information shall be in accordance with Departmental Regulation and Manual (3400 Series) and in accordance with direction issued by the USDA Security Officer, Policy Analysis and Coordination Center—Human Resources Management.

PART 415—CONTRACTING BY NEGOTIATION

Subpart 415.1—General Requirements for Negotiation

Sec.

415.103 Converting from sealed bidding to negotiation procedures.

Subpart 415.4—Solicitation and Receipt of Proposals and Quotations

415.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).
415.406–1 Uniform contract format.
415.407 Solicitation provisions.
415.408 Issuing solicitations.
415.411 Receipt of proposals and quotations.
415.413 Disclosure and use of information before award.
415.413–2 Alternate II.

Subpart 415.5—Unsolicited Proposals

415.504 Advance guidance.
415.506 Agency procedures.

Subpart 415.6—Source Selection

415.607 Disclosure of mistakes before award.
415.608 Proposal evaluation.
415.612 Formal source selection.

Subpart 415.9—Profit

415.902 Policy.

Subpart 415.10—Preaward, Award, and Postaward Notifications, Protests and Mistakes

415.1070 Post-award conference.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 415.1—General Requirements for Negotiation

415.103 Converting from sealed bidding to negotiation procedures.

An acquisition official at a level above the contracting officer is authorized to make the determination to permit the use of negotiation to complete an acquisition following the cancellation of an invitation for bids.

Subpart 415.4—Solicitation and Receipt of Proposals and Quotations

415.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).

415.406–1 Uniform contract format.

The Senior Procurement Executive is authorized to exempt contracts from the uniform contract format.

415.407 Solicitation provisions.

(a) The provision at 452.215–71, Instructions for the Preparation of Technical and Business Proposals, may be used when offerors will be required to submit technical and business proposals. Contracting officers should tailor the clause to reflect the degree of information required for the specific acquisition.

(b) The contracting officer shall insert the provision at 452.215–72, Amendments to Proposals, in solicitations which require the submittal of lengthy, complex technical proposals.

415.408 Issuing solicitations.

Departmental Regulation and Manual (Series 3400), establishes policy and procedures regarding classification, declassification and safeguarding of classified information.

415.411 Receipt of proposals and quotations.

Departmental Regulation and Manual (Series 3400), contains guidance on classification, declassification and safeguarding of classified information.

415.413 Disclosure and use of information before award.

Contracting officers shall use the Alternate II procedures in FAR 15.413–2 and subsection 415.413–2 when releasing proposals outside the Government for evaluation purposes.

415.413–2 Alternate II.

(a) The head of the contracting activity (HCA) is authorized to approve the release of proposals outside the Government for evaluation purposes. Each such decision shall be supported by a written justification that shows in sufficient detail the special needs or circumstances requiring the services of individuals outside the Government.

(b) During the preaward period, only the contracting officer, the chief of the contracting office, or others specifically authorized by either of them may communicate technical or other information to, or conduct discussions with, offerors. Information shall not be furnished to an offeror if, alone or together with other information, it may afford the offeror an advantage over other offerors. However, general information that is not prejudicial to other offerors may be furnished.

(c) Agency personnel and non-Government evaluators having authorized access to information contained in proposals shall disclose neither the number of offerors nor their identity to the public or to anyone in Government except as authorized in accordance with FAR 3.104 (See also FAR 5.403).

(d) The contracting officer shall obtain the following written agreement from the non-Government evaluator prior to the release of any proposal to that evaluator.

''AGREEMENT GOVERNING THE USE AND DISCLOSURE OF PROPOSALS''

RFP# _____

Offeror _____

1. To the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial and objective review of the offeror's proposal, or may otherwise result in a biased opinion or an unfair advantage. If a potential conflict of interest arises or if I identify such a conflict, I agree to notify the Government promptly concerning the potential conflict. In determining whether any potential conflict of interest exists, I agree to review whether me or my employer's relationships with other persons or entities, including, but not limited to, ownership of stocks, bonds, other outstanding financial interests or commitments, employment arrangements (past, present, or under consideration), and, to the extent known by me, all financial interests and employment arrangements of my spouse, minor children, and other members of my immediate household, may place me in a position of conflict, real or apparent, with the evaluation proceedings.

2. I agree to use proposal information only for evaluation purposes. I understand that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information of the proposal. I agree to use my best effort to safeguard such information physically, and not to disclose the contents of, or release any information relating to, the proposal(s) to anyone outside of the Source Evaluation Board or other panel assembled for this acquisition, the Contracting Officer, or other individuals designated by the Contracting Officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

_____
(Name and Organization)

_____
(Date)

(End of provision)

(e) The release of a proposal outside the Government for evaluation does not constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(f) The contracting officer shall attach a cover page bearing the GOVERNMENT NOTICE FOR HANDLING PROPOSALS, as set forth in FAR 15.413–2(e), to each proposal upon receipt. The last sentence of the notice shall cite 48 CFR 415.413 as the agency implementing regulation.

Subpart 415.5—Unsolicited Proposals

415.504 Advance guidance.

HCA's are responsible for establishing procedures to ensure compliance with the requirements of FAR 15.504.

415.506 Agency procedures.

HCA's are responsible for establishing the procedures for control of unsolicited proposals required by FAR 15.506(a) and for identifying the contact points as required by FAR 15.506(b).

Subpart 415.6—Source Selection

415.607 Disclosure of mistakes before award.

The HCA with the concurrence of the Office of the General Counsel is authorized to make the determination permitting proposal correction as required by FAR 15.607(c)(3).

415.608 Proposal evaluation.

An acquisition official above the level of the contracting officer is authorized to make the determination to reject all proposals under the circumstances listed in FAR 15.608(b).

415.612 Formal source selection.

The HCA shall determine when a formal source selection process will be used and establish procedures for implementing the requirements of FAR 15.612.

Subpart 415.9—Profit

415.902 Policy.

(a)(1) USDA will use a structured approach to determine the profit or fee prenegotiation objective in acquisition actions when price negotiation is based on cost analysis.

(2) The following types of acquisitions are exempt from the requirements of the structured approach, but the contracting officer shall comply with FAR 15.905–1 when analyzing profit for these contracts or actions:

(i) Architect-engineer contracts;

(ii) Construction contracts;

(iii) Contracts primarily requiring delivery of material supplied by subcontractors;

(iv) Termination settlements; and

(v) Cost-plus-award-fee contracts;

(b) Unless otherwise restricted by contracting activity procedures, the Contracting Officer may use another Federal agency's structured approach if that approach has been formalized and is maintained as part of that Agency's acquisition regulations (i.e., included in that Agency's assigned chapter of Title 48 of the Code of Federal Regulations).

(c) The HCA is responsible for establishing procedures to ensure compliance with this subpart.

Subpart 415.10—Preaward, Award, and Postaward Notifications, Protests and Mistakes

415.1070 Post-Award Conference.

If a postaward conference is necessary, the contracting officer shall insert clause 452.215–73, Post-Award Conference.

PART 416—TYPES OF CONTRACTS

Sec.
416.000 Scope of part.

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.
416.203–4 Contract clauses.

Subpart 416.4—Incentive Contracts

416.404 Cost-reimbursement incentive contracts.
416.404–2 Cost-plus-award-fee contracts.
416.405 Contract clauses.
416.470 Solicitation provision.

Subpart 416.5—Indefinite-Delivery Contracts

416.505 Ordering.
416.506 Solicitation provision and contract clauses.

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.
416.603–2 Application.
416.603–4 Contract clauses.
416.670 Contract clauses.

Subpart 416.7—Agreements

416.702 Basic agreements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

416.000 Scope of part.

Heads of contracting activities (HCA's) are authorized to establish written procedures allowing the use of any contract type described in FAR part 16 for acquisitions made under simplified acquisition procedures in FAR part 13.

Subpart 416.2—Fixed-Price Contracts

416.203 Fixed-price contracts with economic price adjustment.

416.203–4 Contract clauses.

An economic price adjustment clause based on cost indexes of labor or material may be used under the conditions listed in FAR 16.203–4(d) after approval by the HCA and consultation with the Office of the General Counsel.

Subpart 416.4—Incentive Contracts

416.404 Cost-reimbursement incentive contracts.

416.404–2 Cost-plus-award-fee contracts.

The HCA may designate an acquisition official other than the contracting officer as the fee determination official (FDO) to make the final determination of the award fee. The designated official must have warranted contracting authority at the same level as the contracting officer or higher, and shall not have participated in preparing the contractor performance evaluation. If the HCA does not designate an FDO, the chief of the contracting office shall act as the FDO.

416.405 Contract clauses.

The contracting officer shall insert a clause substantially the same as the clause at 452.216–70, Award Fee, in solicitations and contracts which contemplate the award of cost-plus-award-fee contracts.

416.470 Solicitation provision.

The contracting officer shall insert the provision at 452.216–71, Base Fee and Award Fee Proposal, in solicitations which contemplate the award of a cost-plus-award-fee contract.

Subpart 416.5—Indefinite-Delivery Contracts

416.505 Ordering.

(a) The Chief, Procurement Policy Division, Procurement and Property Management, Policy Analysis and Coordination Center, has been designated as the Departmental Task Order Ombudsman.

(b) The Departmental Task Order Ombudsman shall designate a task order ombudsman for each contracting activity. Contracting activity ombudsmen shall review and resolve complaints from contractors concerning task or delivery orders placed by the contracting activity.

(c) Any contractor who is not satisfied with the resolution of a complaint by a

contracting activity ombudsman may request the Departmental Task Order Ombudsman to review the complaint.

416.506 Solicitation provision and contract clauses.

(a) The contracting officer shall insert a provision substantially the same as the provision at 452.216–72, Evaluation Quantities-Indefinite-Delivery Contract, in solicitations which contemplate the award of indefinite-quantity or requirements contracts to establish the basis on which offers will be evaluated.

(b) The contracting officer shall insert the clause at 452.216–73, Minimum and Maximum Contract Amounts, in indefinite-delivery, indefinite-quantity contracts when the clause at FAR 52.216–18 is used.

Subpart 416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

416.603 Letter contracts.

416.603–2 Application.

The HCA is authorized to extend the period for defining a letter contract required by FAR 16.603–2(c) in extreme cases where it is determined in writing that such action is in the best interest of the Government.

416.603–4 Contract clauses.

The contracting officer shall insert the clause at 452.216–75, Letter Contract, in a definitive contract superseding a letter contract.

416.670 Contract clauses.

The contracting officer shall limit the Government's obligation under a time-and-materials or labor-hour contract by inserting the clause at 452.216–74, Ceiling Price.

Subpart 416.7—Agreements

416.702 Basic agreements.

Promptly after execution by the Government, the HCA shall furnish to the Senior Procurement Executive a copy of each basic agreement negotiated with contractors in accordance with FAR 16.702.

PART 417—SPECIAL CONTRACTING METHODS

Subpart 417.2—Options

Sec.
417.204 Contracts.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 417.2—Options

417.204 Contracts.

The head of the contracting activity is authorized to approve contracts which exceed the 5 year limitation in FAR 17.204(e).

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 419—SMALL BUSINESS PROGRAMS

Subpart 419.2—Policies

Sec.
419.201 General policy.
419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).
419.201–71 Small business coordinators.
419.201–73 Reports.

Subpart 419.5—Set-Asides for Small Business

419.508 Solicitation provisions.

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.
419.602–1 Referral.
419.602–3 Resolving differences between the agency and the Small Business Administration.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 419.2—Policies

419.201 General policy.

It is the policy of USDA to provide a fair portion of its contracting and subcontracting opportunities to small, disadvantaged, minority, and women-owned businesses.

419.201–70 Office of Small and Disadvantaged Business Utilization (OSDBU).

The Office of Small and Disadvantaged Business Utilization (OSDBU) develops rules, policy, procedures and guidelines for the effective administration of USDA's small and disadvantaged business procurement preference program to include minority and women-owned business.

419.201–71 Small business coordinators.

The head of the contracting activity (HCA) or a representative of the HCA shall designate in writing a small business coordinator in each contracting office. Supervisors of small business coordinators are encouraged to provide sufficient time for the coordinators to carry out their small business program duties. Coordinators' duties shall include, but not be limited to, the following:

(a) Review each proposed acquisition expected to exceed the simplified acquisition threshold prior to its solicitation. The coordinator shall:

(1) Recommend section 8(a) action and identify potential contractors, or

(2) Identify available minority and women-owned businesses to be solicited by competitive procedures. Coordinators shall document the contract file with recommendations made and actions taken.

(b) Participate in goal-setting procedures and planning activities and establish aggressive minority and women-owned business goals based on the annual review of advance acquisition plans.

(c) Participate in the review of those contracts which require the successful offeror to submit written plans for the utilization of small and small disadvantaged businesses as subcontractors.

(d) Ensure that purchases exceeding $2,500 and not exceeding the simplified acquisition threshold are reserved exclusively for small businesses, including minority and women-owned businesses. This policy shall be implemented unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased.

(e) Maintain comprehensive source listings of small businesses.

(f) Upon written request, provide small, minority and women-owned businesses the bidders mailing lists of individuals receiving solicitations which will contain the subcontracting clause entitled ''Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.'' These lists may be limited to those supplies or services of major interest to the requesting firms.

(g) Develop a program of contacts with local, small, minority, and women-owned trade, business, and professional associations and organizations and Indian tribal councils to apprise them of USDA's program needs and recurring contract requirements.

(h) Periodically meet with program managers to discuss requirements of the small business preference program, explore the feasibility of breaking large complex requirements into smaller lots suitable for participation by small firms, and encourage program managers to meet with these firms so that their capabilities can be demonstrated.

(i) Establish internal operating procedures which implement the requirements of the regulations as set forth in this part 419. Compile data and prepare all reports pertaining to the small, minority and women-owned business activities. Ensure that these reports are accurate, complete and up-to-date.

(j) Assist and counsel small business firms and especially those found to be nonresponsive or nonresponsible to help qualify them for future awards.

(k) Review proposed large contract requirements to determine the potential for breaking out components suitable for purchase from small business firms.

(l) Ensure that the SBA Resident Procurement Center Representative (PCR) is provided an opportunity and reasonable time to review any solicitation that meets the dollar threshold for small business and small disadvantaged business subcontracting plans.

419.201–73 Reports.

(a) The Director, OSDBU, shall be responsible for submitting reports concerning USDA's progress and achievements in the procurement preference program.

(b) Subcontracting data for an agency shall be collected by the small business coordinators and submitted to OSDBU by April 10 and November 20 of each year.

Subpart 419.5—Set-asides for Small Business

419.508 Solicitation provisions.

The contracting officer shall insert the provision at 452.219–70, Size Standard and SIC Code Information, in solicitations that are set aside for small businesses.

Subpart 419.6—Certificates of Competency and Determinations of Eligibility

419.602 Procedures.

419.602–1 Referral.

Contracting officers shall refer determinations of non-responsibility regarding small businesses directly to the SBA Regional Office servicing the location where the contractor's office (home) is located.

419.602–3 Resolving differences between the agency and the Small Business Administration.

The HCA is authorized to file the formal appeal with the Small Business Administration's Central Office as provided by FAR 19.602–3(c).

PART 422—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 422.1—Basic Labor Policies

Sec.
422.103 Overtime.
422.103–4 Approvals.

Subpart 422.3—Contract Work Hours and Safety Standards Act

422.302 Liquidated damages and overtime pay.

Subpart 422.4—Labor Standards for Contracts Involving Construction

422.404 Davis-Bacon wage determinations.
422.404–6 Modifications of wage determinations.
422.406 Administration and enforcement.
422.406–8 Investigations.

Subpart 422.6—Walsh-Healey Public Contracts Act

422.604 Exemptions.
422.604–2 Regulatory exemptions.
422.608 Procedures.
422.608–4 Award pending final determination.

Subpart 422.8—Equal Employment Opportunity

422.803 Responsibilities.
422.804 Affirmative action programs.
422.804–2 Construction.
422.807 Exemptions.

Subpart 422.13—Special Disabled and Vietnam Era Veterans

422.1303 Waivers.
422.1306 Complaint procedures.

Subpart 422.14—Employment of the Handicapped

422.1403 Waivers.
422.1406 Complaint procedures.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 422.1—Basic Labor Policies

422.103 Overtime.
422.103–4 Approvals.

Requests for the use of overtime shall be approved by an acquisition official at a level above the contracting officer in accordance with the procedures in FAR 22.103–4 (a) and (b).

Subpart 422.3—Contract Work Hours and Safety Standards Act

422.302 Liquidated damages and overtime pay.

Heads of contracting activities (HCA's) are authorized to review determinations of liquidated damages due under section 104(c) of the Contract Work Hours and Safety Standards Act, and to take remedial action, if appropriate, in accordance with FAR 22.302(c). Contractors or subcontractors may request review of administrative determinations of liquidated damages by written notice to the contracting officer. The contracting officer shall promptly forward appeals of liquidated damages determinations to the HCA.

Subpart 422.4—Labor Standards for Contracts Involving Construction

422.404 Davis-Bacon Act wage determinations.

422.404–6 Modifications of wage determinations.

HCA's are authorized to request extension of the 90 day period for award after bid opening as provided in FAR 22.404–6(b)(6).

422.406 Administration and enforcement.

422.406.8 Investigations.

Reports of violations shall be forwarded to the HCA, who shall process such reports in accordance with FAR 22.406–8(d).

Subpart 422.6—Walsh-Healey Public Contracts Act

422.604 Exemptions.

422.604–2 Regulatory exemptions.

The Assistant Secretary for Administration can request the Secretary of labor to exempt contracts from the Walsh-Healey Public Contracts Act pursuant to FAR 22.604–2(c). A written finding justifying the request for exemption shall be prepared for the Assistant Secretary's signature and submitted by the HCA to the Senior Procurement Executive (SPE) for referral to the Assistant Secretary.

422.608 Procedures.

422.608–4 Award pending final determination.

The HCA is delegated authority to approve the contracting officer's certification for award required by FAR 22.608–4.

Subpart 422.8—Equal Employment Opportunity

422.803 Responsibilities.

The contracting office shall submit questions involving the applicability of Executive Order 11246 and FAR subpart 22.8 through the HCA to the SPE for resolution.

422.804 Affirmative action programs.

422.804–2 Construction.

The HCA shall ensure that each contracting office, awarding nonexempt construction contracts, maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction trades.

422.807 Exemptions.

(a) The Assistant Secretary for Administration is authorized to make

the determination in FAR 22.807(a)(1) that a contract is essential to the national security.

(b) The contracting officer shall submit requests for exemptions under FAR 22.807(a)(1), (a)(2), and (b)(5) through the HCA to the SPE for determination by the Assistant Secretary of Administration or referral to the Director, Office of Federal Contract Compliance Programs (OFCCP), as appropriate.

Subpart 422.13—Special Disabled and Vietnam Era Veterans

422.1303 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1303(a) and FAR 22.1303(b) with concurrence of the Director, OFCCP.

(b) The contracting office shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

422.1306 Complaint procedures.

The contracting officer shall forward complaints received about the administration of the Vietnam Era Veterans Readjustment Assistance Act directly to the Department of Labor (DoL) as prescribed in FAR 22.1306.

Subpart 422.14—Employment of the Handicapped

422.1403 Waivers.

(a) The Assistant Secretary for Administration is authorized to make the waiver determinations under FAR 22.1403(a) and (b) with concurrence of the Director, OFCCP.

(b) The contracting officer shall submit requests for waivers through the HCA to the SPE for determination by the Assistant Secretary for Administration.

422.1406 Complaint procedures.

The contracting officer shall forward complaints received about the administration of Section 503 of the Rehabilitation Act of 1973, as amended, directly to the OFCCP as prescribed in FAR 22.1406.

PART 423—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 423.1—Pollution Control and Clean Air and Water

Sec.
423.101 Applicability.
423.103 Policy.
423.104 Exemptions.
423.106 Delaying award.
423.107 Compliance responsibilities.

Subpart 423.2—Energy Conservation

423.203 Policy.

Subpart 423.4—Use of Recovered Materials

423.400 Scope of subpart.
423.402 Definitions.
423.404 Procedures.
423.404–70 Acquisition, Recycling, and Waste Prevention Program (AR&WPP).

Subpart 423.5—Drug-Free Workplace

423.506 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

Subpart 423.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

423.704 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 423.1—Pollution Control and Clean Air and Water

423.101 Applicability.

In addition to the requirement in FAR 23.101, this subpart applies to indefinite-delivery contracts, other than those for commercial items, when the contracting officer estimates that the contract will exceed $100.000.

423.103 Policy.

The head of the contracting activity (HCA) shall establish a system of instructions to make available to each contracting officer the EPA *List of Violating Facilities* and to ensure the contracting officer reviews the list prior to each proposed award.

423.104 Exemptions.

(a) The Assistant Secretary for Administration is authorized to grant an exemption described in FAR 23.104.

(b) The Senior Procurement Executive (SPE) is authorized to consult with the EPA Administrator regarding a proposed class exemption.

423.106 Delaying award.

Prior to notifying EPA, the contracting officer shall advise the SPE of the need to award before the requested time period expires.

423.107 Compliance responsibilities.

The HCA is authorized to notify the Administrator of EPA of known or suspected noncompliance with clean air or water standards in facilities used in performing nonexempt contracts. A copy of the notification is to be provided to the SPE.

Subpart 423.2—Energy Conservation

423.203 Policy.

In the acquisition of products and services, USDA will give preference to those that are more energy-efficient.

Subpart 423.4—Use of Recovered Materials

423.400 Scope of subpart.

This subpart implements and supplements FAR policies and procedures for acquiring products and services when preference is given to offers of products containing recovered materials. This subpart further supplements FAR subpart 23.4 by providing guidance for recycling and waste prevention programs in accordance with Executive Order 12873 and 42 U.S.C. 6962.

423.402 Definitions.

Mission areas are USDA organizational elements headed by an Undersecretary or an Assistant Secretary.

USDA Acquisition, Recycling, and Waste Prevention Program, issued by the USDA Environmental Executive, provides implementing guidance for Departmental affirmative procurement, recycling, and waste reduction.

The USDA Environmental Executive is the Deputy Assistant Secretary for Administration.

423.404 Procedures.

(a) The dollar thresholds described in FAR 23.404(a) apply to USDA as a whole.

(b) *EPA designated items.* The officials identified as Acquisition, Recycling, and Waste Prevention Program (AR&WPP) Coordinators are authorized to approve determinations to buy EPA designated items which do not meet EPA or USDA minimum recovered material content standards.

(c) *Agency designated items.* The USDA Environmental Executive may, without further publication in this chapter, designate items or classes of items containing recovered material to be acquired under the procedures in FAR 23.4 and this subpart.

423.404–70 Acquisition, Recycling, and Waste Prevention Program (AR&WPP).

(a) *Applicability.* The AR&WPP applies to all USDA organizations; i.e., USDA mission areas, USDA corporations (as described in 31 U.S.C. 9101), and USDA staff offices not included within a mission area.

(b) *Authority.* The AR&WPP has been established to comply with the requirements of Executive Order 12873 to coordinate all environmental

programs in the areas of procurement and acquisition, standards and specification review, facilities management, waste prevention and recycling, and logistics.

(c) *Responsibilities*. (1) Each USDA organization will identify one or more AR&WPP Coordinators in writing to represent the mission area, serve on the Council of Coordinators, and work in conjunction with the USDA Environmental Executive.

(2) Each USDA organization periodically will conduct an audit (survey or inventory) of the waste stream generated by the organization. The goals of the audit are:

(i) To identify and measure the elements of waste generated in its operations;

(ii) To identify processes, equipment, techniques, or materials which generate waste in energy or materials;

(iii) To identify actions which can be taken to reduce and to recycle or recover the wastes generated; and

(iv) To assign time frames to accomplish those actions.

(3) Each USDA organization will implement an avoidance or recovery or recycling program based on the results of the waste stream audit.

(4) Each USDA organization will implement a plan to install on-going waste prevention techniques.

(5) Each USDA organization will ensure that responsibility for preparation, implementation, and monitoring of its affirmative procurement program is shared between program personnel and procurement personnel.

(6) Each USDA organization will establish measurable goals by which the effectiveness of its participation in AR&WPP can be assessed on an annual basis.

(7) Each USDA organization will sponsor annual awards to recognize the most innovative environmental program of the year.

(d) *Acquisition and administration*. (1) Each USDA organization will annually review its product descriptions to enhance the use of recovered materials and environmentally preferable products and services by eliminating from the product description:

(i) Any exclusion of recovered materials, and

(ii) Any requirement that items be manufactured from virgin materials.

(2) Each USDA organization will create a promotion program to internally and externally promote its desire to buy recycled products.

(3) Each USDA organization will implement the USDA electronic acquisition system to reduce waste by eliminating unnecessary paper transactions and to foster accurate data collection and reporting of acquisitions.

(4) Each USDA organization will establish an affirmative procurement program specifically for the needs and requirements of its own organization, to maximize environmental benefits, consistent with price, performance, and availability considerations.

(5) Each USDA organization will ensure that the on-going inspection and production surveillance systems in place will monitor the production or the testing of goods and services to verify the recovered material contents reported.

(6) Each USDA organization will include

(i) Requirements in contracts for contractor operation of Government-owned or leased facilities to provide for waste prevention activities and the recycling of materials and

(ii) Environmental and recycling factors in the selection process for the acquisition and management of real property.

Subpart 423.5—Drug-Free Workplace

423.506 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer may recommend waiver of the determination to suspend payments, to terminate a contract, or to debar or to suspend a contractor.

(b) The recommendation shall be submitted through the HCA to the SPE and shall include a full description of the disruption of USDA operations should the determination not be waived.

(c) The SPE will submit the request for a waiver to the Secretary with a recommendation for action.

Subpart 423.6—Notice of Radioactive Material

423.601 Requirements.

The HCA shall establish a system of instructions to identify the installation/facility radiation protection officer.

Subpart 423.7—Contracting for Environmentally Preferable and Energy-Efficient Products and Services

423.704 Policy.

In its acquisitions, USDA will give preference to environmentally preferable and energy-efficient products and services.

PART 424—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 424.1—Protection of Individual Privacy

Sec.
424.103 Procedures.
424.104 Contract clauses.

Subpart 424.2—Freedom of Information Act

424.202 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 424.1—Protection of Individual Privacy

424.103 Procedures.

USDA regulations implementing the Privacy Act are found in 7 CFR, subtitle A, part 1, subpart G. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

424.104 Contract clauses.

When applicable, the contracting officer shall insert the clause at 452.224–70, Confidentiality of Information, in contracts involving confidential information.

Subpart 424.2—Freedom of Information Act

424.202 Policy.

USDA regulations implementing the Freedom of Information Act are found in 7 CFR, subtitle A, part 1, subpart A. Contracting officers shall follow these regulations when responding to requests for information or awarding contracts that will involve the design, development, or operation of a system of records on individuals to accomplish agency functions.

PART 425—FOREIGN ACQUISITION

Subpart 425.1—Buy American Act—Supplies

Sec.
425.102 Policy.
425.105 Evaluating offers.
425.108 Expected articles, materials and supplies.

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.
425.203 Evaluating offers.
425.204 Violations.

Subpart 425.3—Balance of Payments Program

425.302 Policy.
425.304 Excess and near-excess foreign currencies.

Subpart 425.4—Trade Agreements

425.402 Policy.

Subpart 425.9—Additional Foreign Acquisition Clauses

425.901 Omission of audit clause.

Subpart 425.10—Implementation of Sanctions Against Countries That Discriminate Against United States Products or Services in Government Procurement

425.1002 Trade sanctions.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 425.1—Buy American Act—Supplies

425.102 Policy.

The Senior Procurement Executive (SPE) shall make the determination prescribed in FAR 25.102(a)(3).

425.105 Evaluating offers.

The SPE shall make the determinations prescribed in FAR 25.105. Requests for SPE approval shall be submitted by the HCA, in writing, and shall provide a detailed justification supporting why the proposed award is in the best interest of the Government.

425.108 Excepted articles, materials, and supplies.

(a) Copies of determinations of nonavailability in accordance with FAR 25.102(a)(4) or 25.202(a)(3), for articles, material or supplies not listed in FAR 25.108, shall be submitted to the SPE for submission to the FAR Council.

(b) Information required by FAR 25.108(c) shall be submitted to the SPE for submission to the FAR Council.

Subpart 425.2—Buy American Act—Construction Materials

425.202 Policy.

The SPE shall make the determination prescribed in FAR 25.202(a)(2).

425.203 Evaluating offers.

(a) The SPE may determine that the use of a particular domestic construction material would be impracticable or would unreasonably increase the cost of the contract.

(b) If a contracting officer proposes that the use of a particular domestic construction material should be waived for a contract, the contracting officer shall submit the proposed award and the information prescribed in FAR 25.203(b) through the HCA to the SPE for approval or disapproval.

425.204 Violations.

Contracting officers shall, in accordance with the debarment procedures prescribed in 409.4, refer all violations of FAR clause 52.225–5, Buy American Act—Construction Material, to the Department Debarring Officer for possible debarment action.

Subpart 425.3—Balance of Payments Program

425.302 Policy.

The HCA shall make the determinations prescribed in FAR 25.302(b)(2) and (3) and may authorize differentials greater than 50 percent as prescribed in FAR 25.302(c).

425.304 Excess and near-excess foreign currencies.

HCA's shall make the determinations as to the feasibility of using excess or near-excess currency.

Subpart 425.4—Trade Agreements

425.402 Policy.

Whenever the U.S. Trade Representative publishes a redetermination of the dollar threshold at which the Trade Agreements Act applies, that dollar threshold will be published in a Departmental Notice, 5025 series.

Subpart 425.9—Additional Foreign Acquisition Clauses

425.901 Omission of audit clause.

The SPE shall make the determination under FAR 25.901(c)(1).

Subpart 425.10—Implementation of Sanctions Against Countries That Discriminate Against United States Products or Services in Government Procurement

425.1002 Trade sanctions.

The Secretary, without power of redelegation, has the authority to make the necessary determination(s) and authorize award(s) of contract(s) in accordance with FAR 25.1002(c).

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 427—PATENTS, DATA AND COPYRIGHTS

Subpart 427.1—General

Sec.
427.104 General guidance.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 427.1—General

427.104 General guidance

As used in FAR part 27, the agency head or agency head designee is the Senior Procurement Executive, except under FAR 27.306(a) and (b). Under FAR 27.306(a) and (b), the agency head is the Secretary without power of redelegation.

PART 428—BONDS AND INSURANCE

Subpart 428.1—Bonds

Sec.
428.101 Bid guarantees.
428.101–1 Policy on use.
428.106 Administration.
428.106–6 Furnishing information.

Subpart 428.2—Sureties

428.203 Acceptability of individual sureties.
428.204 Alternatives in lieu of corporate or individual sureties.
428.204–2 Certified or cashier's checks, bank drafts, money orders, or currency.

Subpart 428.3—Insurance

428.307 Insurance under cost-reimbursement contracts.
428.307–1 Group insurance plans.
428.310 Contract clause for work on a Government installation.
428.370 Government-owned vehicles operated in foreign countries.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 428.1—Bonds

428.101 Bid guarantees.

428.101–1 Policy on use.

The Senior Procurement Executive may authorize class waivers of the requirement to obtain bid guarantees.

428.106 Administration.

428.106–6 Furnishing information.

Heads of contracting activities (HCA's) or their designees may furnish certified copies of bonds and the contracts for which they were given as provided by FAR 28.106–6(c). Requesters may be required to pay costs of certification and copying established by the Departmental Fee Schedule for records requests (7 CFR part 1, subpart A, appendix A).

Subpart 428.2—Sureties

428.203 Acceptability of individual sureties.

Evidence of possible criminal or fraudulent activities by an individual surety shall be reported to the Office of Inspector General in accordance with Departmental Regulations (1700 series).

428.204 Alternatives in lieu of corporate or individual sureties.

HCA's shall establish procedures to ensure protection and conveyance of deposited securities of the types listed in FAR 28.204–1 through 28.204–3.

428.204–2 Certified or cashier's checks, bank drafts, money orders, or currency.

The contracting officer shall insert the provision at 452.228–70, Alternative Forms of Security, in a solicitation if a bond is required.

Subpart 428.3—Insurance

428.307 Insurance under cost-reimbursement contracts.

428.307–1 Group insurance plans.

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer shall use all sources of information available, such as audits, industry practice, or other sources of information, to determine whether acceptance of the plan submitted would be in the Government's best interest.

428.310 Contract clause for work on a Government installation.

The contracting officer shall insert the clause at 452.228–71, Insurance Coverage, in solicitations and contracts which include the clause at FAR 52.228–5, Insurance—Work on a Government Installation. If property liability insurance is required, the contracting officer shall use the clause with its Alternate I.

428.370 Government-owned vehicles operated in foreign countries.

USDA is authorized to obtain insurance to cover liability incurred by any of its employees while acting within the scope of their employment and operating a Government-owned vehicle in a foreign country. (7 U.S.C. 2262).

PART 430—-COST ACCOUNTING STANDARDS ADMINISTRATION

Sec.
430.070 Definitions.

Subpart 430.2—-CAS Program Requirements

430.201 Contract requirements.
430.201–5 Waiver.
430.202 Disclosure requirements.
430.202–2 Impracticality of submission.
430.202–8 Subcontractor Disclosure Statements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

430.070 Definitions.

ACO, as used in this part and in FAR part 30, means *administrative contracting officer* as described in FAR part 42.

Subpart 430.2—-CAS Program Requirements

430.201 Contract requirements.

430.201–5 Waiver.

The Senior Procurement Executive (SPE), without the authority to further redelegate, is authorized to request the Cost Accounting Standards Board to waive the application of the Cost Accounting Standards (CAS). Contracting officers shall prepare waiver requests in accordance with 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subsection 9903.201–5, and submit them to the SPE through the head of the contracting activity (HCA).

430.202 Disclosure requirements.

430.202–2 Impracticality of submission.

(a) The Secretary, without the power to delegate, is authorized to determine, in accordance with FAR part 99 (Appendix B), subsection 9903.202–2, that the Disclosure Statement is impractical to secure and to authorize award without obtaining the Disclosure Statement.

(b) The request for this determination is to be prepared in accordance with FAR part 99 (Appendix B), subsection 9903.202–2 and is to contain the proposed report to the CASB.

(c) Requests for a determination under paragraph (a) of this section shall be prepared by the contracting officer and submitted through the HCA to the SPE for concurrence and submittal to the Secretary.

430.202–8 Subcontractor Disclosure Statements.

(a) The Secretary, without the power to redelegate, is authorized to determine that the Disclosure Statement for a subcontractor is impractical to secure and to authorize award without obtaining the Disclosure Statement.

(b) Requests for this determination are to be prepared and forwarded as described in 430.202–2.

PART 431—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 431.1—Applicability

Sec.
431.101 Objectives.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 431.1—Applicability

431.101 Objectives.

(a) The SPE is designated as the official authorized to give advance approval of an individual deviation concerning cost principles.

(b) The SPE is designated as the official authorized to give advance approval of a class deviation concerning cost principles after coordination with the Civilian Agency Acquisition Council.

(c) Requests for advance approval of class deviations concerning cost principles must be submitted to the SPE through the HCA.

PART 432—CONTRACT FINANCING

Sec.
432.001 Definitions.
432.003 Simplified acquisition procedures financing.
432.006 Reduction or suspension of contract payments upon finding of fraud.
432.006–2 Definitions.
432.006–3 Responsibilities.
432.006–4 Procedures.
432.006–5 Reporting.

Subpart 432.1—Non-Commercial Item Purchase Financing

432.102 Description of contract financing methods.
432.103 Progress payments under construction contracts.
432.111 Contract clauses for non-commercial purchases.
432.113 Customary contract financing.
432.114 Unusual contract financing.

Subpart 432.2—Commercial Item Purchase Financing

432.202 General.
432.202–1 Policy.
432.202–4 Security for Government financing.
432.206 Solicitation provisions and contract clauses.
432.207 Administration and payment of commercial financing payments.

Subpart 432.3—Loan Guarantees for Defense Production

432.301 Definitions.

Subpart 432.4—Advance Payments for Non-Commercial Items

432.402 General.
432.406 Letters of credit.
432.407 Interest.
432.412 Contract clause.

Subpart 432.6—Contract Debts

432.601 Definition.
432.616 Compromise actions.

Subpart 432.7—Contract Funding

432.703 Contract funding requirements.
432.703–3 Contracts crossing fiscal years.
432.770 USDA specific funding limitations.

Subpart 432.8—Assignment of Claims

432.802 Conditions.
432.803 Policies.
432.805 Procedure.
432.806 Contract clauses.

Subpart 432.9—Prompt Payment

432.905 Invoice payments.
432.906 Contract financing payments.

Subpart 432.10—Performance-Based Payments

432.1007 Administration and payment of performance-based payments.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

432.001 Definitions.

The *agency contract finance office* is the office, other than the office of the requisitioner, providing funding or performing funding record keeping for the contract action.

Responsible fiscal authority is that officer in the agency contract finance office with the responsibility to ensure that adequate funds are available and usable for the intended purpose.

432.003 Simplified acquisition procedures financing.

(a) The chief of the contracting office may approve contract financing on a contract to be entered under the simplified acquisition procedures. Class approvals may not be made.

(b) The signed approval must contain the supporting rationale for the action and an estimate of the cost and/or risk to the government.

432.006 Reduction or suspension of contract payments upon finding of fraud.

432.006–2 Definitions.

(a) The USDA *remedy coordination official* (RCO) is the Assistant Secretary for Administration.

(b) For the purposes of this part, *head of the agency* means, exclusively, the Secretary or the Deputy Secretary.

432.006–3 Responsibilities.

When a contracting officer suspects that a request for advance, partial, or progress payment is based on fraud, the request shall be referred directly to the Office of Inspector General (OIG) in accordance with their instructions. A copy of the referral shall be submitted through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE).

432.006–4 Procedures.

(a) Immediately upon submittal of the referral described in 432.006–3, the HCA and the contracting officer shall confer with the SPE and representatives of the OIG to discuss the potential for reduction or suspension of further payments based on the considerations listed in FAR 32.006–4(d) (1) through (5).

(b) The SPE will determine whether the contractor has contracts with other Departments or contracting activities and will involve them, as necessary, in the decision making process.

(c) The OIG will determine the need for and the extent of an investigation.

(d) Immediately upon completion of the OIG investigation (or, if deemed necessary by the OIG and the SPE, before completion of the investigation) the SPE, in coordination with the HCA, the contracting officer, and the OIG, shall make a report on the action to the RCO.

(e) Upon receipt of the report, the RCO will submit a recommendation to the Secretary.

(f) Upon receipt of the RCO's report the Secretary will:

(1) Notify the contractor in writing, allowing 30 calendar days after receipt of the notice, that the contractor may submit in writing information and arguments in opposition to the recommendation; and

(2) Consider the RCO's recommendation, the SPE's report, the response of the contractor, and any other relevant information in order to make an appropriate final determination.

(g) This determination will be provided to the contractor and to the SPE for distribution to the agencies involved and for appropriate action under the determination.

(h) The determination and the supporting documentation will be placed in the contract file(s) and a copy will be maintained by the SPE.

(i) The contracting officer will advise the SPE of the actual date of the reduction or suspension action.

(j) Not later than 150 calendar days after the actual date of the reduction or suspension action, the SPE will prepare for the RCO a review of the agency head's determination, and will propose a recommendation from the RCO to the agency head as to whether the reduction or suspension action should continue. The RCO will submit the recommendation (including a recommendation for the time period of a follow up review) to the agency head. This recommendation will be considered by the Secretary and handled as a final action described in paragraph (f) of this section.

(k) The contract may not be closed nor final payment made prior to a final determination by the Secretary.

432.006–5 Reporting.

The annual report required by FAR 32.006–5 is to be prepared by the SPE and to be submitted to the Secretary within 90 calendar days after the end of the fiscal year. When signed by the Secretary, the report is to be maintained by the SPE.

Subpart 432.1—Non-commercial Item Purchase Financing

432.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under USDA contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. Such payments also are authorized for service contracts, if the contracting officer determines that progress payments based on costs are not practicable and adequate safeguards are provided to administer progress payments based on a percentage or stage of completion. For all other contracts, progress payment provisions shall be based on costs except that the HCA may authorize progress payments based on a percentage or stage of completion on a case-by-case basis. Each authorization by the HCA shall include a determination and finding that progress payments based on costs cannot be employed practically and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

432.103 Progress payments under construction contracts.

(a) When approving a progress payment under a construction contract, the contracting officer shall indicate the amount to be paid by the payment office and include in the contract file the rationale in support of the payment.

(b) When a retainage is made on a progress payment under a construction contract, the contracting officer shall place in the contract file a written determination stating the reason(s) for the retainage.

(c) When a progress payment under a construction contract has been approved, the amount to be paid, the amount of any retainage withheld, and the reason(s) for the retainage shall be provided to the contractor by the contracting officer in writing before the payment due date.

(d) When the contractor, under a fixed-price construction contract, furnishes evidence to the contracting officer that the surety has been paid in full for bond premiums and requests reimbursement, the first subsequent progress payment shall include the total amount attributable to such bond premiums and the Government shall pay that amount in full. This amount paid for the bond premiums is not an amount in addition to the stated contract price.

432.111 Contract clauses for non-commercial purchases.

The contracting officer shall insert the clause at 452.232–1, Reimbursement for Bond Premiums—Fixed Price Construction Contracts, whenever the clause at FAR 52.232–5, Payments under Fixed-Price Construction Contracts, is used in a contract.

432.113 Customary contract financing.

The contracting officer may determine the necessity for customary contract financing. The determination and finding that customary contract financing is needed shall be placed in the contract file.

432.114 Unusual contract financing.

The HCA is authorized to approve unusual contract financing. The signed determination and finding supporting this approval shall be included in the contract file.

Subpart 432.2—Commercial Item Purchase Financing

432.202 General.

432.202–1 Policy.

In the case of unusual contract financing, the approval by the HCA shall be recorded in a determination and finding and maintained in the contract file.

432.202–4 Security for Government financing.

Prior to determining that an offeror's financial condition is adequate security, the contracting officer must obtain the concurrence of the funding activity in the proposed determination.

432.206 Solicitation provisions and contract clauses.

The responsibility for administration of the liquidation provisions of a contract may not be transferred from the contracting officer.

432.207 Administration and payment of commercial financing payments.

The responsibility for receiving, reviewing, and approval of contract financing requests may not be transferred from the contracting officer.

Subpart 432.3—Loan Guarantees for Defense Production

432.301 Definitions.

Within this subpart, the ''agency'' or ''guaranteeing agency'' is the ''head of the contracting activity'' (HCA) and may not be redelegated.

Subpart 432.4—Advance Payments for Non-commercial Items

432.402 General.

The HCA is designated as the individual responsible for making the findings and determination, and for approval of the contract terms concerning advance payments.

432.406 Letters of credit.

The HCA is designated as the individual responsible for coordination with the Department of Treasury concerning letters of credit.

432.407 Interest.

(a) The HCA is designated as the individual who may authorize, on a case by case basis, advance payments without interest for the contract types described in FAR 32.407(d)(1), (2), (3), and (4). The signed determination and findings supporting these authorizations shall be included in the contract files.

(b) The SPE is designated as the individual who may authorize advance payments without interest other than those described in paragraph (a) of this section.

432.412 Contract clause.

The decision to use Alternates I or III to clause 52.232–12 must be supported by a determination and finding.

Subpart 432.6—Contract Debts

432.601 Definition.

Responsible official means the contracting officer.

432.616 Compromise actions.

Compromise of a debt within the proceedings under appeal to the Board of Contract Appeals is the responsibility of the contracting officer.

Subpart 432.7—Contract Funding

432.703 Contract funding requirements.

432.703–3 Contracts crossing fiscal years.

Funds appropriated to USDA may be used for one-year contracts which are to be performed in two fiscal years so long as the total amount for such contracts is obligated in the year for which the funds are appropriated (7 U.S.C. 2209c).

432.770 USDA specific funding limitations.

(a) The USDA is authorized to subscribe for newspapers as may be necessary to carry out its authorized work: *Provided,* that such subscriptions shall not be made unless provision is made therefor in the applicable appropriation and the cost thereof is not in excess of limitations prescribed therein (7 U.S.C. 2258).

(b) The expenditure of any USDA appropriation for any consulting service through any contract, pursuant to section 3109 of Title 5 of the U.S. Code shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law (7 U.S.C. 2225a).

Subpart 432.8—Assignment of Claims

432.802 Conditions.

Written notices of assignment and a true copy of the assigned instrument are to be sent to the contracting officer rather than the agency head. Other copies are distributed as directed in FAR 32.802.

432.803 Policies.

The HCA may make a determination of need to include a no-setoff commitment in a contract.

432.805 Procedure.

The information described in FAR 32.805 shall be filed with the contracting officer.

432.806 Contract clauses.

The contracting officer may make the determination whether to include the clause at FAR 52.232–23 in any purchase order expected to exceed the micro-purchase threshold.

Subpart 432.9—Prompt Payment

432.905 Invoice payments.

The payment terms for supplies and services on the Procurement List and provided by a Javits-Wagner-O'Day Act participating nonprofit agency are governed by FAR 8.709.

432.906 Contract financing payments.

The HCA may prescribe, on a case-by-case basis, a shorter period for financing payments.

Subpart 432.10—Performance-Based Payments

432.1007 Administration and payment of performance-based payments.

The responsibility for receiving, reviewing, and approval of performance-based payment requests may not be transferred from the contracting officer.

PART 433—PROTESTS, DISPUTES AND APPEALS

Subpart 433.1—Protests

Sec.
433.102 General.
433.103 Protests to the agency.
433.104 Protests to GAO.

Subpart 433.2—Disputes and Appeals

433.203 Applicability.
433.203–70 Agriculture Board of Contract Appeals.
433.209 Suspected fraudulent claims.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 433.1—Protests

433.102 General.

(a) The Senior Procurement Executive (SPE) is responsible for coordinating the handling of bid protests lodged with the General Accounting Office (GAO).

(b) The head of the contracting activity (HCA), on a non-delegable basis, may resolve protests and authorize reimbursement of costs in accordance with FAR 33.102(b).

433.103 Protests to the agency.

(a) Actual or prospective bidders or offerors may file protests either with the HCA, as provided by 433.102(b), or with the contracting officer. Protesters who file protests with the HCA shall furnish a complete copy to the contracting officer no later than 1 day after the protest is filed with the HCA.

(b) When a protest is received, the adjudicating official shall take prompt action towards resolution and notify the protester in writing of the action taken. The written final decision shall include a paragraph substantially as follows:

This decision shall be final and conclusive unless a further written notice of protest is filed with the General Accounting Office in accordance with 4 CFR part 21. Neither the filing of a protest with USDA nor the filing of a protest with the General Accounting Office affects your right to file an action in a district court of the United States or the United States Court of Federal Claims.

433.104 Protests to GAO.

The contracting activity shall furnish a copy of all reports submitted to the GAO, including all relevant documents, to the SPE simultaneously with their submission to the GAO.

Subpart 433.2—Disputes and Appeals

433.203 Applicability.

The Assistant Secretary for Administration is authorized to determine the applicability of the Contract Disputes Act to contracts with foreign governments pursuant to FAR 33.203.

433.203–70 Agriculture Board of Contract Appeals.

The organization, jurisdiction, and functions of the Agriculture Board of Contract Appeals, together with its Rules of Procedure, are set out in 7 CFR part 24.

433.209 Suspected fraudulent claims.

The contracting officer shall refer all matters related to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of Inspector General for additional action or investigation.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 434—MAJOR SYSTEM ACQUISITION

Subpart 434.0—General

Sec.
434.001 Definitions.
434.002 Policy.
434.003 Responsibilities.
434.004 Acquisition strategy.
434.005 General requirements.
434.005–6 Full production.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 434.0—General

434.001 Definitions.

Pursuant to OMB Circular No. A–109 (A–109) and the definition at FAR 34.001, within USDA, a system shall be considered a major system if:

(a) The total acquisition costs with private industry are estimated to be $50 million or more, or

(b) The system has been specifically designated to be a major system by the USDA Acquisition Executive, even if the acquisition costs are not expected to exceed $50 million.

434.002 Policy.

In addition to the policy guidance at FAR 34.002, the policies outlined in paragraph 6 of A–109 should serve as guidelines for all contracting activities in planning and developing systems, major or otherwise.

434.003 Responsibilities.

(a) The Secretary of Agriculture or other designated USDA key executive is responsible for making four key decisions in each major system acquisition process. These are listed in paragraph 9 of A–109 and elaborated on in paragraphs 10 through 13. The key executives of USDA (Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) individually or as a group will participate in this decision making process.

(b) The Assistant Secretary for Administration (ASA) is the USDA Acquisition Executive. The ASA will ensure that A–109 is implemented in USDA and that the management objectives of the Circular are realized. The ASA is responsible for designating the program manager for each major system acquisition, designating an acquisition to be a major system acquisition, and approving the written charter and project control system for each major system acquisition.

(c) The Procurement and Property Management staff is responsible for assisting the ASA in carrying out the above responsibilities.

(d) Heads of contracting activities must:

(1) Ensure compliance with the requirements of A–109, FAR part 34 and AGAR 434.

(2) Ensure that potential major system acquisitions are brought to the attention of the USDA Acquisition Executive.

(3) Recommend qualified candidates for designation as program managers for each major system acquisition within their jurisdiction.

(4) Ensure that program managers fulfill their responsibilities and discharge their duties.

(5) Cooperate with the ASA in implementing the requirements of A–109.

(e) The program manager is responsible for planning and executing the major system acquisition, ensuring appropriate coordination with the USDA Acquisition Executive and other key USDA executives.

434.004 Acquisition strategy.

(a) The program manager will develop, in coordination with the Acquisition Executive, a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.

(b) The program manager will develop, subject to the approval of the Acquisition Executive, a project control system to schedule, monitor, and regularly report on all aspects of the project. The control system shall establish reporting periods and milestones consistent with the key decisions listed in paragraph 9 of A–109.

(c) Upon initiation of the project, the program manager will report regularly to the Acquisition Executive.

434.005 General requirements.

434.005–6 Full production.

The Secretary or the USDA key executive designated by the Secretary for the specific program is the agency head for the purposes of FAR 34.005–6.

PART 435—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
435.010 Scientific and technical reports.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

435.010 Scientific and technical reports.

Research and development contracts shall contain a provision requiring that the contractor send copies of all scientific and technical reports to the National Technical Information Service at the address indicated in FAR 35.010(b). The release of research and development contract results to other government activities and to the private sector is subject to the provisions of FAR subpart 4.4.

PART 436—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 436.2—Special Aspects of Contracting for Construction

Sec.
436.201 Evaluation of contractor performance.
436.203 Government estimate of construction costs.
436.204 Disclosure of the magnitude of construction projects.
436.205 Statutory cost limitations.
436.209 Construction contracts with architect-engineer firms.

Subpart 436.3—Special Aspects of Sealed Bidding in Construction Contracting

436.302 Presolicitation notices.

Subpart 436.5—Contract Clauses

436.500 Scope of subpart.
436.571 Prohibition against the use of lead-based paint.
436.572 Use of premises.
436.573 Archeological or historic sites.
436.574 Control of erosion, sedimentation, and pollution.
436.575 Maximum workweek-construction schedule.
436.576 Samples and certificates.
436.577 Emergency response.
436.578 Standard specifications for construction of roads and bridges.
436.579 Opted timber sale road requirements.

Subpart 436.6—Architect-Engineer Services

436.601 Policy
436.601–3 Applicable contracting procedures.
436.602 Selection of firms for architect-engineer contracts.
436.602–1 Selection criteria.
436.602–2 Evaluation boards.
436.602–3 Evaluation board functions.
436.602–4 Selection authority.
436.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.
436.603 Collecting data on and appraising firms' qualifications.
436.604 Performance evaluation.
436.605 Government cost estimate for architect-engineer work.
436.609 Contract clauses.
436.609–1 Design within funding limitations.
436.670 Firms ineligible for award—construction.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 436.2—Special Aspects of Contracting for Construction

436.201 Evaluation of contractor performance.

Preparation of performance evaluation reports. In addition to the requirements of FAR 36.201, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activity's reasonable estimate of services to be ordered exceeds $500,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

436.203 Government estimate of construction costs.

For acquisitions using sealed bid procedures, the contracting officer may disclose the overall amount of the Government's estimate of construction costs following identification of the responsive bid most advantageous to the Government; verification of that bid's price reasonableness; and verification of the bidder's responsibility. For acquisitions using other than sealed bid procedures (e.g., negotiation), the contracting officer may disclose the overall amount of the estimate after contract award.

436.204 Disclosure of the magnitude of construction projects.

In the case of indefinite-delivery type contracts, the reasonable estimate of work to be done or the maximum in the solicitation, both including all options, is to be used to select the price range. Contracting officers may elect to use both a price range for the base period of services and the total, inclusive of options, to best describe the magnitude of the solicitation.

436.205 Statutory cost limitations.

(a) When it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In this case, the contracting officer shall insert the provision at 452.236–70, Additive or Deductive Items, in solicitations for construction.

(b) In the alternative to the process in paragraph (a) of this section, the contracting officer may use the policies and procedures found in FAR 17.2.

436.209 Construction contracts with architect-engineer firms.

The head of the contracting activity (HCA) is authorized to approve the award of a contract to construct a project, in whole or in part, to the firm (inclusive of its subsidiaries or affiliates) that designed the project.

Subpart 436.3—Special Aspects of Sealed Bidding in Construction Contracting

436.302 Presolicitation notices.

The authority to waive a presolicitation notice is restricted to the HCA.

Subpart 436.5—Contract Clauses

436.500 Scope of subpart.

This subpart prescribes clauses for insertion in USDA solicitations and contracts for construction and for dismantling, demolition, or removal of improvements or structures. The contracting officer shall use the clauses as prescribed, in contracts that exceed the simplified acquisition threshold. The contracting officer may use the clauses if the contract amount is expected to be within the simplified acquisition threshold.

436.571 Prohibition against the use of lead-based paint.

The contracting officer shall insert the clause at 452.236–71, Prohibition Against the Use of Lead-Based Paint, in solicitations and contracts, if the work involves construction or rehabilitation (including dismantling, demolition, or removal) of residential structures. This clause may be used in contracts for other than residential structures.

436.572 Use of premises.

The contracting officer shall insert the clause at 452.236–72, Use of Premises, if the contractor will be permitted to use land or premises administered by USDA.

436.573 Archeological or historic sites.

The contracting officer shall insert the clause at 452.236–73, Archeological or Historic Sites, if the contractor will be working in an area where such sites may be found. Use of the clause is optional in service contracts for on-the-ground work, e.g. reforestation, silvicultural,

land stabilization, or other agricultural-related projects.

436.574 Control of erosion, sedimentation, and pollution.

The contracting officer shall insert the clause at 452.236–74, Control of Erosion, Sedimentation and Pollution, if there is a need for applying environmental controls in the performance of work. Use of the clause is optional in service contracts for on-the-ground e.g., reforestation, silvicultural, land stabilization, or other agricultural-related projects.

436.575 Maximum workweek-construction schedule.

The contracting officer shall insert the clause at 452.236–75, Maximum Workweek-Construction Schedule, if the contractor's work schedule is restricted by access to the facility or must be coordinated with the schedule of contract administration personnel.

436.576 Samples and certificates.

The contracting officer shall insert the clause at 452.236–76, Samples and Certificates, in all contracts.

436.577 Emergency response.

The contracting officer may insert the clause at 452.236–77, Emergency Response, in construction contracts awarded for the Forest Service.

436.578 Standard specifications for construction of roads and bridges.

The contracting officer shall insert the clause at 452.236–78, Forest Service Standard Specifications for Construction of Roads and Bridges, in construction contracts that incorporate the standard specifications.

436.579 Opted timber sale road requirements.

The contracting officer shall insert the clause at 452.236–79, Opted Timber Sale Road Requirements, in road construction contracts resulting from a timber sale turnback.

Subpart 436.6—Architect-Engineer Service.

436.601 Policy.

436.601–3 Applicable contracting procedures.

The technical official's listing of areas where recovered materials cannot be used shall be referred to the contracting activity's official designated in accordance with FAR 23.404. A copy of the listing and of any approval or disapproval by that official is to be retained in the solicitation file.

436.602 Selection of firms for architect-engineer contracts.

436.602–1 Selection criteria.

The HCA is authorized to approve the use of design competition under the conditions in FAR 36.602–1(b).

436.602–2 Evaluation boards.

HCA's shall establish written procedures for providing permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602–2. The procedures may provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined by the HCA to be essential to meet the Government's minimum needs.

436.602–3 Evaluation board functions.

The selection report required in FAR 36.602–3(d) shall be prepared for the approval of the HCA. The HCA may authorize an acquisition official above the level of the contracting officer to execute the required approval.

436.602–4 Selection authority.

(a) The HCA shall serve as the selection authority in accordance with FAR 36.602–4. The HCA may authorize an acquisition official above the level of the contracting officer to serve as the selection authority.

(b) A copy of the final selection, inclusive of the supporting documents, shall be provided to the contracting officer and maintained in the solicitation file.

436.602–5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The HCA may include either or both procedures in FAR 36.602–5 in the procedures for evaluation boards.

436.603 Collecting data on and appraising firms' qualifications.

(a) HCA's which require architect-engineer services shall establish procedures to comply with the requirements of FAR 36.603.

(b) The procedures shall include a list of names, addresses, and phone numbers of offices or boards assigned to maintain architect-engineer qualification data files. The list shall be updated annually.

436.604 Performance evaluation.

Preparation of performance evaluation reports. (a) In addition to the requirements of FAR 36.604, performance evaluation reports shall be prepared for indefinite-delivery type contracts when either the contract maximum or the contracting activities reasonable estimate of services to be ordered exceeds $25,000.00. For these contracts, performance evaluation reports shall be prepared for each order at the time of final acceptance of the work under the order.

(b) The contracting officer may require a performance evaluation report on the work done by the architect-engineer after the completion of or during the construction of the designed project.

436.605 Government cost estimate for architect-engineer work.

The contracting officer may release the Government's total cost estimate in accordance with FAR 36.605(b).

436.609 Contract clauses.

436.609–1 Design within funding limitations.

(a) Should the head of the contracting activity appoint a designee to make the determination in FAR 36.609–1(c)(1), the appointment may be to one no lower than the official authorized to commit program funds for the work being acquired.

(b) The contracting officer, with the advice of appropriate technical representatives, may make the determination in FAR 36.609–1(c)(2) or (3).

(c) A copy of the determinations described in paragraph (b) and (c) of this section shall be maintained in the contract file.

436.670 Firms ineligible for award—construction.

The contracting officer shall insert the clause at 452.236–80, Firms Ineligible For Award—Construction, in the contract for architect-engineering services except as provided in FAR 36.209 and AGAR 436.209.

PART 437—SERVICE CONTRACTING

Subpart 437.1—Service Contracts—General

Sec.
437.104 Personal services contracts.
437.110 Solicitation provisions and contract clauses.

Subpart 437.2—Advisory and Assistance Services

437.203 Policy.
437.270 Solicitation provisions and contracts clauses.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 437.1—Service Contracts—General

437.104 Personal services contracts.

USDA has the following specific statutory authorities to contract for personal services:

(a) Section 706(a) of the Organic Act of 1944 (7 U.S.C. 2225) authorizes contracting with persons or organizations on a temporary basis, without regard to civil service compensation classification standards in 5 U.S.C., Chapter 51 and Subchapter III of Chapter 53, *Provided:*

(1) That no expenditures shall be made unless specifically provided for in the applicable appropriation, and

(2) Expenditures do not exceed any limitations prescribed in the appropriation.

(b) 7 U.S.C. 1627 authorizes the Secretary of Agriculture to contract with technically qualified persons, firms or organizations to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws, *Provided:* it is for a temporary basis and for a term not to exceed six months in any fiscal year.

437.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237–70, Loss Damage, Destruction or Repair, in contracts for equipment rental, whether the equipment is furnished with or without operator.

(b) The contracting officer shall insert a provision substantially the same as the clause at 452.237–71, Pre-Bid/Pre-Proposal Conference, in all solicitations if a conference with prospective offerors will be held prior to the submittal of bids or proposals.

(c) The contracting officer shall insert the provision at 452.237–73, Equipment Inspection visit, in solicitations if work is to be done on Government equipment and an offeror's inspection is encouraged for an understanding of the work to be performed prior to submittal of bids or proposals.

(d) The contracting officer shall insert a clause substantially the same as the clause at 452.237–74, Key Personnel, in contracts if contract performance requires identification of the contractor's key personnel.

(e) The contracting officer shall insert a clause substantially the same as the clause at 452.237–75, Restrictions Against Disclosure, in service contracts (including architect-engineer contracts) requiring restrictions on release of information developed or obtained in connection with performance of the contract.

Subpart 437.2—Advisory and Assistance Services

437.203 Policy.

Contracting for advisory and assistance services is subject to the policy and procedures in Departmental Regulations (5000 series).

437.270 Solicitation and contract clauses.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.237–76, Progress Reporting, in all contracts for advisory and assistance services. It may also be used in other service contracts.

(b) The contracting officer shall insert a clause substantially the same as the clause at 452.237–78, Contracts with Consulting Firms for Services, in solicitations and contracts for consulting services which prohibit follow-on contracts with the contracting firm.

PART 441—ACQUISITION OF UTILITY SERVICES

Subpart 441.2—Acquiring Utility Services

441.201 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 441.2—Acquiring Utility Services

441.201 Policy.

As used in FAR 41.201(d)(2)(i) and 41.201(d)(3) the Federal agency head designee is the head of the contracting activity.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 442—CONTRACT ADMINISTRATION

Subpart 442.1—Interagency Contract Administration and Audit Services

Sec.
442.102 Procedures.

Subpart 442.15—Contractor Performance Information

442.1502 Policy.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 442.1—Interagency Contract Administration and Audit Services

442.102 Procedures.

(a) The Office of Inspector General (OIG), Audit Division, has established a cross-servicing arrangement with the Defense Contract Audit Agency (DCAA) to provide contract audit services required by the FAR.

(b) All contract audit services required by contracting officers, except those which can be accomplished in-house, shall be coordinated through the cognizant OIG Regional Inspector General—Auditing (RIG-A). Cognizance is determined on the basis of the contractor's location. There is no charge for DCAA audit services coordinated through OIG.

(c) In order to ensure compliance with this requirement and to evaluate the results of audits, contracting officers shall forward to the RIG-A copies of all price negotiation memoranda prepared for contracts and contract modifications in excess of $500,000.

Subpart 442.15—Contractor Performance Information

442.1502 Policy.

The head of the contracting activity shall be responsible for establishing past performance evaluation procedures and systems as required by FAR 42.1502 and 42.1503.

PART 445—GOVERNMENT PROPERTY

Subpart 445.3—Providing Government Property to Contractors

Sec.
445.302 Providing facilities.
445.302–1 Policy.

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.
445.407 Non-Government use of plant equipment.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contracting inventory.
445.608–6 Waiver of screening requirements.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 445.3—Providing Government Property to Contractors

445.302 Providing facilities.

445.302–1 Policy.

Heads of contracting activities (HCA's) are authorized to make determinations for providing facilities to a contractor as prescribed in FAR 45.302–1(a)(4).

Subpart 445.4—Contractor Use and Rental of Government Property

445.403 Rental—Use and Charges clause.

HCA's are authorized to make determinations for charging rent on the basis of use under the Use and Charges clause in FAR 52.245–9 as prescribed in FAR 45.403(a).

445.407 Non-Government use of plant equipment.

Requests for non-Government use of plant equipment as prescribed in FAR 45.407 shall be submitted by the HCA to the Senior Procurement Executive (SPE) for approval.

Subpart 445.6—Reporting, Redistribution and Disposal of Contractor Inventory

445.608 Screening of contractor inventory.

445.608–6 Waiver of screening requirements.

Requests to waive screening requirements as prescribed in FAR 46.608–6 shall be submitted by the HCA to the SPE for approval.

PART 446—QUALITY ASSURANCE

Subpart 446.3—Contract Clauses

Sec.
446.370 Inspection and acceptance.

Authority: 5 U.S.C. 30 and 40 U.S.C. 486(c).

Subpart 446.3—Contract Clauses

446.370 Inspection and acceptance.

The Contracting Officer shall insert the clause at 452.246–70, Inspection and Acceptance, in contracts where inspection and acceptance will be performed at the same location. The clause with its Alternate I is for use when inspection and acceptance will be performed at different locations.

PART 447—TRANSPORTATION

Subpart 447.3—Transportation in Supply Contracts

Sec.
447.302 Place of delivery—F.O.B. point.
447.305 Solicitation provisions, contract clauses, and transportation factors.
447.305–10 Packing, marking, and consignment instructions.

Authority: 5 U.S.C. 30 and 40 U.S.C. 486(c).

Subpart 447.3—Transportation in Supply Contracts

447.302 Place of delivery—F.O.B. point.

The contracting officer shall insert a clause substantially the same as the clause at 452.247–70, Delivery Location, in supply contracts when it is necessary to specify delivery locations. If appropriate, the clause may reference an attachment which lists various delivery locations and other delivery details (e.g., quantities to be delivered to each location, etc.).

447.305 Solicitation provisions, contract clauses, and transportation factors.

447.305–10 Packing, marking, and consignment instructions.

(a) The contracting officer shall insert a clause substantially the same as the clause at 452.247–71, Marking Deliverables, in solicitations and contracts if special marking on deliverables (other than reports) are required.

(b) The contracting officer shall insert the clause at 452.247–72, Packing for Domestic Shipment, in contracts when item(s) will be delivered for immediate use to a destination in the continental United States; when the material specification or purchase description does not provide preservation, packaging, packing, and/or marking requirements; and/or when the requiring activity has not cited a specific specification for packaging.

(c) The contracting officer shall insert the clause at 452.247–73, Packing for Overseas Shipment, in contracts when item(s) will be delivered to an overseas destination for immediate use, the material specification does not specify packing levels, and the required activity has not specified such requirements.

PART 449—TERMINATION OF CONTRACTS

Subpart 449.1—General Principles

Sec.
449.106 Fraud or other criminal conduct.
449.111 Review of proposed settlements.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.
449.402–3 Procedure for default.

Subpart 449.5—Contract Termination Clauses

449.501 General

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 449.1—General Principles

449.106 Fraud or other criminal conduct.

(a) If the contracting officer suspects fraud or other criminal conduct a written report documenting the facts shall be submitted by the head of the contracting activity (HCA) to the Office of Inspector General. Copies of documents or other information connected with the suspected fraud or criminal conduct shall be provided with the report. Concurrently, a copy of the report shall also be submitted to the Senior Procurement Executive.

(b) Depending on the findings of the Office of Inspector General, the HCA may initiate suspension or debarment action as prescribed in FAR part 9.4 and part 409.4.

449.111 Review of proposed settlements.

Proposed settlement agreements shall be reviewed and approved in accordance with contracting activity procedures.

Subpart 449.4—Termination for Default

449.402 Termination of fixed-price contracts for default.

449.402–3 Procedure for default.

In addition to the requirements of FAR 49.402–3(g), the notice of termination shall contain instructions regarding the disposition of any Government property in the possession of the contractor (see FAR 45.508–1) and, in the case of construction contracts, such materials, appliances, and structures as may be on the site of the construction work. The notice shall also contain a statement concerning the liability of the contractor or its surety for any liquidated damages (see FAR 49.402–7).

Subpart 449.5—Contract Termination Clauses

449.501 General.

Use of special purpose termination clauses pursuant to the authority of FAR 49.501 shall be approved in advance by the HCA.

PART 450—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.
450.001 Definitions.

Subpart 450.1—General

450.104 Reports.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

Subpart 450.3—Contract Adjustments

450.303 Contract adjustment.
450.303–1 Contractor requests.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

450.001 Definitions.

Approving authority, as used in this part, means the Assistant Secretary for Administration.

Secretarial level, as used in this part means the Assistant Secretary for Administration.

Subpart 450.1—General

450.104 Reports.

The Senior Procurement Executive shall prepare the report required by FAR 50.104.

Subpart 450.2—Delegation of and Limitations on Exercise of Authority

450.201 Delegation of authority.

The Assistant Secretary for Administration is authorized to approve all actions under FAR part 50 except indemnification actions listed in FAR 50.201(d) which must be approved by

the Secretary, without power of delegation.

Subpart 450.3—Contract Adjustments

450.303 Contract adjustment.

450.303–1 Contractor requests.

Contractor requests shall be submitted to the contracting officer.

SUBCHAPTER H—CLAUSES AND FORMS

PART 452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 452.2—Texts of Provisions and Clauses

Sec.

452.204–70 Inquiries.
452.211–1 Brand Name or Equal.
452.211–2 Equal Products Offered.
452.211–3 Statement of Work/Specifications.
452.211–4 Attachments to Statement of Work/Specifications.
452.211–5 Period of Performance.
452.211–6 Effective Period of the Contract.
452.214–70 Award by Lot.
452.215–71 Instructions for the Preparation of Technical and Business Proposals.
452.215–72 Amendments to Proposals.
452.215–73 Post-Award Conference.
452.216–70 Award Fee.
452.216–71 Base Fee and Award Fee Proposal.
452.216–72 Evaluation Quantities—Indefinite-Delivery Contract.
452.216–73 Minimum and Maximum Contract Amounts.
452.216–74 Ceiling Price.
452.216–75 Letter Contract.
452.219–70 Size Standard and SIC Code Information.
452.224–70 Confidentiality of Information.
452.228–70 Alternative Forms of Security.
452.228–71 Insurance Coverage.
452.232–1 Reimbursement for Bond Premiums—Fixed-Price Construction.
452.236–70 Additive or Deductive Items.
452.236–71 Prohibition Against the Use of Lead-Based Paint.
452.236–72 Use of Premises.
452.236–73 Archaeological or Historic Sites.
452.236–74 Control of Erosion, Sedimentation, and Pollution.
452.236–75 Maximum Workweek—Construction Schedule.
452.236–76 Samples and Certificates.
452.236–77 Emergency Response.
452.236–78 Forest Service Standard Specifications for Construction of Roads and Bridges.
452.236–79 Opted Timber Sale Road Requirements.
452.236–80 Firms Ineligible for Award—Construction.
452.237–70 Loss, Damage, Destruction or Repair.
452.237–71 Pre-Bid/Pre-Proposal Conference.
452.237–73 Equipment Inspection Visit.
452.237–74 Key Personnel.
452.237–75 Restrictions Against Disclosure.
452.237–76 Progress Reporting.
452.237–78 Contracts with Consulting Firms for Services.
452.246–70 Inspection and Acceptance.
452.247–70 Delivery Location.
452.247–71 Marking Deliverables.
452.247–72 Packing for Domestic Shipment.
452.247–73 Packing for Overseas Shipment.

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

Subpart 452.2—Texts of Provisions and Clauses

452.204–70 Inquiries.

As prescribed in 404.7001, insert the following provision:

INQUIRIES (FEB 1988)

Inquiries and all correspondence concerning this solicitation should be submitted in writing to the Contracting Officer. Offerors should contact only the Contracting Officer issuing the solicitation about any aspect of this requirement prior to contract award.

(End of provision)

452.211–1 Brand Name or Equal.

As prescribed in 411.171, insert the following provision:

BRAND NAME OR EQUAL (NOV 1996)

(As used in this provision, the term ''brand name'' includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified by a ''brand name or equal'' description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Offers of ''equal'' products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offer (see clause 452.211–2) and are determined by the Contracting Officer to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an ''equal'' product, the offeror shall be considered as offering the brand name product(s) referenced in the solicitation.

(c)(1) If the offeror proposes to furnish an ''equal'' product or products, the brand name(s), if any, and any other required information about the product(s) to be furnished shall be inserted in the space provided in the solicitation. The evaluation of offers and the determination as to the equality of the product(s) offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting activity. Caution to offerors: The contracting activity is not responsible for locating or securing any information which is not identified in the offer and is not reasonably available to the contracting activity. Accordingly, to assure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting activity to (i) determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting activity.

(2) If an offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, the offer shall include (i) a clear description of such proposed modifications and (ii) clearly marked descriptive material to show the proposed modifications.

(End of Provision)

452.211–2 Equal Products Offered.

As prescribed in 411.171, insert the following or substantially the same clause in solicitations seeking offers on a ''brand name or equal'' basis to allow offerors the opportunity to clearly identify the ''equal'' item being offered, and to illustrate how that item meets the salient characteristics requirements of the Government.

EQUAL PRODUCTS OFFERED (NOV 1996)

(a) Offerors proposing to furnish an ''equal'' product, in accordance with the ''Brand Name or Equal'' provision of this solicitation, shall provide the following information for each offered ''equal'' product:
Contract Line Item Number (if any): _____
Brand Name or Equal Product identified by the Government in this solicitation: _____
Offered Product Name: _____
Catalog Description or part number: _____
_____
Manufacturer's Name: _____
Manufacturer's Address: _____
_____
_____

(b) Offerors are responsible for submitting all additional information on the above product necessary for the Contracting Officer to determine whether the product offered meets the ''brand name or equal'' product's salient characteristics listed in the solicitation.

(End of Clause)

452.211–3 Statement of Work/Specifications.

As prescribed in 411.171, insert the following clause:

STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the Statement of Work/Specifications referenced in Section J.

(End of Clause)

452.211–4 Attachments to Statements of Work/Specifications.

As prescribed in 411.171, insert the following clause:

ATTACHMENTS TO STATEMENT OF WORK/SPECIFICATIONS (FEB 1988)

The attachments to the Statement of Work/Specifications listed in Section J are hereby made part of this solicitation and any resultant contract.

(End of Clause)

452.211–5 Period of Performance.

As prescribed in 411.404(a), insert the following clause:

PERIOD OF PERFORMANCE (FEB 1988)

The period of performance of this contract is from _____ through _____.*

(End of Clause)

* *Contracting Officer shall insert the appropriate dates.*

452.211–6 Effective Period of the Contract.

As prescribed in 411.404(b), insert the following clause:

EFFECTIVE PERIOD OF THE CONTRACT (FEB 1988)

The effective period of this contract is from _____ through _____.*

(End of Clause)

* *Contracting Officer shall insert the appropriate dates.*

452.214–70 Award by Lot.

As prescribed in 414.201–6, insert a provision substantially as follows:

AWARD BY LOT (NOV 1996)

Subject to the Section L provision FAR 52.214–10, ''Contract Award—Sealed Bidding,'' award will generally be made to a single bidder on each entire lot. However, the Government reserves the right to award by item within any lot when the contracting officer determines that it is advantageous to the Government.

(End of Provision)

452.215–71 Instructions for the Preparation of Technical and Business Proposals.

As prescribed in 415.407(a), insert a provision substantially as follows:

INSTRUCTIONS FOR THE PREPARATION OF TECHNICAL AND BUSINESS PROPOSALS (NOV 1996)

(a) *General Instructions.* Proposals submitted in response to this solicitation shall be furnished in the following format with the numbers of copies as specified below.

(1) The proposal must include a technical proposal and business proposal. Each of the parts shall be separate and complete so that evaluation of one may be accomplished independently from evaluation of the other. The technical proposal must not contain reference to cost; however, resource information (such as data concerning labor hours and categories, materials, subcontracts, etc.) must be contained in the technical proposal so that the contractor's understanding of the statement of work may be evaluated.

(2) Offerors may, at their discretion, submit alternate proposals or proposals which deviate from the requirement; provided, that an offeror also submit a proposal for performance of the work as specified in the statement of work. Any ''alternate'' proposal may be considered if overall performance would be improved or not compromised, and if it is in the best interest of the Government. Alternate proposals, or deviations from any requirement of this RFP, must be clearly identified.

(3) The Government will evaluate proposals in accordance with the evaluation criteria set forth in Section M of this RFP.

(4) Offerors shall submit their proposal(s) in the following format and the quantities specified:

(a) _____* copies of the completed, signed offer (Sections A through K of the solicitation package)

(b) _____* copies of the technical proposal

(c) _____* copies of the business/cost proposal

(b) *Technical Proposal Instructions.* The technical proposal will be used to make an evaluation and arrive at a determination as to whether the proposal will meet the requirements of the Government. Therefore, the technical proposal must present sufficient information to reflect a thorough understanding of the requirements and a detailed, description of the techniques, procedures and program for achieving the objectives of the specifications/statement of work. Proposals which merely paraphrase the requirements of the Government's specifications/ statement of work, or use such phrases as ''will comply'' or ''standard techniques will be employed'' will be considered unacceptable and will not be considered further. As a minimum, the proposal must clearly provide the following:

(*Contracting Officer shall identify in this section the minimum information required to evaluate each technical evaluation factor listed in Section M.*)

(c) *Business Proposal Instructions.*

(1) Cost Proposal.

In addition to any other requirements for cost/pricing information required in clause FAR 52.215–41, Requirements for Cost or Pricing Data or Other Than Cost of Pricing Data (OCT 1995), the following is required:

(*Contracting Officer shall identify additional information required if appropriate.)*

(2) Business Proposal.

(a) Furnish financial statements for the last two years, including an interim statement for the current year, unless previously provided to the office issuing the RFP, in which case a statement as to when and where this information was provided may be furnished instead.

(b) Specify the financial capacity, working capital and other resources available to perform the contract without assistance from any outside source.

(c) Provide the name, location, and intercompany pricing policy for other divisions, subsidiaries, parent company, or affiliated companies that will perform work or furnish materials under this contract.

(End of Provision)

**Contracting officer shall insert number of copies required.*

Alternate I (NOV 1996): When FAR clause 52.215–41 is not used to specify the cost/price information requirements and cost and pricing data is required substitute the following for subparagraph (1):

(c)(1) Cost and pricing data is required. Cost proposals must be submitted on a Standard Form 1411, Contract Pricing Proposal Cover Sheet, with supporting attachments in accordance with FAR Table 15–2, Instructions for Submission of a Contract Pricing Proposal.

Alternate II (NOV 1996): When FAR clause 52.215–41 is not used and use of a SF 1448 is required for submission of other than cost and pricing data, substitute the following subparagraph for c(1) above:

(c)(1) Cost proposals must be submitted on a Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), in accordance with FAR Table 15–3, Instructions for Submission of Information Other Than Cost or Pricing Data.

452.215–72 Amendments to Proposals.

As prescribed in 415.407(b), insert the following provision:

AMENDMENTS TO PROPOSALS (FEB 1988)

Any changes to a proposal made by the offeror after its initial submittal shall be accomplished by replacement pages. Changes from the original page shall be indicated on the outside margin by vertical lines adjacent to the change. The offeror shall include the date of the amendment on the lower right corner of the changed pages.

(End of Provision)

452.215–73 Postaward Conference.

As prescribed in 415.1070, insert a clause substantially as follows:

POST AWARD CONFERENCE (NOV 1996)

A post award conference with the successful offeror is required. It will be scheduled within _____* days after the date of contract award. The conference will be held at: _____*.

(End of Clause)

*Contracting officer to insert number of days and location.

452.216–70 Award Fee.

As prescribed in 416.405, insert a clause substantially as follows:

AWARD FEE (FEB 1988)

The amount of award fee the Contractor earns, if any, is based on a subjective evaluation by the Government of the quality of the Contractor's performance in accordance with the award fee plan. The Government will determine the amount of award fee every _____* months beginning with _____*. The Fee Determination Official (FDO) will unilaterally determine the amount of award fee. The FDO's determination will be in writing to the Contractor and is not

subject to the ''Disputes'' clause. The Government may unilaterally change the award fee plan at any time and will provide such changes in writing to the Contractor prior to the beginning of the applicable evaluation period. The Contractor may submit a voucher for the earned award fee. Available award fee not earned during one period does not carry over to subsequent periods.

(End of Clause)

* Contracting Officer shall insert appropriate number of months.

** Contracting Officer shall insert appropriate date.

452.216–71 Base Fee and Award Fee Proposal.

As prescribed in 416.470, insert the following provision:

BASE FEE AND AWARD FEE PROPOSAL (FEB 1988)

For the purpose of this solicitation, offerors shall propose a base fee of _____* percent of the total estimated cost proposed. The award fee shall not exceed _____* percent of the total estimated cost.

(End of Provision)

**Contracting Officer shall insert appropriate percentages.*

452.216–72 Evaluation Quantities—Indefinite Delivery Contract.

As prescribed in 416.506(a), insert a provision substantially as follows:

EVALUATION QUANTITIES—INDEFINITE-DELIVERY CONTRACT (FEB 1988)

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation, and will add other direct costs if applicable.

(End of Provision)

452.216–73 Minimum and Maximum Contract Amounts.

As prescribed in 416.506(b), insert the following clause:

MINIMUM AND MAXIMUM CONTRACT AMOUNTS (FEB 1988)

During the period specified in FAR clause 52.216–18, ORDERING, the Government shall place orders totaling a minimum of _____*, but not in excess of _____*.

(End of Clause)

**Contracting Officer shall insert appropriate quantity or dollar amounts.*

452.216–74 Ceiling Price.

As prescribed in 416.670, insert the following clause:

CEILING PRICE (FEB 1988)

The ceiling price of this contract is $ _____*. The Contractor shall not make expenditures or incur obligations in the performance of this contract which exceed the ceiling price specified herein, except at the Contractor's own risk.

(End of Clause)

**Contracting Officer shall insert appropriate dollar amount.*

452.216–75 Letter Contract.

As prescribed in 416.603–4, insert the following clause:

LETTER CONTRACT (FEB 1988)

This contract replaces letter contract No. _____* dated _____* and all amendments thereto.

(End of Clause)

**Contracting Officer shall insert number and date.*

452.219–70 Size Standard and SIC Code Information.

As prescribed in 419.508, insert the following provision:

SIZE STANDARD AND SIC CODE INFORMATION (NOV 1996)

The Standard Industrial Classification Code(s) and business size standard(s) describing the products and/or services to be acquired under this solicitation are listed below:

Contract line item(s): _____* SIC Code _____* Size Standard _____*

(End of provision)

**Contracting Officer shall insert the appropriate data for each contract line item in the solicitation. The data entry line may be duplicated as required to describe all of the contract line items or sub-items.*

452.224–70 Confidentiality of Information.

As prescribed in 424.104, insert a clause substantially as follows:

CONFIDENTIALITY OF INFORMATION (FEB. 1988)

(a) Confidential information, as used in this clause, means—

(1) information or data of a personal nature, proprietary about an individual, or (2) information or data submitted by or pertaining to an organization.

(b) In addition to the types of confidential information described in (a)(1) and (2) above, information which might require special consideration with regard to the timing of its disclosure may derive from studies or research, during which public disclosure of primarily invalidated findings could create an erroneous conclusion which might threaten public health or safety if acted upon.

(c) The Contracting Officer and the Contractor may, by mutual consent, identify elsewhere in this contract specific information and/or categories of information which the Government will furnish to the Contractor or that the Contractor is expected to generate which is confidential. Similarly, the Contracting Officer and the Contractor may, by mutual consent, identify such confidential information from time to time during the performance of the contract. Failure to agree will be settled pursuant to the ''Disputes'' clause.

(d) If it is established that information to be utilized under this contract is subject to the Privacy Act, the Contractor will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. 552a, and implementing regulations and policies, with respect to systems of records determined to be subject to the Privacy Act.

(e) Confidential information, as defined in (a)(1) and (2) above, shall not be disclosed without the prior written consent of the individual, institution or organization.

(f) Written advance notice of at least 45 days will be provided to the Contracting Officer of the Contractor's intent to release findings of studies or research, which have the possibility of adverse effects on the public or the Federal agency, as described in (b) above. If the Contracting Officer does not pose any objections in writing within the 45 day period, the Contractor may proceed with disclosure. Disagreements not resolved by the Contractor and Contracting Officer will be settled pursuant to the ''Disputes'' clause.

(g) Whenever the Contractor is uncertain with regard to the proper handling of material under the contract, or if the material in question is subject to the Privacy Act or is confidential information subject to the provisions of this clause, the Contractor shall obtain a written determination from the Contracting Officer prior to any release, disclosure, dissemination, or publication.

(h) The provisions of paragraph (e) of this clause shall not apply when the information is subject to conflicting or overlapping provisions in other Federal, State or local laws.

(End of Clause)

452.228–70 Alternative Forms of Security.

As prescribed in 428.204–2, insert the following provision:

ALTERNATIVE FORMS OF SECURITY (NOV. 1996)

If furnished as security, money orders, drafts, cashiers checks, or certified checks shall be drawn payable to: ____*.

(End of Provision)

**Contracting Officer shall insert the name of the USDA contracting activity.*

452.228–71 Insurance Coverage.

As prescribed in 428.310, insert the following clause:

INSURANCE COVERAGE (NOV. 1996)

Pursuant to FAR clause 52.228–5, Insurance-Work on a Government Installation, the Contractor will be required to present evidence to show, as a minimum, the amounts of insurance coverage indicated below:

(a) Workers Compensation and Employer's Liability. The Contractor is required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a Contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least $100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit

worker's compensation to be written by private carriers.

(b) General Liability. The Contractor shall have bodily injury liability insurance coverage written on a comprehensive form of policy of at least $500,000 per occurrence.

(c) Automobile Liability. The Contractor shall have automobile liability insurance written on a comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least $200,000 per person and $500,000 per occurrence for bodily injury and $20,000 per occurrence for property damage or loss.

(d) Aircraft Public and Passenger Liability. When aircraft are used in connection with performing the contract, the Contractor shall have aircraft public and passenger liability insurance. Coverage shall be at least $200,000 per person and $500,000 per occurrence for bodily injury, other than passenger injury. Coverage for passenger injury shall be at least $200,000 multiplied by the number of seats or passengers, whichever is greater.

(End of Clause)

Alternate I (NOV. 1996). As prescribed in 428.310, substitute the following paragraph (b), when additionally the contractor must have property damage liability coverage:

(b) General Liability. (1) The Contractor shall have bodily injury liability coverage written on a comprehensive form of policy of at least $500,000 per occurrence.

(2) The Contractor shall have property damage liability insurance shall be required in the amount of _____* per occurrence.

**Contracting Officer shall insert amount required.*

452.232–1 Reimbursement for Bond Premiums—Fixed-Price Construction Contracts.

As prescribed in 432.111, insert the following clause:

REIMBURSEMENT FOR BOND PREMIUMS—FIXED-PRICE CONSTRUCTION CONTRACTS (NOV. 1996)

The Contract Price includes the total amount for premiums that the Contractor attributes to the furnishing of performance and payment bonds required by the contract. Reimbursement for bond premiums under the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contract, shall not cover any amount therefor not included in the contract price.

(End of clause)

452.236–70 Additive or Deductive Items.

As prescribed in 436.205, insert the following provision:

ADDITIVE OR DEDUCTIVE ITEMS (FEB. 1988)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award therein can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because of each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made on the selected first or base bid item and any combination of additive or deductive items for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of clause)

452.236–71 Prohibition Against the Use of Lead-Based Paint.

As prescribed in 436.571, insert the following clause:

PROHIBITION AGAINST THE USE OF LEAD-BASED PAINT (NOV 1996)

Neither the Contractor nor any subcontractor performing under this contract shall use paints containing more then 0.06 of 1 percent lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both.

(End of clause)

452.236–72 Use of Premises.

As prescribed in 436.572, insert the following clause:

USE OF PREMISES (NOV 1996)

(a) Before any camp, quarry, borrow pit, storage, detour, or bypass site, other than shown on the drawings, is opened or operated on USDA land or lands administered by the USDA, the Contractor shall obtain written permission from the Contracting Officer. A camp is interpreted to include a campsite or trailer parking area of any employee working on the project for the Contractor.

(b) Unless excepted elsewhere in the contract, the Contractor shall (i) provide and maintain sanitation facilities for the work force at the site and (ii) dispose of solid waste in accordance with applicable Federal, State and local regulations.

(End of clause)

452.236–73 Archaeological or Historic Sites.

As prescribed in 436.573, insert the following clause:

ARCHAEOLOGICAL OR HISTORIC SITES (FEB 1988)

If a previously unidentified archaeological or historic site(s) is encountered, the Contractor shall discontinue work in the general area of the site(s) and notify the Contracting Officer immediately.

(End of clause)

452.236–74 Control of Erosion, Sedimentation, and Pollution.

As prescribed in 436.574, insert the following clause:

CONTROL OF EROSION, SEDIMENTATION, AND POLLUTION (NOV 1996)

(a) Operations shall be scheduled and conducted to minimize erosion of soils and to prevent silting and muddying of streams, rivers, irrigation systems, and impoundments (lakes, reservoirs, etc.).

(b) Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged on the ground; into or nearby rivers, streams, or impoundments; or into natural or man-made channels. Wash water or waste from concrete or aggregate operations shall not be allowed to enter live streams prior to treatment by filtration, settling, or other means sufficient to reduce the sediment content to not more than that of the stream into which it is discharged.

(c) Mechanized equipment shall not be operated in flowing streams without written approval by the Contracting Officer.

(End of clause)

452.236–75 Maximum Workweek—Construction Schedule.

As prescribed in 436.575, insert the following clause:

MAXIMUM WORKWEEK—CONSTRUCTION SCHEDULE (NOV 1996)

Within ____ calendar days after receipt of a written request from the Contracting Officer, the Contractor must submit the following in writing for approval:

(a) A schedule as required by FAR clause 52.236–15, Schedules for Construction Contracts, and

(b) The hours (including the daily starting and stopping times) and days of the week the Contractor proposes to carry out the work.

The maximum workweek that will be approved is _____*.

(End of clause)

**Contracting Officer shall insert appropriate number of days and hours and/or days.*

452.236–76 Samples and Certificates.

As prescribed in 436.576, insert the following clause:

SAMPLES AND CERTIFICATES (FEB 1988)

When required by the specifications or the Contracting Officer, samples, certificates, and

test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance with materials and construction specified in the contract performance requirements.

Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

452.236–77 Emergency Response.

As prescribed in 436.577, the following clause may be used in Forest Service construction contracts:

EMERGENCY RESPONSE (NOV 1996)

(a) *Contractor's Responsibility for Fire Fighting.* (1) The Contractor, under the provisions of FAR clause 52.236–9, PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS, shall immediately extinguish all fires on the work site other than those fires in use as a part of the work. (2) The Contractor may be held liable for all damages and for all costs incurred by the Government for labor, subsistence, equipment, supplies, and transportation deemed necessary to control or suppress a fire set or caused by the Contractor or the Contractor's agents or employees.

(b) *Contractor's Responsibility for Notification in Case of Fire.* The Contractor shall immediately notify the Government of any fires sighted on or in the vicinity of the work site.

(c) *Contractor's Responsibility for Responding to Emergencies.* When directed by the Contracting Officer, the Contractor shall allow the Government to temporarily use employees and equipment from the work site for emergency work (anticipated to be restricted to fire fighting). An equitable adjustment for the temporary use of employees and equipment will be made under the CHANGES clause, FAR 52.243–4.

(End of clause)

452.236–78 Forest Service Standard Specifications for Construction of Roads and Bridges.

As prescribed in 436.578, insert the following clause:

FOREST SERVICE STANDARD SPECIFICATIONS FOR CONSTRUCTION OF ROADS AND BRIDGES (NOV 1996)

The Forest Service Standard Specifications for Construction of Roads and Bridges, XXXX 199X are included by reference. The requirements contained in these specifications are hereby made a part of this solicitation and any resultant contract.

(End of Clause)

452.236–79 Opted Timber Sale Road Requirements.

As prescribed in 436.579, insert the following clause:

OPTED TIMBER SALE ROAD REQUIREMENTS (NOV 1996)

This contract is for the construction of timber sale road(s) which a timber purchaser has opted to have the Government construct. The Government is obligated to make these roads available to the timber purchaser by _____*. Failure to make these roads available by this date could result in Government liability for delay to the timber purchaser for which the Contractor might become liable should the Contractor fail to complete this contract within the specified and allowed contract time.

(End of clause)

**Contracting Officer shall insert appropriate date.*

452.236–80 Firms Ineligible for Award—Construction.

As prescribed in 436.670, insert the following clause:

Firms Ineligible for Award—Construction (NOV 1996)

The firm(s) and its subsidiaries or affiliates signatory to this contract shall be ineligible for award of any construction contract resulting from the design work performed under this contract.

(End of clause)

452.237–70 Loss, Damage, Destruction or Repair.

(a) As prescribed in 437.110(a), insert a clause substantially as follows:

LOSS, DAMAGE, DESTRUCTION OR REPAIR (FEB 1988)

(a) For equipment furnished under this contract without operator, the Government will assume liability for any loss, damage or destruction of such equipment, not to exceed a total of $_____* except that no reimbursement will be made for loss, damage or destruction due to (1) ordinary wear or tear, (2) mechanical failure, or (3) the fault or negligence of the Contractor or the Contractor's agents or employees.

(b) For equipment furnished under this contract with operator, the Government shall not be liable for any loss, damage or destruction of such equipment, except for loss, damage or destruction resulting from the negligent or wrongful act(s) of Government employee(s) while acting within the scope of their employment.

(c) All repairs to equipment furnished under this contract shall be made by the Contractor and reimbursement, if any, shall be determined in accordance with (a) or (b) above. Repairs shall be made promptly and equipment returned to use within _____** hours. In lieu of repairing equipment, the Contractor may furnish similar replacement equipment within the time specified. The Contractor may authorize the Government to make repairs upon the request of the Contracting Officer. In such case, the Contractor will be billed for labor and parts costs.

(End of Clause)

**Contracting Officer shall insert amount available in current funds to cover potential liability.*

***Contracting Officer shall insert appropriate number of hours.*

452.237–71 Pre-Bid/Pre-Proposal Conference.

As prescribed in 437.110(b), insert a provision substantially as follows:

PRE-BID/PRE-PROPOSAL CONFERENCE (FEB 1988)

(a) The Government is planning a pre-bid/pre-proposal conference, during which potential offerors may obtain a better understanding of the work required.

(b) Offerors are encouraged to submit all questions in writing at least five (5) days prior to the conference. Questions will be considered at any time prior to or during the conference; however, offerors will be asked to confirm verbal questions in writing. Subsequent to the conference, an amendment to the solicitation containing an abstract of the questions and answers, and a list of attendees, will be disseminated.

(c) In order to facilitate conference preparations, it is requested that the person named on the Standard Form 33 of this solicitation be contacted and advised of the number of persons who will attend.

(d) The Government assumes no responsibility for any expense incurred by an offeror prior to contract award.

(e) Offerors are cautioned that, notwithstanding any remarks or clarifications given at the conference, all terms and conditions of the solicitation remain unchanged unless they are changed by amendment to the solicitation. If the answers to conference questions, or any solicitation amendment, create ambiguities, it is the responsibility of the offeror to seek clarification prior to submitting an offer.

(f) The conference will be held:

Date: _____

Time: _____

Location: _____

(End of Clause)

452.237–73 Equipment Inspection Visit.

As prescribed in 437.110(c), insert the following provision:

EQUIPMENT INSPECTION VISIT (FEB 1988)

Offerors are urged and expected to inspect the equipment on which maintenance or repairs are to be performed and to satisfy themselves regarding all conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the equipment constitute grounds for a claim after contract award.

Offerors are invited to inspect the _____* at _____* by telephoning _____* on _____* for an appointment.

(End of Clause)

**Contracting Officer shall insert appropriate data.*

452.237–74 Key Personnel.

As prescribed in 437.110(d), insert a clause substantially as follows:

KEY PERSONNEL (FEB 1988)

(a) The Contractor shall assign to this contract the following key personnel:

_____

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) below. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. The contract will be modified to reflect any approved changes of key personnel.

(End of Clause)

452.237–75 Restrictions Against Disclosure.

As prescribed in 437.110(e), insert a clause substantially as follows:

RESTRICTIONS AGAINST DISCLOSURE (FEB 1988)

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part in any manner or form, or to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the Contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a ''need to know'' basis. The Contractor agrees to immediately notify in writing, the Contracting Officer, named herein, in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(End of Clause)

452.237–76 Progress Reporting.

As prescribed in 437.270(a), insert a clause substantially as follows:

PROGRESS REPORTING (FEB 1988)

The Contractor shall submit a progress report _____*, covering work accomplished during that period of the contract performance. The progress report shall be brief and factual and shall be prepared in accordance with the following format:

(a) A cover page containing:

(1) Contract number and title;

(2) Type of report, sequence number of report, and period of performance being reported;

(3) Contractor's name and address;

(4) Author(s); and

(5) Date of report.

(b) Section I—An introduction covering the purpose and scope of the contract effort. This shall be limited to one paragraph in all but the first and final month's narrative.

(c) Section II—A description of overall progress plus a separate description of each task or other logical segment of work on which effort was expended during the report period. The description shall include pertinent data and/or graphs in sufficient detail to explain any significant results achieved.

(d) Section III—A description of current technical or substantive performance, and any problem(s) which may impede performance along with proposed corrective action.

(e) Section IV—A planning schedule shall be included with the first progress report for all assigned tasks required under the contract, along with the estimated starting and completion dates for each task. The planning schedule shall be updated and submitted with each subsequent technical progress report, including an explanation of any difference between actual progress and planned progress, why the differences have occurred, and—if behind planned progress—what corrective steps are planned.

(f) Section V—If applicable, financial information shall be submitted for each major task or line item cost.

Data shall include:

(1) The total estimated cost budgeted (fee excluded).

(2) The estimated cost expended during the current reporting period.

(3) Identification of direct labor hours of prime contractor and subcontractor(s) and/or consultant(s), if applicable.

(4) Total project to-date expenditures.

(5) Total remaining funds.

(End of Clause)

**Contracting Officer shall insert frequency of reporting requirement.*

452.237–78 Contracts with Consulting Firms for Services.

As prescribed in 437.270(b), insert a clause substantially as follows:

CONTRACTS WITH CONSULTING FIRMS FOR SERVICES (FEB 1988)

Offerors are specifically cautioned that any firm(s) receiving a contract award to provide the services described herein will be prohibited from competing for or receiving a follow-on contract to perform _____.*

(End of Clause)

* *Contracting Officer shall insert the appropriate information.*

452.246–70 Inspection and Acceptance.

As prescribed in 446.370, insert the following clause:

INSPECTION AND ACCEPTANCE (FEB 1988)

(a) The Contracting Officer or the Contracting Officer's duly authorized representative will inspect and accept the supplies and/or services to be provided under this contract.

(b) Inspection and acceptance will be performed at: _____.*

(End of clause)

* *Contracting Officer shall insert appropriate identifying data.*

Alternate I (FEB 1988). As prescribed in 446.370, substitute a paragraph (b) and add a paragraph (c):

(b) Inspection will be performed at: _____.*

(c) Acceptance will be performed at: _____.*

(End of clause)

452.247–70 Delivery Location.

As prescribed in 447.302, insert a clause substantially as follows:

DELIVERY LOCATION (FEB 1988)

Shipment of deliverable items, other than reports, shall be to: _____.*

(End of Clause)

* *Contracting Officer shall insert appropriate identifying data.*

452.247–71 Marking Deliverables.

As prescribed in 447.305–10(a), insert a clause substantially as follows:

MARKING DELIVERABLES (FEB 1988)

(a) The contract number shall be placed on or adjacent to all exterior mailing or shipping labels of deliverable items called for by the contract.

(b) Mark deliverables, except reports, for: _____.*

(End of Clause)

* *Contracting Officer shall insert the appropriate information.*

452.247–72 Packing for Domestic Shipment.

As prescribed in 447.305–10(b), insert the following clause:

PACKING FOR DOMESTIC SHIPMENT (FEB 1988)

Material shall be packed for shipment in such a manner that will insure acceptance by common carriers and safe delivery at destination. Containers and closures shall comply with the Interstate Commerce Commission regulations, Uniform Freight Classification Rules, or regulations of other carriers as applicable to the mode of transportation.

(End of Clause)

452.247–73 Packing for Overseas Shipment.

As prescribed in 447.305–10(c), insert the following clause:

PACKING FOR OVERSEAS SHIPMENT (FEB 1988)

Supplies shall be packed for overseas shipment in accordance with the best commercial export practice suitable for water movement to arrive undamaged at ultimate destination.

(End of Clause)

PART 453—FORMS

Sec.
453.000 Scope of part.

Subpart 453.1—General

453.103 Exceptions.
453.108 Recommendations concerning forms.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.
453.213 Simplified Acquisition and other simplified purchase procedures (AD–838).
453.270 Request for contract action (AD–700).

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.
453.303 Agency forms.
453.303–700 Procurement Request (AD–700).
453.303–838 Purchase Order (AD–838).

Authority: 5 U.S.C. 301 and 40 U.S.C. 486(c).

§ 453.000 Scope of part.

This part:

(a) Prescribes USDA (AD) forms for use in acquisition,

(b) Contains requirements and information generally applicable to AD forms and forms prescribed by FAR part 53, and

(c) Illustrates AD forms.

Subpart 453.1—General

453.103 Exceptions.

(a) The contracting officer shall submit a request for exceptions to forms prescribed in FAR part 53 through the head of the contracting activity (HCA) to the Senior Procurement Executive (SPE) for referral to the GSA.

(b) Requests for exceptions to AD forms prescribed in part 453 shall be handled as individual or class deviations, as appropriate (see subpart 401.4).

453.108 Recommendations concerning forms.

Contracting officers shall submit recommendations for new forms or to revise, eliminate, or consolidate forms prescribed by FAR part 53 and part 453 through the HCA to the SPE.

Subpart 453.2—Prescription of Forms

453.200 Scope of subpart.

This subpart prescribes USDA (AD) forms for use in acquisition. Consistent with the approach used in FAR subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the AGAR in which the form usage requirements are addressed.

453.213 Simplified Acquisition and other simplified purchase procedures (AD–838).

Form AD–838, *Purchase Order,* is prescribed for use as a Simplified Acquisition Procedure/delivery order/task order document in lieu of OF 347 and OF 348 (see 413.505–1).

453.270 Request for contract action (AD–700).

Form AD–700, *Procurement Request,* may be used as a contract requisition document by contracting activities in USDA.

Subpart 453.3—Illustrations of Forms

453.300 Scope of subpart.

This subpart contains illustrations of USDA (AD) forms for use in acquisitions.

Forms are not illustrated in the Federal Register or Code of Federal Regulations. Individual copies may be obtained from any USDA contracting activity or the office of the SPE.

453.303 Agency forms.

453.303–700 Procurement Request (AD–700).

453.303–838 Purchase Order (AD–838).

[FR Doc. 96–25427 Filed 10–11–96; 8:45 am]

BILLING CODE 3410–98–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Part 1212

RIN 2105–AC–59

Revision of Department of Transportation Regulations; Correction

AGENCY: Office of the Secretary, DOT.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations published September 25, 1996, (61 FR 50248). The final regulations amended the Transportation Acquisition Regulation (TAR) to reflect restructuring and modified coverage made necessary by the Federal Acquisition Streamlining Act of 1994.

EFFECTIVE DATE: October 25, 1996.

FOR FURTHER INFORMATION CONTACT: James F. Hawkins, Office of Acquisition and Grant Management, M–61, 400 Seventh Street, SW., Washington DC 20590: (202) 366–6688.

SUPPLEMENTARY INFORMATION:

Correction of Publication

Amendatory instruction 10, on page 50249, in the middle column, is corrected to remove the references to subparts 1213.1 (§ 1213.107–90) and 1213.5 (§ 1213.5). As corrected, amendatory instruction 10 reads as follows:

PART 1212—ACQUISITION OF COMMERCIAL ITEMS [RESERVED]

10. The heading of part 1212 is revised to read as set forth above.

David J. Litman,

Director of Acquisition and Grant Management.

[FR Doc. 96–25884 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 100296D]

Atlantic Tuna Fisheries; Adjustments

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

ACTION: Fishery reopenings; inseason transfer.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna Angling category quota, as adjusted, has not been reached. Therefore, NMFS reopens the Angling category for school ABT for the northern area. The daily catch limit for the Angling category reopening is set at one school ABT per vessel. Additionally, NMFS adjusts the October subquota for the General category by transferring 30 metric tons (mt) from the Incidental Longline category, and reopens the General category fishery for all areas for one day. These actions are being taken to extend scientific data collection on certain size classes of ABT while preventing overharvest of the adjusted subquotas for the affected fishing categories. Closures will be strictly enforced.

EFFECTIVE DATES: The Angling category fishery for school ABT will open for the northern area beginning Saturday, October 12, at 1 a.m. local time and close on Monday, October 14, at 11:30 p.m. local time. The catch limit adjustment is effective for the duration of the reopening. The General category fishery for large medium and giant ABT will open for all areas beginning Friday, October 11, at 1 a.m. local time and close on Friday, October 11, at 11:30 p.m. local time.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301–713–2347, or Mark Murray-Brown, 508–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

NMFS is authorized, under § 285.22(f), to make adjustments to quotas involving transfers between vessel categories if, during a single year quota period, it is determined, based on landing statistics, present year catch rates, effort, and other available information, that any category, is not likely to take its entire quota as previously allocated for that year.

Given that determination, the AA may transfer inseason any portion of the quota of any fishing category to any other fishing category or to the reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season, and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Angling Category Reopening

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 138 mt of school ABT and 100 mt of large school/small medium ABT to be harvested from the regulatory area by vessels fishing under the Angling category quota during calendar year 1996. The school ABT quota is further subdivided into 65 mt for states Delaware and south and 73 mt for states New Jersey and north.

Based on catch estimates obtained through angler interviews, NMFS closed the southern school ABT fishery on July 25, 1996 (61 FR 38656, July 25, 1996) and the coastwide large school/small medium fishery on July 31, 1996 (61 FR 40352, August 2, 1996). Although catch estimates did not indicate that the quota was reached, NMFS closed the school ABT Angling category fishery for the northern area effective August 17, 1996 (61 FR 43027, August 20, 1996) due to the estimated landings exceeding the quotas for the school ABT southern area subquota and the coastwide large school/small medium ABT quota.

In accordance with the regulations, NMFS transferred 10 mt from the Inseason Reserve and reopened the school ABT Angling category fishery for the northern area effective September 13, 1996 (61 FR 48640, September 15, 1996), and for a second time September 28, 1996 (61 FR 50765, September 27, 1996). Now, NMFS has determined that, due to lower than expected fishing effort attributable to poor weather conditions, the full 10 mt still has not been taken. NMFS therefore reopens the school ABT Angling category fishery so that management and data collection objectives specified in the prior notice may be attained.

Catch Limit Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.24 provide for a daily catch limit of school or large school ABT of one fish per angler. However, the AA has the authority to make adjustments to catch limits to effect maximum utilization of the available quota and a fair distribution of fishing opportunities. For this reason, the catch limit is adjusted to one school ABT per vessel per day for the duration of this reopening.

This action is being taken to extend the season for the Angling category, provide for fishing opportunities in the northern fishing area, and ensure additional collection of biological assessment and monitoring data without exceeding the adjusted quota.

General Category Quota Adjustment and Reopening

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 541 mt of large medium and giant ABT to be harvested from the regulatory area by vessels fishing under the General category quota during calendar year 1996. The General category ABT quota is further subdivided into monthly quotas to provide for broad temporal and geographic distribution of scientific data collection and fishing opportunities.

NMFS previously adjusted the General category October subquota to 60 mt for all areas, and announced a closure date of October 2, 1996 (61 FR 50765, September 27, 1996). No quota remains for the October period.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers between categories after considering certain criteria.

The bluefin tuna have migrated to their summer feeding grounds in New England waters and incidental catch by longline vessels operating south of 34° N. lat. is no longer expected to occur. A total of 39 mt currently remains of the amount allocated to the Incidental longline category. Reallocating quota from the Incidental longline category would allow for the reopening of the General category fishery in October.

Such transfer responds to the four criteria listed above as follows: (1) General category landings are a major contributor to the collection of biological data on this fishery, (2) catch in the General category to date has precluded the October fishery as planned and this fishery cannot continue if no allocation is made, (3) the General category is projected to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season, and (4) the impact on other gear segments is minimal since sufficient quota remains for the Incidental category, the purse seine fishery is managed under individual quotas and other gear segments of the fishery have previously been closed.

For the reasons set forth above, NMFS exercises its regulatory authority to transfer 30 mt of ABT from the Incidental Longline category quota to the General category. Thus, the October General category quota is adjusted to 90 mt, with an additional 10 mt reserved for the New York Bight, and the General category fishery is reopened for one day. The New York Bight set-aside is not affected by this action. However, during

the one day opening, on October 11, 1996, large medium and giant ABT harvested and landed in the New York Bight area will be counted against the New York Bight set-aside quota.

Classification

This action is taken under 50 CFR 285.20(b), 50 CFR 285.22, and 50 CFR 285.24 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 8, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–26261 Filed 10–9–96; 9:48 am]

BILLING CODE 3510–22–P

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 100796C]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear Rockfish Fishery in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1996 Pacific halibut bycatch mortality allowance apportioned to the trawl rockfish fishery in the BSAI.

EFFECTIVE DATE: 1200 hours, Alaska local time (A.l.t.), October 8, 1996, until 2400 hours, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1996 Pacific halibut mortality bycatch allowance for the BSAI trawl rockfish fishery, which is defined at § 679.21(e)(3)(iv)(D), was established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 110 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.21(e)(7)(iv), that the 1996 mortality bycatch allowance of Pacific halibut apportioned to the trawl rockfish fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for rockfish species of the genera *Sebastes* and *Sebastolobus* by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: October 8, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–26312 Filed 10–9–96; 11:44 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 200
Tuesday, October 15, 1996

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–133; Notice No. SC–96–6–NM]

Special Conditions: Jetstream Aircraft Limited, Jetstream Model 4100 Series Airplanes, Passenger Airbag Installation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes to issue special conditions to Jetstream Aircraft Limited of Prestwick, Scotland (formerly British Aerospace Public Limited Company (BAe)) for the Jetstream Model 4100 series airplanes. This airplane series has a novel or unusual design feature associated with the installation of passenger airbags. Since the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this particular design feature, this notice contains the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to that established by the airworthiness standards for transport category airplanes.

DATES: Comments must be received on or before November 29, 1996.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate (ANM–100), Attn: Docket No. NM–133, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Regulations Branch, ANM–114, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2136.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–133.'' The postcard will be date/time stamped, and returned to the commentor.

Background

On May 24, 1989, BAe Public Limited Company (currently Jetstream Aircraft Ltd.) applied for a type certificate for the BAe Model 4100 (currently Jetstream Model 4101) airplane in the transport airplane category. The Model 4100 was to be derivative of the Model 3100, which is a small airplane and is certificated under the provisions of part 23. Like the Model 3100, the Model 4100 was a low wing, twin engine turbo-prop design. The FAA issued Type Certificate (TC) A41NM for the Jetstream Model 4101 airplane on April 9, 1993. The TC includes Exemption 5587 from compliance with the head injury criteria (HIC) requirements in § 25.562 of the Federal Aviation Regulations (FAR) for the front row of passenger seats.

Section 25.562 of the FAR specifies that dynamic tests must be conducted for each seat type installed in the airplane. The pass/fail criteria for these seats include structural as well as human tolerance criteria. In particular the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. The HIC is based on physiological data, and was first introduced in the automotive industry. At the time the rule was written, compliance with the HIC requirement was expected to involve using energy absorbing pads, upper torso restraints, or increasing spacing between seats and interior features. In the years following publication of the rule, the requirement has proved difficult to comply with using ''conventional'' means, and there has been commercial resistance to installation of upper torso restraint for passengers. Because of the technical problems, BAe and other manufacturers were granted temporary exemptions to allow certification of their airplanes while design solutions were developed.

One design solution that appeared to be impractical early in its adaptation to aircraft was airbags, even though airbags are widely used in automobiles as a supplemental restraint system. While the service history in automobiles is quite good, the operating environment and conditions of use in aircraft are quite different from automobiles. The FAA will not enumerate the differences here, but they include exposure to electromagnetic fields, wear and tear considerations, crash sensing systems etc., and did serve to help frame the content of the proposed special conditions. In any case, airbags were not envisioned as a means of compliance with the FAR, and the rules are not adequate to define the necessary criteria. Therefore, special conditions are necessary.

Airbags have two potential advantages over other means of head impact protection. They essentially provide equivalent protection for all sizes of occupants and they can provide significantly greater protection than would be expected with energy absorbing pads, for example. These are significant advantages from a safety standpoint, since airbags will likely provide a level of safety that exceeds the FAR minimum standards. Conversely, airbags are an active system, and must be relied upon to activate properly

when needed, as opposed to an energy absorbing pad or upper torso restraint that is always available. These potential advantages must be balanced against the potential problems in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of airbags to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The airbag will rely on electronic sensors for signaling, and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. For example, there is subjective evidence that there may be transient overpressure (shock) caused by deployment of the airbag. Jetstream must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. For example, an airbag installed in a galley wall or windscreen will be subjected to wear and tear associated with loading the galley and rough contact from baggage during aircraft boarding etc. Whether or not these conditions are more severe than in the automotive world, the installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are high intensity electromagnetic fields and lightning. Since the senors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–48 are therefore incorporated by reference. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; to the extent that injuries to persons could result from inadvertent deployment, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture, of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts, this could render the airbag useless is a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection proportional to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

The airbag will also potentially serve more than one occupant although, since seats could be unoccupied, this may not always be the case. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats.

Since a seat could be occupied by a wide range of occupants, the airbag should be effective for a wide range of occupants. The FAA has historically considered the range from the 5th percentile female to the 95th percentile male as the range of occupants that must be taken into account. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the airbag will enhance the brace position. However, the airbag must not introduce a hazard in that case by deploying into the seated, braced occupant.

Since the airbag will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs, at any point in the fuselage. A separation that occurs at the location of the airbag would not have to be considered.

Since the airbag is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an airbag would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the airbag may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the airbag, and the airbag will likely deflate much quicker than ten seconds. Since the Jetstream 4101 does not have an airbag installed at an exit passageway, the case where the seats are unoccupied is not critical.

Type Certification Basis

Under the provisions of § 21.101, Jetstream must show that airbag-equipped 4100 series airplanes comply with the regulations in the U.S. type certification basis established for the Jetstream Model 4101 airplane. The W.S. type certification basis for the Model 4101 is established in accordance with §§ 21.29 and 21.17 of the FAR and the type certification application date. The U.S. type certification basis is as follows:

—Part 25 of the FAR dated February 1, 1965, as amended by Amendments 25–1 through 25–66 (based on the BAe application date to CAA–UK for TC), and

—Part 25 of the FAR, Amendments 25–67, 25–68, 25–69, 25–70, and 25–71, and

—Part 25 of the FAR, §§ 25.361, 25.729, 25.571(e)(2), 25.773(b)(2) and 25.905(d), all as amended by Amendment 25–72, and

—Part 25 of the FAR, § 25.1419 as amended by Amendments 25–1 through 25–66 (BAe elected to comply with this requirement), and
—Special Conditions No. 25–ANM–48 issued August 29, 1991, Lightning and High Intensity Radiated Fields (HIRF), and
—Other special conditions
—FAA Exemptions as follows: Exemption No. 5587 issued January 13, 1993, head impact criteria (25.562(c)(5)) for the three most forward passenger seats in the passenger cabin (Note: Exemption number 5587 is a time limited exemption that expires at the date specified therein unless extended by the FAA Transport Airplane Directorate.), and
—FAA Equivalent Safety Findings
—Part 34 of the FAR effective September 10, 1990, and
—Part 36 of the FAR effective December 1, 1969 as amended by Amendments 36–1 through 36–18 including Appendices A, B and C.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for Jetstream 4100 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 of the FAR to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Jetstream Model 4100 series airplanes will incorporate the following novel or unusual features:

The Jetstream Model 4100 series airplanes will utilize airbags to provide head injury protection for occupants seated behind interior walls and furnishings. The airbags will be activated by acceleration sensors that integrate the acceleration time history to determine whether the bag should be deployed. Inflation of the bag is accomplished by firing of a small pyrotechnic device.

The FAR state the performance criteria for head injury protection in objective terms, and contain more specific criteria for systems and equipment. None of these criteria are adequate, however, to address the specific issues raised by airbags. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to an airbag installation.

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following proposed special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Conclusion: This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the Jetstream Aircraft Limited, Jetstream Model 4100 Series Airplanes:

1. It must be shown that inadvertent deployment of the airbag, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

2. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person, is improbable.

3. For the purposes of complying with Special Conditions No. 25–ANM–48, high intensity radiated fields (HIRF), the airbag system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

4. It must be shown that the airbag system is not susceptible to inadvertent deployment as a result of wear and tear or inertial loads resulting from inflight or ground maneuvers (including gusts and hard landings) likely to be experienced in service.

5. It must be shown that the airbag will deploy and provide protection under crash conditions where its use is necessary to prevent serious head injury.

6. It must be shown that the airbag will not be a hazard to occupants that are in the brace position when it deploys.

7. The airbag must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly.

8. It must be shown that the airbag will not impede rapid egress of occupants after 10 seconds following its deployment.

9. It must be shown that the airbag will not release hazardous quantities of gas or particulate matter into the cabin.

10. The airbag must function properly after loss of normal electrical power, and after a transverse separation of the fuselage at the most critical location.

11.The airbag installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means, that is operable by a crewmember, to verify the integrity of the airbag activation system.

Issued in Renton, Washington, on October 4, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 96–26324 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 96–CE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Models H301 ''Libelle,'' H301B ''Libelle,'' Standard ''Libelle,'' Standard Libelle 201B, Club Libelle 205, and Kestrel Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Glasflugel Models H301 ''Libelle,'' H301B ''Libelle,'' Standard ''Libelle,'' Standard Libelle 201B, Club Libelle 205, and Kestrel sailplanes. The proposed action would require measuring and adjusting the control surface weight and static moment, and inserting amendments into the maintenance manual. The proposed action results from considerable variation of the weight and static moment of the control surface on the affected sailplanes found during repair or repainting of the control surface. The actions specified by the proposed AD are intended to prevent sailplane flutter because the weight and static moment of the control surface are not within certain limits, which could result in flutter and subsequent loss of control of the sailplane.

DATES: Comments must be received on or before December 13, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Glasflugel, c/o Hr. H. Streifeneder, Glasfaser-Flugzeug-Service GmbH, Hofener Weg, D–72582 Grabenstetten, Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–38–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on Glasflugel Models H301 ''Libelle'', H301B ''Libelle'', Standard ''Libelle'', Standard Libelle 201B, Club Libelle 205, and Kestrel sailplanes. The LBA reports that considerable variation in the weight and static moment of the control surfaces on 10 of the affected sailplanes was found during repair or repainting. Glasflugel did not define the required weight or static moment of the control surfaces at the time of manufacture of these sailplanes. If the control surface weight and static moment of these sailplanes are not within certain limits, flutter could result with subsequent loss of control of the sailplane.

Applicable Service Information

Glasflugel has issued amendments to the maintenance manual that include procedures for measuring and adjusting the weight and static moment of the control surfaces. The following specifies the maintenance manual amendments for each specific sailplane model:

Sailplane models	Maintenance manual amendment page numbers
H301 Libelle and H301B Libelle.	Pages 14a and 14b.
Standard Libelle	Pages E14a and E14b.
Standard Libelle 201B.	Pages E15a and E15b.
Club Libelle 205	Pages 42a and 42b.
Kestrel	Pages 27a and 27b.

The FAA's Determination

The LBA issued LTA AD 96–137, LTA AD 96–138, and LTA AD 96–139, all dated April 9, 1996, in order to assure the continued airworthiness of these sailplanes in Germany.

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA; reviewed all available information, including the maintenance manual amendments referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Glasflugel Models H301 ''Libelle'', H301B ''Libelle'', Standard ''Libelle'', Standard Libelle 201B, Club Libelle 205, and Kestrel sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require measuring and adjusting the control surface weight and static moment, and inserting the

following amendments into the maintenance manual, as applicable:

Sailplane models	Maintenance manual amendment page numbers
H301 Libelle and H301B Libelle.	Pages 14a and 14b.
Standard Libelle	Pages E14a and E14b.
Standard Libelle 201B.	Pages E15a and E15b.
Club Libelle 205	Pages 42a and 42b.
Kestrel	pages 27a and 27b.

Compliance Time of the Proposed AD

The compliance time for the proposed AD is presented in calendar time and whenever the control surface is repaired or repainted (the prevalent one being that which occurs first). The FAA has determined that a calendar time for compliance would be desirable because the unsafe condition described by the proposed AD is not directly related to sailplane operation. The control surface weight and static moment could become outside the specified limits after repair or repainting instead of occurring during normal operation of the sailplane. Also, if the sailplane control surface is already scheduled for repair or repainting, then accomplishing the proposed action at the time of repair or repainting would not force the owner/operator to schedule this action at a later time and would allow the action to be accomplished during already-scheduled maintenance.

Cost Impact

The FAA estimates that 174 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Material to accomplish the surface control weight and static moment balance costs approximately $10 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $12,180. This figure only takes into account the one-time measurement and adjustment of the control surface weight and static moment; it does not reflect the time it would take an owner/operator of an affected sailplane to insert the amendments into the maintenance manual.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Glasflugel: Docket No. 96–CE–38–AD.

Applicability: Models H301 ''Libelle'', H301B ''Libelle'', Standard ''Libelle'', Standard Libelle 201B, Club Libelle 205, and Kestrel sailplanes (all serial numbers), certificated in any category.

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

Compliance: Required within the next three calendar months after the effective date of this AD or at the time of any repair to or repainting of the control surface, whichever occurs first, unless already accomplished.

To prevent sailplane flutter because the weight and static moment of the control surface are not within certain limits, which could result loss of control of the sailplane, accomplish the following:

(a) Measure and adjust the control surface weight and static moment in accordance with the maintenance manual amendments referenced in paragraph (b) of this AD.

(b) Insert the following amendments into the sailplane maintenance manual, as applicable:

Sailplane models	Amendment page numbers
H301 Libelle and H301B Libelle.	Pages 14a and 14b.
Standard Libelle	Pages E14a and E14b.
Standard Libelle 201B.	Pages E15a and E15b.
Club Libelle 205	Pages 42a and 42b.
Kestrel	Pages 27a and 27b.

(c) Inserting the amendments into the maintenance manual as required by paragraph (b) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) All persons affected by this directive may obtain copies of the maintenance manual amendments referred to herein upon request to Glasflugel, c/o Hr. H. Streifeneder, Glasfaser-Flugzeug-Service GmbH, Hofener Weg, D–72582 Grabenstetten, Germany; or may examine these amendments at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 7, 1996.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–26253 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 96N–0144]

Over-the-Counter Drug Products Containing Colloidal Silver Ingredients or Silver Salts

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish that all over-the-counter (OTC) drug products containing colloidal silver ingredients or silver salts for internal or external use are not generally recognized as safe and effective and are misbranded. FDA is issuing this proposal because many products containing colloidal silver ingredients or silver salts are being marketed for numerous serious disease conditions and FDA is not aware of any substantial scientific evidence that supports the use of OTC colloidal silver ingredients or silver salts for these disease conditions.

DATES: Written comments by January 13, 1997; written comments on the agency's economic impact determination by January 13, 1997. FDA is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the Federal Register.

ADDRESSEES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Bradford W. Williams, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0063.

SUPPLEMENTARY INFORMATION:

I. Background

Colloidal silver is a suspension of silver particles in a colloidal base. Historically, a number of colloidal silver/silver colloidal salts have been marketed in the United States. Some of these colloidal silver products were recognized as official articles in the United States Pharmacopeia (U.S.P.) and the National Formulary (N.F.). Colloidal silver iodide (Ref. 1) contained not less than 18 percent and not more than 22 percent silver, with the product diluted for local use to concentrations from 0.05 to 10 percent. Strong silver protein (Ref. 1) contained not less than 7.5 percent and not more than 8.5 percent silver, with the product diluted for local use to concentrations from 0.5 to 10 percent. The 10th edition of the N.F. had a cautionary note for these products that stated: ''Caution: Solutions of Colloidal Silver Iodide should be freshly prepared and should be dispensed in amber-colored bottles,'' and ''Caution: Strong Silver Protein Solutions should be freshly prepared and should be dispensed in amber-colored bottles.''

Mild silver protein (Ref. 2) contained not less than 19 percent and not more than 23 percent silver, with the product diluted for local use to concentrations from 0.1 to 5 percent. The 12th edition of the N.F. had a cautionary note, which stated: ''Caution: Solutions of Mild Silver Protein should be freshly prepared or contain a suitable stabilizer, and should be dispensed in amber-colored bottles.''

Ammoniacal silver nitrate solution (Ref. 2) contained 28.5 to 30.5 percent silver, was made extemporaneously, and was used locally without dilution. Silver nitrate solution (Ref. 3) was made extemporaneously and was used locally at strengths from 0.1 to 10 percent.

None of these formerly recognized colloidal silver preparations has been official in the U.S.P. or the N.F. since 1975. Moreover, of the silver salts evaluated as part of the agency's OTC drug review thus far, none was found to be generally recognized as safe and effective for its intended use(s). These included silver nitrate as an astringent (58 FR 27636, May 10, 1993) and as a smoking deterrent (58 FR 31236, June 1, 1993) and mild silver protein as an ophthalmic anti-infective (57 FR 60416, December 18, 1992). Silver acetate was also evaluated as a smoking deterrent and found not to be generally recognized as safe and effective (58 FR 31236).

II. Recent Developments

In recent years, colloidal silver preparations of unknown formulation have been appearing in retail outlets. These products are labeled for numerous disease conditions, including human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), cancer, tuberculosis, malaria, lupus, syphilis, scarlet fever, shingles, herpes, pneumonia, typhoid, exanthematic typhus, tetanus, variola, scarlatina, erysipelas, rheumatism, candida, staphylococcus and streptococcus infections, tonsillitis, parasites, fungus, bubonic plague, cholera, chronic fatigue, acne, warts, Meniere's disease (syndrome), whooping cough, enlarged prostate, perineal eczema, hemorrhoids, impetigo, ringworm, recurrent boils, burns, and appendicitis.

Several marketers of these products use a labeling brochure that refers to colloidal silver as a treatment or cure for 650 diseases (Ref. 4). Some colloidal silver products have been promoted using reprints of articles, taken from magazines and newspapers, that make claims of extensive health benefits for colloidal silver, similar to the claims listed above. The articles have also been shipped with colloidal silver products, when the products were ordered through the mail (Ref. 5). The dosage form of these colloidal silver products is usually oral, but product labeling also contains directions for topical and, occasionally, intravenous use.

In October 1994, FDA issued Health Fraud Bulletin #19 (Ref. 6) to address the emerging marketing of colloidal silver products offered for serious disease conditions. In that bulletin, the agency stated that it was ''not aware of any substantial scientific evidence which demonstrates that any OTC colloidal silver solution is useful to prevent or treat any serious disease condition.'' The bulletin explained that FDA has not approved a new drug application (NDA) for a colloidal silver product. In addition, the bulletin stated no data or information has been submitted to FDA to document an exemption from the new drug provisions of the Federal Food, Drug, and Cosmetic Act (the act) under the 1938 or 1962 grandfather provisions. The bulletin referred to 21 CFR 314.200(e)(2), which sets forth the type of evidence necessary to support an exemption under a grandfather provision.

III. The ''Grandfather'' Exemption

Some marketers of various colloidal silver preparations claim their products are exempt from the ''new drug'' provisions of section 201(p) of the act (21 U.S.C. 321(p)) under the ''grandfather'' provisions of the 1938 act and the 1962 amendments to the act. The marketers frequently claim that their products were marketed before 1938, that only insubstantial changes have been made in product formulation and labeling since that time, and that

the products' current labeling contains the same representations for use as those contained in the labeling used before 1938.

To qualify for exemption from the ''new drug'' definition under the 1938 ''grandfather'' clause, the drug product must have been subject to the Food and Drugs Act of 1906, before June 25, 1938, and at such time its labeling must have contained the same representations concerning the conditions of its use (section 201(p)(1) of the act). Under the 1962 ''grandfather'' clause, a drug product that, preceding October 9, 1962, (1) Was commercially used or sold in the United States, (2) was not a ''new drug'' as defined in the 1938 act, and (3) was not covered by an approved NDA under the 1938 act, would not be subject to the added requirement of effectiveness ''when intended solely for use, under conditions prescribed, recommended, or suggested in the labeling with respect to such drug.'' (Pub. L. 87–781, sec. 107(c)(4), 76 Stat. 788, note following 21 U.S.C. 321.)

FDA does not believe that any of the currently marketed products qualify for the exemption, because the currently marketed silver products do not appear to be the same as the silver products marketed in the early 1900's. Unlike the silver preparations that were once compendial articles, these new colloidal silver preparations, based on their labeling and/or product analysis, appear to contain less silver than the products marketed historically. Many of the products FDA has sampled lack an ingredient declaration. Samples of some products analyzed by FDA laboratories contained as little as 0.01 percent silver. Analyses showed potency varied from 15.2 percent to 124 percent of the amount of silver declared on the labels. However, FDA has not analyzed the majority of the products on the market and, thus, is unable to state their actual silver content.

Any person seeking to show that a drug comes within a grandfather exemption must prove every essential fact necessary for invocation of the exemption. (See *United States* v. *An Article of Drug* * * * *''Bentex Ulcerine,''* 469 F.2d 875, 878 (5th Cir. 1972), *cert. denied*, 412 U.S. 938 (1973).) Furthermore, the grandfather clause will be strictly construed against one who invokes it. (See *id.; United States* v. *Allan Drug Corp.*, 357 F.2d 713, 718 (10th Cir.), *cert. denied*, 385 U.S. 899 (1966).) A change in the composition or labeling of the product precludes the applicability of the grandfather exemption. (See *USV Pharmaceutical Corp.* v. *Weinberger*, 412 U.S. 655, 663 (1973).)

IV. Evidence of Safety and Effectiveness

FDA is not aware of any body of data that supports the use of colloidal silver for the various conditions listed in the labeling (Refs. 4 and 5) used with currently marketed products.

The 1939 book, ''Argyria, The Pharmacology of Silver'' (Ref. 7), discussed the history and pharmacophysiologic effects of silver administration. It included a summary chapter on the negative effects of argyria, a permanent ashen-grey discoloration of the skin, conjuctiva, and internal organs, resulting from the silver salts. The book also included an index that listed proprietary silver compounds marketed at that time.

Goodman and Gilman described colloidal silver use in earlier editions of *The Pharmacological Basis of Therapeutics* (Refs. 8 and 9). But in the 1980 edition (Ref. 10), Goodman and Gilman stated:

> Claims that mild silver protein penetrates tissue at the site of application because chloride ion does not precipitate the silver are misleading. The large-carrier protein molecule penetrates poorly. Fortunately, the colloidal silver preparations are now in a deserved oblivion.

Goodman and Gilman (Ref. 10) also stated that the indiscriminate use of colloidal silver solutions, especially in the prophylaxis and treatment of respiratory tract infections, probably does more harm than good. They mentioned that there is no acceptable evidence that the routine use of silver solutions for the prophylaxis of colds is at all efficacious, and cases of argyria have resulted from this practice.

Remington's Pharmaceutical Sciences (Ref. 11) and *The Dispensatory of the United States of America* (Ref. 12) state that long-term use of silver preparations could lead to argyria. Concerns about the side effects of argyria may have contributed to reduced medical usage of colloidal silver products.

The Dispensatory of the United States of America (Ref. 12) also stated that there is no justification for the internal use of colloidal silver either theoretically or practically.

Recently, Fung and Bowen (Ref. 13) reviewed the basic chemistry, pharmacokinetics, pharmacology, clinical toxicology, and case reports of adverse events of OTC silver-containing medicinal products, including colloidal silver proteins. They concluded that silver has no known physiologic function and that the risk of using these products exceeds any unsubstantiated benefit.

Fung and Bowen reported that, after ingestion, up to 10 percent of silver salts may be absorbed. Silver is deposited in many organs. The highest concentrations are found in the skin, liver, spleen, and adrenal glands, with lesser deposits in the muscle and brain. Argyria is the most commonly reported adverse event and results from accumulation of silver deposits in the skin below the epidermis. Argyria is effectively irreversible.

As noted in section I. of this document, a number of silver salts were evaluated as part of FDA's OTC drug review, and none was found to be generally recognized as safe and effective for its intended use(s). Accordingly, FDA concludes at this time that no colloidal silver ingredients or silver salts are generally recognized as safe and effective for OTC use.

V. The Agency's Proposal

FDA is proposing to declare all OTC drug products containing colloidal silver ingredients or silver salts as not generally recognized as safe and effective, misbranded, and new drugs within the meaning of section 201(p) of the act. FDA proposes to amend subpart E of part 310 (21 CFR part 310) by adding new § 310.548 for OTC drug products containing colloidal silver ingredients or silver salts. The agency invites any interested parties to collect and submit any existing data and information that support the safety and effectiveness of colloidal silver ingredients or silver salts for any of the uses not already evaluated under the OTC drug review. Safety data should be in accord with § 330.10(a)(4)(i) (21 CFR 330.10(a)(4)(i)) and effectiveness data in accord with § 330.10(a)(4)(ii). The agency will evaluate these data and determine if any colloidal silver ingredients or silver salts should not be included in new § 310.548.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. *National Formulary*, 10th ed., pp. 517 and 520, Rockville, MD, 1955.

2. *National Formulary*, 12th ed., pp. 354–355, Rockville, MD, 1965.

3. *The Pharmacopeia of the United States*, 16th ed., pp. 643–644, Rockville, MD, 1960.

4. Labeling brochure for ''Colloidal Silver.''

5. Reprints of articles and labeling that accompanied samples of colloidal silver shipped through the mail.

6. Food and Drug Administration, Health Fraud Bulletin #19, ''Colloidal Silver,'' October 7, 1994.

7. Hill, W. B., and D. M. Pillsbury, *Argyria, The Pharmacology of Silver*, The Williams & Wilkins Co., Baltimore, 1939.

8. *The Pharmacological Basis of Therapeutics*, Goodman and Gilman, 4th ed., p. 1050, 1970.
9. *The Pharmacological Basis of Therapeutics*, Goodman and Gilman, 5th ed., pp. 930, 931, 999, and 1000, 1975.
10. *The Pharmacological Basis of Therapeutics*, Goodman and Gilman, 6th ed., pp. 976–977, 1980.
11. *Remington's Pharmaceutical Sciences*, 16th ed., pp. 351, 727, and 1111, 1980.
12. *The Dispensatory of the United States of America*, 25th ed., pp. 1234–1236, 1960.
13. Fung, M. C., and D. L. Bowen, ''Silver Products for Medical Indications: Risk-benefit Assessment,'' *Clinical Toxicology*, March 1996.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. Early finalization of the regulatory status of colloidal silver ingredients and silver salts will benefit consumers by the early removal from the marketplace of products for which safety and effectiveness have not been established. This will result in a direct economic savings and public health protection to consumers. In addition, other approved products may be available to treat the conditions. This particular rulemaking for OTC colloidal silver and silver salts drug products is not expected to pose a significant impact on small business because only a limited number of products, the agency estimates fewer than 30, would be covered by this rulemaking. A number of silver ingredients have already been covered in earlier rulemakings in the OTC drug review, and none were found safe and effective for OTC human use. Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC drug products containing colloidal silver ingredients or silver salts. Comments regarding the impact of this rulemaking on OTC drug products containing colloidal silver ingredients or silver salts should be accompanied by appropriate documentation. The agency is providing a period of 90 days from the date of publication of this proposed rule for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Request for Comments and Data

Interested persons may, on or before January 13, 1997 submit to the Dockets Management Branch (address above) written comments and data in response to the proposed rule. Written comments on the agency's economic impact determination may be submitted on or before January 13, 1997. Three copies of all comments or objections are to be submitted, except that individuals may submit one copy. Comments and data should be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments and data may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 310 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. New § 310.548 is added to subpart E to read as follows:

§ 310.548 Drug products containing colloidal silver ingredients or silver salts offered over-the-counter (OTC) for the treatment and/or prevention of disease.

(a) Colloidal silver ingredients and silver salts have been marketed in over-the-counter (OTC) drug products for the treatment and prevention of numerous disease conditions. There are serious and complicating aspects to many of the diseases these silver ingredients purport to treat or prevent. Further, there is a lack of adequate data to establish general recognition of the safety and effectiveness of colloidal silver ingredients or silver salts for OTC use in the treatment or prevention of any disease. These ingredients and salts include, but are not limited to, silver proteins, mild silver protein, strong silver protein, silver chloride, and silver iodide.

(b) Any OTC drug product containing colloidal silver ingredients or silver salts that is labeled, represented, or promoted for the treatment and/or prevention of any disease is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any drug product containing colloidal silver or silver salts labeled, represented, or promoted for any OTC drug use is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After (date 30 days after date of publication of the final rule in the Federal Register), any such OTC drug product containing colloidal silver or silver salts initially introduced or

initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

Dated: October 9, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96–26371 Filed 10–11–96; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–48–95]

RIN 1545–AU09

Amortizable Bond Premium; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the federal income tax treatment of bond premium and bond issuance premium. The public hearing originally scheduled for October 23, 1996, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–6808 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 171 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register for Thursday, June 27, 1996 (61 FR 33396), announced that a public hearing on the proposed regulations would be held on Wednesday, October 23, 1996, beginning at 10:00 a.m., in the Commissioner's Conference room, room 3313, 1111 Constitution Avenue NW, Washington, D.C.

The public hearing scheduled for Wednesday, October 23, 1996, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–26355 Filed 10–11–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Part 1

[FI–59–94]

RIN 1545–AU06

Modifications of Bad Debts and Dealer Assignments of National Principal Contracts; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to the notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to the notice of proposed rulemaking by cross-reference to temporary regulations (FI–59–94) which was published in the Federal Register on Tuesday, June 25, 1996 (61 FR 32728). The notice of proposed rulemaking by cross-reference to temporary regulations relates to the allowance of a deduction for a partially worthless debt when the terms of a debt instrument have been modified.

FOR FURTHER INFORMATION CONTACT: Craig R. Wojay, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations that is subject to this correction is under sections 166 and 1001 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (FI–59–94) contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (FI–59–94) which is the subject of FR Doc. 96–15831 is corrected as follows:

On page 32728, column 2, in the heading, the RIN ''RIN 1545–AT08'' is corrected to read ''RIN 1545–AU06''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96–26356 Filed 10–11–96; 8:45 am]

BILLING CODE 4830–01–U

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 55

(Notice No. 841)

RIN: 1512–AB55

Commerce in Explosives

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend the explosives regulations to require the explosives industry to notify local law enforcement officials and fire departments of sites where explosives are stored or manufactured, increase license and permit fees, eliminate the manufacturer-limited license, amend the definitions of ''fireworks'', ''fireworks nonprocess building'' and ''highway'', and amend the American Table of Distances to conform with the explosives industry's latest revisions. The intended effect of these changes is to protect public safety, eliminate duplication with respect to licensing requirements, and to update references and definitions to reflect current industry and U.S. Department of Transportation terminology.

DATES: Written comments must be received by January 13, 1997.

ADDRESSES: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, DC 20091–0221. ATTN: Notice No. 841.

FOR FURTHER INFORMATION CONTACT: Gail Hosey, Firearms and Explosives Regulatory Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202–927–8310).

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) and the explosives industry have become increasingly concerned about the number and severity of accidental explosions that have occurred at sites where explosives are stored without the knowledge of State and local officials. Serious explosions have occurred that resulted in multiple deaths and injuries.

In 1988, 6 firefighters were killed as a result of fighting a fire at a construction site where explosives were stored and had not been reported. ATF is concerned with the safety of emergency response personnel responding to fires on sites where

explosives are stored. In discussions with industry representatives on this subject, the Institute of Makers of Explosives (IME), an industry organization concerned with safety, requested that ATF incorporate two provisions in the regulations that are contained in IME safety publications. The IME recommends that ATF require anyone who stores explosive materials to notify local law enforcement officials and fire departments of the type, magazine capacity, and location of each site where explosive materials are stored. ATF believes that this information is necessary for the safety of emergency response personnel. Accordingly, this notice proposes the addition of this notification requirement to the regulations in Part 55. The proposed regulations will require all persons who store explosives to notify local law enforcement officials and fire departments orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced. This requirement would not apply to persons who merely use but are not subject to the storage requirements of the explosives regulations.

Under 18 U.S.C. 842(j), the Secretary of the Treasury has the authority to issue regulations governing the storage of explosive materials. Section 842(j) further provides that in promulgating such regulations, the standards of safety and security recognized in the explosives industry shall be taken into consideration.

Section 846, Title 18, U.S.C., gives the Secretary the authority to inspect the site of any accident or fire in which there is reason to believe that explosive materials were involved so that precautions may be taken to prevent similar accidents from occurring. This provision gives the Secretary the authority to issue regulations intended to help prevent accidents involving explosives.

Finally, section 847, Title 18, U.S.C., gives the Secretary the authority to prescribe regulations as he deems reasonably necessary to carry out the provisions of Chapter 40, Title 18.

ATF proposes to increase explosives license and permit fees to $200 for each license and $100 for each permit. In a report dated September 29, 1995, the U.S. Department of the Treasury, Office of Inspector General (OIG) found that ATF had not raised the explosives license and permit fees since the enactment of the Organized Crime Control Act of 1970. In order to defray the cost of administering the program and to ensure consistency with licensing fees charged by State and local governments, the OIG recommended that ATF raise the fees to the maximum amount permitted. ATF concurs with the recommendation and proposes that the license and permit fees be raised accordingly. Under 18 U.S.C. 843(a), the Secretary of the Treasury has the authority to set the license or permit fee in an amount not to exceed $200.

ATF also proposes to amend the regulations to eliminate the manufacturer-limited license. Under current regulations, the manufacturer-limited license allows an individual to engage in the business of manufacturing explosives materials for his own use and not for sale or distribution. The manufacturer-limited license is only valid for a period of 30-days from the date of issuance and is not renewable. Activities covered by this license are also covered by a manufacturer's license that is valid for a period of three years and is renewable. ATF has not issued any manufacturer-limited licenses in the last three years and, therefore, ATF has determined that this category of license is unnecessary.

ATF also proposes to amend the definitions of ''highway'' and ''fireworks'' and change the names of ''common fireworks'' to ''consumer fireworks'' and ''special fireworks'' to ''display fireworks'' and amend their definitions. These definitions are being amended to conform to current industry terminology and to incorporate the United Nations (UN) identification numbers for fireworks as described in the U.S. Department of Transportation regulations at 49 CFR 172.101. The definition of ''fireworks nonprocess building'' is being amended to eliminate the unnecessary reference to fireworks plant warehouse. ''Fireworks plant warehouse'' is already defined in the regulations.

In June 1991, the American Table of Distances was revised by the IME. ATF proposes to substantially adopt the American Table of Distances as revised by the IME. The IME revised the table to clarify the header for public highways and to change the minimum amount of explosives subject to the table from 2 pounds to any quantity of explosives.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. These proposed regulations provide clarification and consistency with industry terminology. In addition, the proposed increases in license and permit fees are within the maximum amounts provided by the statute. Further, the burden placed on licensees and permittees for the collection and disclosure of information to local law enforcement authorities is minimal.

Paperwork Reduction Act

The collection of information contained in this notice has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226.

The collection of information in this proposed regulation is in 27 CFR 55.201(f). This information is required to inform local law enforcement officials and fire departments of sites where explosives are stored or manufactured. This information will be used to protect emergency response personnel called to fire scenes where explosives may be stored. The likely respondents are Federal licensees and permittees who store or manufacture explosive materials. Estimated total annual reporting burden per respondent: 1.5 hours. Estimated number of respondents: 10,057. Estimated annual frequency of responses: 2.

Public Participation

ATF requests comments on the notice of proposed rulemaking from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person

submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Drafting Information

The author of this document is Gail Hosey, Firearms and Explosives Regulatory Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 55

Administrative practice and procedure, Authority delegations, Customs duties and inspection, Explosives, Hazardous materials, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, and Warehouses.

Authority and Issuance

27 CFR Part 55, Commerce in Explosives, is amended as follows:

Part 55–Commerce in Explosives

Paragraph 1. The authority citation for 27 CFR part 55 is amended to read as follows:

Authority: 18 U.S.C. 842, 846, 847.

Par. 2. Section 55.11 is amended by removing the term ''Common Fireworks'' and adding in its place ''Consumer Fireworks'', by removing the term ''Special Fireworks'' and adding in its place ''Display Fireworks'', by placing the new terms in appropriate alphabetical order, and by revising the definitions of ''Consumer Fireworks'', ''Display Fireworks'', ''Fireworks'', ''Fireworks nonprocess building'', ''Highway'', and ''Salute'' to read as follows:

§ 55.11 Meaning of terms.

* * * * *

Consumer fireworks. Any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission, as set forth in title 16, Code of Federal Regulations, parts 1500 and 1507. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials. Consumer fireworks are classified as fireworks UN0336, UN0337, UN0431, or UN0432 by the U.S. Department of Transportation at 49 CFR 172.101.

* * * * *

Display fireworks. Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This term includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as ''consumer fireworks.'' Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as ''consumer fireworks.'' Display fireworks are classified as fireworks UN0333, UN0334 or UN0335 by the U.S. Department of Transportation at 49 CFR § 172.101.

Fireworks. Any composition or device designed to produce a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of ''consumer fireworks'' or ''display fireworks'' as defined by this section.

* * * * *

Fireworks nonprocess building. Any office building, or other building or area in a fireworks plant where no fireworks, pyrotechnic compositions or explosive materials are processed or stored.

* * * * *

Highway. Any public street, public alley, or public road.

* * * * *

Salute. An aerial shell, classified as a display firework, that contains a charge of flash powder and is designed to produce a flash of light and a loud report as the pyrotechnic effect.

* * * * *

Par. 3. Section 55.11 is amended to delete the definitions of ''licensed manufacturer-limited'' and ''manufacturer-limited''.

Par. 4. Section 55.30 is amended in paragraphs (a), (b), (d), introductory text, by revising ''1–800–424–9555'' to read ''1–800–800–3855'' and by revising paragraph (d)(3) to read as follows:

* * * * *

(d) * * *

(3) Description (United Nations (UN) identification number, hazard division number, and classification letter, ex. 1.1D) as classified by the U.S. Department of Transportation at 49 CFR 172.101 and 173.52.

Par. 5. Section 55.42 is revised to read as follows:

§ 55.42 License fees.

(a) Each applicant shall pay a fee for obtaining a license, a separate fee being required for each business premises, as follows:

(1) Manufacturer—$200.

(2) Importer—$200.

(3) Dealer—$200.

(b) Each applicant for a renewal of a license shall pay a fee for a three year license as follows:

(1) Manufacturer—$100.

(2) Importer—$100.

(3) Dealer—$100.

Par. 6. Section 55.43 is revised to read as follows:

§ 55.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User—$100.

(2) User-limited (nonrenewable)—$75.

(b) Each applicant for renewal of a user permit shall pay a fee of $50 for a three year permit.

Par. 7. Section 55.46(b) is revised to read as follows:

§ 55.46 Renewal of license or permit.

* * * * *

(b) A user-limited permit is not renewable and is valid for a single purchase transaction. All applications for user-limited permits must be filed on ATF F 5400.13 or ATF F 5400.16, as required by § 55.45.

Par. 8. Section 55.51 is revised to read as follows:

§ 55.51 Duration of license or permit.

An original license or permit is issued for a period of one year. A renewal license or permit is issued for a period of three years. However, a user-limited permit is valid only for a single purchase transaction.

Par. 9. Section 55.63 is amended by revising the heading of paragraph (d) to read as follows:

§ 55.63 Explosive magazine changes.

* * * * *

(d) *Magazines acquired or constructed after permit or license is issued.* * * *

* * * * *

Par. 10. Section 55.102 is revised to read as follows:

§ 55.102 Authorized operations by permittees and certain licensees.

(a) *In general.* A permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly, if a

permittee's operations bring him within the definition of manufacturer, importer, or dealer under this part, he shall qualify for the appropriate license.

(b) *Distributions of surplus stocks.* Permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with § 55.103, and to nonlicensees or to nonpermittees in accordance with § 55.105(d).

Par. 11. In Section 55.103, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 55.103 Transactions among licensees/permittees.

(a) *General.* (1) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to another licensee or permittee) who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(2) A licensed importer, licensed manufacturer or licensed dealer selling or otherwise distributing explosive materials (or a permittee disposing of surplus stock to another licensee or permittee) shall verify the license or permit status of the distributee prior to the release of explosive materials ordered, as required by this section.

* * * * *

Par. 12. Section 55.105(d) is revised to read as follows:

§ 55.105 Distributions to nonlicensees and nonpermittees.

* * * * *

(d) A permittee may dispose of surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e) and (f) of this section are fully met.

* * * * *

Par. 13. Section 55.122 is amended by removing the phrase ''special fireworks'' and the associated abbreviation ''(sf)'' where they appear in paragraphs (b)(4), (b)(5), (c)(4) and (c)(5) and replacing them with the phrase ''display fireworks'' and the associated abbreviation ''(df)''.

Par. 14. Section 55.123 is amended by removing the phrase ''special fireworks'' and the associated abbreviation ''(sf)'' where they appear in paragraphs (b)(3), (b)(4), (c)(4), (c)(5), (d)(2) and (d)(3) and replacing them with the phrase ''display fireworks'' and the associated abbreviation ''(df)''.

Par. 15. Section 55.124 is amended by removing the phrase ''special fireworks'' and the associated abbreviation ''(sf)'' where they appear in paragraphs (b)(4), (b)(5), (c)(4) and (c)(5) and replacing them with the phrase ''display fireworks'' and the associated abbreviation ''(df)''.

Par. 16. Section 55.125 is revised to read as follows:

§ 55.125 Records maintained by permittees.

(a) Each permittee will take true and accurate physical inventories which will include all explosive materials on hand required to be accounted for in the records kept under this part. The permittee shall take a special inventory, at the time of commencing business, which is the effective date of the permit issued upon original qualification under this part; at the time of changing the location of his premises to another region; at the time of discontinuing business; and at any other time the regional director (compliance) may in writing require. Each special inventory is to be prepared in duplicate, the original of which is submitted to the regional director (compliance) and the duplicate retained by the permittee. If a special inventory required by this paragraph (a) has not been taken during the calendar year, a permittee is required to take at least one physical inventory. However, the record of the yearly inventory, other than a special inventory required by paragraph (a), will remain on file for inspection instead of being sent to the regional director (compliance). (See also § 55.127).

(b) Each permittee shall, not later than the close of the next business day following the date of acquisition of explosive materials, enter the following information in a separate record:

(1) Date of acquisition.

(2) Name or brand name of manufacturer.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of detonators, number of display fireworks, etc.).

(5) Description (dynamite (dyn), blasting agents (ba), detonators (det), display fireworks (df), etc.) and size (length and diameter or diameter only of display fireworks).

(6) Name, address, and license number of the persons from whom the explosive materials are received.

(c) Each permittee shall, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 55.124(c).

(d) Each permittee shall maintain separate records of disposition of surplus stocks of explosive materials to nonlicensees or nonpermittees as prescribed in § 55.126.

(e) The regional director (compliance) may authorize alternate records to be maintained by a permittee to record his acquisition of explosive materials, when it is shown by the permittee that alternate records will accurately and readily disclose the required information. A permittee who proposes to use alternate records shall submit a letter application to the regional director (compliance) and shall describe the proposed alternate records and the need for them. Alternate records are not to be employed by the permittee until approval is received from the regional director (compliance).

Par. 17. Section 55.127 is revised to read as follows:

§ 55.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 55.122, 55.123, 55.124, and 55.125, a licensee or permittee shall enter the inventory in a record of daily summary transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining on hand at the end of the day. Quantity entries for display fireworks may be expressed as the number and size of individual display fireworks in a finished state or as the number of packaged display segments or packaged displays. Information as to the number and size of display fireworks contained in any one packaged display shall be provided to any ATF officer on request. Any discrepancy which might indicate a

theft or loss of explosive materials is to be reported in accordance with § 55.30.

Par. 18. Section 55.141(a)(7) is revised to read as follows:

§ 55.141 Exemptions.

(a) *General.* * * *

(7) The importation, distribution, and storage of fireworks classified as UN0336, UN0337, UN0431, or UN0432 explosives by the U.S. Department of Transportation at 49 CFR 172.101 and generally known as ''consumer fireworks''.

* * * * *

Par. 19. Section 55.163 is revised to read as follows:

§ 55.163 False entry in record.

Any licensed importer, licensed manufacturer, licensed dealer, or permittee who knowingly makes any false entry in any record required to be kept under Subpart G of this part, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

Par. 20. Section 55.201 is amended by revising paragraph (d) and by adding paragraph (f) to read as follows:

§ 55.201 General.

* * * * *

(d) The regulations set forth in §§ 55.221 through 55.224 pertain to the storage of display fireworks, pyrotechnic compositions and explosive materials used in assembling fireworks.

* * * * *

(f) Any person who stores explosive materials shall notify the chief law enforcement officer and fire department of the locality in which the explosive materials are being stored, of the type, magazine capacity, and location of each site where such explosive materials are stored. Such notification shall be made orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced.

Par. 21. Section 55.202 is amended by revising paragraph (b) to read as follows:

§ 55.202 Classes of explosive materials.

* * * * *

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined, (for example, black powder, safety fuses, igniters, igniter cords, fuse lighters, and ''display fireworks'' identified as UN0333, UN0334, or UN0335 by the U.S. Department of Transportation regulations at 49 CFR 172.101, except for bulk salutes).

Par. 22. Section 55.206 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Outdoor magazines in which low explosives are stored must be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of low explosives in § 55.219, except that the table of distances in § 55.224 shall apply to the storage of display fireworks. The distances shown in § 55.219 may not be reduced by the presence of barricades.

* * * * *

Par. 23. Section 55.218 is amended by removing the phrase ''Public highways, class A to D'' where it appears in the table heading, and by adding in its place the phrase, ''Public Highways with Traffic Volume of less than 3000 Vehicles/Day''; by removing the number ''2'' where it appears as the first entry in the column titled ''Pounds over'' and by adding in its place the number ''0''; by adding the following heading to the table in this section; and removing the heading preceding the *Notes to the Table of Distances for Storage of Explosives.*

TABLE: AMERICAN TABLE OF DISTANCES FOR STORAGE OF EXPLOSIVES (DECEMBER 1910), AS REVISED AND APPROVED BY THE INSTITUTE OF MAKERS OF EXPLOSIVES JUNE, 1991.

* * * * *

Par. 24. In Section 55.221, paragraphs (a) and (d) are revised to read as follows:

§ 55.221 Requirements for display fireworks, pyrotechnic compositions, and explosive materials used in assembling fireworks.

(a) Display fireworks, pyrotechnic compositions and explosive materials used to assemble fireworks shall be stored at all times as required by this subpart unless they are in the process of manufacture, assembly, packaging, or are being transported.

* * * * *

(d) All dry explosive powders and mixtures, partially assembled display fireworks, and finished display fireworks shall be removed from fireworks process buildings at the conclusion of a day's operations and placed in approved magazines.

Par. 25. In §§ 55.222, 55.223, and 55.224, the term ''common fireworks'' is removed wherever it appears, and the term ''consumer fireworks'' is added in its place, and the term ''special fireworks'' is removed wherever it appears and the term ''display fireworks'' is added in its place.

Signed: June 3, 1996.

John W. Magaw,

Director.

Approved: June 12, 1996.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 96–25817 Filed 10–11–96; 8:45 am]

BILLING CODE 4810–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 144; NJ22–1–7069b, FRL–5554–8]

Approval and Promulgation of Implementation Plans; New Jersey Transportation Control Measures

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Environmental Protection Agency (EPA) proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of New Jersey which incorporate transportation control measures (TCMs) as part of the State's effort to attain the national ambient air quality standard for ozone. On November 15, 1993, the State submitted a SIP revision containing a list of 136 TCMs as part of the plan to reduce emissions of volatile organic compounds by 15 percent between 1990 and 1996. EPA proposes to find that New Jersey also demonstrated in its November 15, 1993 submittal that emissions from growth in vehicle miles traveled will not increase and, therefore, offsetting measures are not necessary.

In the final rules section of this Federal Register, EPA is approving New Jersey's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the action is set forth in this direct final notice of approval. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposed rule. Any parties interested in

commenting on this action should do so at this time.

DATES: Comments must be received on or before November 14, 1996.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 290 Broadway, New York, NY 10007–1866.

Copies of the State submittal are available at the following address for inspection during normal business hours:

Environmental Protection Agency, Region II Office, 290 Broadway, 20th floor, New York, NY 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: July 29, 1996.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 96–26203 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[TN–158–1–9632b; FRL–5619–5]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the Knox County Portion of the State of Tennessee's State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Knox County Department of Air Pollution Control for the purpose of allowing the local agency to utilize permit-by-rule regulations for the purpose of limiting potential to emit air pollutants for certain source categories to less than the title V permitting major source thresholds. In the final rules section of this Federal Register, EPA is approving the County's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by November 14, 1996.

ADDRESSES: Written comments on this action should be addressed to Scott Miller at the Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file TN158–1–9632. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 100 Alabama Street, SW, Atlanta, Georgia 30303. Scott Miller, 404/562–9120.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor, L & C Annex, 401 Church Street, Nashville, Tennessee 37243–1531.

Knox County Department of Air Pollution Control, Suite 339, City-County Building, 400 West Main Street, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Scott Miller at 404/562–9120.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: August 29, 1996.

Robert F. McGhee,

Acting Regional Administrator.

[FR Doc. 96–26200 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[ME–001–3567b; A–1–FRL–5619–9]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Stage II Vapor Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on July 24, 1995. This revision includes requirements for controlling volatile organic compound (VOC) emissions from bulk gasoline terminals and gasoline dispensing facilities. In the Final Rules Section of this Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal and does not anticipate any adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before November 14, 1996.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 23, 1996.

John P. DeVillars,

Regional Administrator Region I.

[FR Doc. 96–26198 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[NM–23–1–7101b, FRL–5612–9]

Approval and Promulgation of State Implementation Plans (SIP); Prevention of Significant Deterioration; Louisiana and New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Louisiana and New Mexico SIPs addressing Prevention of Significant Deterioration (PSD) permitting regulations. The purpose of these revisions is to replace the total suspended particulate PSD increments with increments for PM–10 (particulate matter 10 micrometers or less in diameter). In the final rules section of this Federal Register, EPA is approving the States' SIP revisions as direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be postmarked by November 14, 1996.

ADDRESSES: Comments should be mailed to Jole C. Luehrs, Chief, Air Permits Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

New Mexico Environment Department, Air Monitoring and Control Strategy Bureau, 1190 St. Francis Drive, Room So. 2100, Santa Fe, New Mexico 87503.

Louisiana Department of Environmental Quality, Office of Air Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

Anyone wishing to review this petition at the Region 6 EPA office should contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel R. Mitz, Air Permits Section (6PD–R), EPA Region 6, telephone (214) 665–8370.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this Federal Register.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 27, 1996.

Jerry Clifford,

Acting Regional Administrator (6RA–D).

[FR Doc. 96–26205 Filed 10–11–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[MM Docket No. 96–197; FCC 96–381]

Waiver of the Newspaper/Broadcast Cross-Ownership Restriction

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission seeks comment on the adoption of a new policy under which it will consider requests for waiver of the newspaper/broadcast cross-ownership restriction with respect to proposed newspaper/radio combinations. The intended effect is to provide more clarity and certainty to Commission policy with respect to such combinations.

DATES: Comments are due by December 9, 1996, and reply comments are due by January 8, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Mass Media Bureau, Policy and Rules Division (202) 418–2134.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry in MM Docket No. 96–197, FCC 96–381, adopted May 9, 1996, and released May 20, 1996. The complete text of this NOI is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Notice of Inquiry

1. *Introduction*. In 1975, the Commission adopted its rule (47 CFR 73.3555(d)) prohibiting the common ownership of commercial broadcast stations and newspapers in the same community.[1] Although divestiture of existing local newspaper/broadcast combinations was not required except in ''egregious'' cases, the Commission did intend the rule to prevent the creation of new combinations, including those created by the sale of a ''grandfathered'' newspaper-broadcast combination to the same party.[2]

2. Like all of our multiple ownership rules, the newspaper/broadcast cross-ownership rule rests on the twin goals of promoting diversity of viewpoint and economic competition.[3] Of these two goals, the Commission made it clear when adopting the rule that fostering diverse viewpoints from antagonistic sources is at the heart of its licensing responsibility. It determined that, as a general rule, granting a broadcast license to an entity in the same community as that in which the entity also publishes a newspaper would harm local diversity.[4] The Commission nonetheless noted its expectation that there could be meritorious waiver requests.[5] Accordingly, it set forth the

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[1] Multiple Ownership of Standard, FM, and Television Broadcast Stations, Second Report and Order, 40 FR 6449, 50 FCC 2d 1046 (1975) (''Second Report and Order''), recon., 40 FR 24729, 53 FCC 2d 589 (1975) (''Recon. Order''), aff'd sub nom. *Federal Communications Commission* v. *National Citizens Committee for Broadcasting,* 436 U.S. 775 (1978). The provisions of 47 CFR 73.3555 do not apply to noncommercial educational FM and TV stations. See 47 CFR 73.3555(f).

[2] Second Report and Order, supra at 1076.

[3] *Id*. at 1074.

[4] *Id*. at 1075.

[5] Although the waiver standards were discussed in the *Second Report and Order, supra,* in

grounds that it would consider pertinent to such requests. First, the Commission stated that inability to sell the station would constitute a basis for a waiver.[6] Refusal to grant a waiver under such conditions would work a forfeiture, a result contrary to the Commission's intent. Second, the Commission stated that it would waive the rule upon a showing that the only sale possible would be at an artificially depressed price.[7] Third, the Commission contemplated waiving the rule if it could be shown that the separate ownership and operation of the newspaper and the broadcast station could not be supported in the locality.[8] Finally, the Commission indicated that it would waive the rule if it could be shown, for whatever reason, that the purposes of the rule would be disserved by its application.[9] In this regard, the Commission stated that while it would consider the specifics of any particular situation, it would not relitigate in the guise of a waiver request issues that it had previously considered and rejected in adopting the rule. The Supreme Court in upholding the rule specifically noted the availability of waivers of the rule, particularly where the station and newspaper could not survive under separate ownership, as underscoring the reasonableness of the rule.[10]

3. The Commission has stated that ''the broadcast-newspaper cross-ownership rule will be waived only in cases where application of the rule would be 'unduly' harsh.'' [11] Moreover, requests for permanent waiver of the rule have a ''considerably heavier'' burden than do requests for its temporary waiver.[12] The Commission has granted only two permanent newspaper/broadcast waivers. Both involved television stations. In *Field Communications Corp.*, 65 FCC 2d 959 (1977), Field Communications Corp. (''Field'') published two daily newspapers in Chicago. As a result of the proposed transaction, a subsidiary of Field would reacquire ownership of a Chicago television station in which Field had previously sold a majority interest to the instant assignor. The only other permanent waiver of the newspaper/broadcast cross-ownership rule involved the reacquisition of the New York Post newspaper by NYP Acquisition Corp., a subsidiary of The News Corporation Limited (''News Corp.''). In granting the waiver, the Commission relied on ''special circumstances,'' considered in tandem with an evaluation of the diversity and competitiveness of the New York market.[13]

4. For several years Congress precluded the Commission from spending authorized funds ''to repeal, retroactively apply changes in, or to begin or continue a reexamination of the rules and the policies established to administer'' the newspaper/broadcast cross-ownership restriction.[14] In the Commission's 1994 appropriation, however, Congress provided that the Commission could ''amend policies with respect to waivers'' of the broadcast-newspaper cross-ownership rule.[15] In the legislative history of the 1994 Appropriations Act, Congress clarified its intent and set forth guidelines for Commission consideration of waiver requests involving daily newspapers and radio stations. The legislative history of that Act indicates a congressional intent that such ''new policy allow such waivers to be granted only in the top 25 markets [with] at least 30 [remaining] independent broadcast voices'' provided that the Commission make ''a separate affirmative determination that [the transaction] is otherwise in the public interest, based upon the applicants' showing that there are specified benefits to the service provided to the public sufficient to offset the reduction in diversity which would result from the waiver.'' [16]

5. The legislative history also indicates that Congress intended the Commission to examine, on a case-by-case basis, requests for waivers in other circumstances upon a showing of ''unique public benefits.'' [17] As we noted in *Capital Cities/ABC, Inc., supra,* this was not a directive requiring the Commission to grant waivers in such ''top 25/30 voice'' situations or otherwise to modify our waiver policy.[18] Instead, it reflected congressional intent that, if we modified our waiver policy for newspaper/radio combinations, we (1) require a showing that the proposed combination met the ''top 25/30 voice'' standard, and (2) make ''a separate affirmative determination'' in each case that ''the specified benefits'' to the public would offset ''the reduction in diversity.'' This second element suggests that Congress did not intend that the Commission routinely grant waiver requests because the first element is established but, instead, that we require a showing of specific public interest benefits flowing from a waiver. In any event, the ''top 25/30 voice'' language was not included by Congress in either the text of our 1995 or 1996 appropriations acts or their accompanying conference reports, and the proscription against spending funds to reevaluate policies related to the rule has been eliminated.[19] Subsequently, on February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996, omnibus legislation which, *inter alia,* removed national radio station ownership caps but imposed a legislative ceiling on the number of stations that could be commonly owned in a local market. The Telecommunications Act of 1996 addresses other cross-ownership issues, and the legislative history of that Act reveals that the House of Representatives explicitly considered and rejected changes to the newspaper/broadcast cross ownership rules.[20] Thus, while the Commission now clearly has the authority to reevaluate its waiver policy for newspaper-broadcast combinations it is without specific

conjunction with the ''egregious'' cases in which divestiture was required, they are the standards that have subsequently been applied in virtually all newspaper/broadcast cross-ownership waiver cases.

[6] *Id.* at 1085.

[7] *Id.* at 1084; see also *Hopkins Hall Broadcasting, Inc.,* 10 FCC Rcd 9764 (1995)

[8] *Second Report and Order, supra* at 1085.

[9] *Id.*

[10] *FCC* v. *National Citizens Committee for Broadcasting, supra* at 802 n. 20.

[11] *NewCity Communications of Massachusetts, Inc.,* 10 FCC Rcd 4985, 4986 n. 8 (1995). (In *NewCity* we dismissed the applicant's application on other grounds and did not reach the issue of whether to grant a waiver of the newspaper/broadcast cross-ownership restriction.) See also *Second Report and Order, supra* at 1077.

[12] *News America Publishing Inc.* v. *FCC,* 844 F.2d 800, 803 (D.C. Cir. 1988); see also *Hopkins Hall Broadcasting, supra* at 9764; *Capital Cities/ABC, Inc.,* 11 FCC Rcd 5841 (1996). See also, *Owosso Broadcasting Co.* (Stay Request), 60 RR 2d 99 (1986) (grant of temporary waiver in which to divest in ''egregious'' case).

[13] *Fox Television Stations Inc.,* 8 FCC Rcd 5341, 5349 (1993); *aff'd sub nom. Metropolitan Council of NAACP Branches* v. *FCC,* 46 F.3d 1154 (D.C. Cir. 1995).

[14] See, *e.g.,* Department of Justice and Related Agencies, Appropriations Act, 1993, Pub. L. 102–395, 106 Stat. 1828 (1992). These appropriations restrictions were continued in effect through subsequent appropriations legislation and continuing resolutions that funded the agency until April 26, 1996, when a budget was enacted. See Departments of Commerce, State, Justice, the Judiciary and Related Agencies for FY '96, Pub. L. 104–134, 110 Stat. 1321. The restriction on repealing, retroactively applying or reexamining the newspaper/broadcast cross-ownership rule is no longer contained in this Agency's appropriation legislation.

[15] 107 Stat. 1167 (1993).

[16] *Id.* at 2–3.

[17] *Id.* at 3.

[18] *Capital Cities/ABC, Inc., supra* at 5889.

[19] See Department of Justice and Related Agencies, Appropriations Act, 1995 Pub. L. No. 103–317, 108 Stat. 1724, 1737–38 (1994); H. Rep. 103–708, filed August 16, 1994; see also Departments of Commerce, State, Justice, the Judiciary and Related Agencies for FY '96, Pub. L. No. 104–134, 110 Stat. 1321; H. Rep. 104–537, filed April 25, 1996.

[20] 141 Cong. Rec. E–1571 (August 1, 1995).

guidance on whether or how that authority should be exercised.

Discussion

6. We are issuing this *NOI* in order to solicit comment on what, if any, changes we should make in our newspaper/broadcast cross-ownership waiver policy with respect to newspaper/radio combinations. Since 1975 when the newspaper/broadcast cross-ownership rule was adopted, the number of radio stations licensed has increased from 8,265 [21] to 12,076,[22] a 46 percent increase. Meanwhile, since the rule's adoption the number of English language daily newspapers has shrunk from 1,756 [23] to approximately 1,556,[24] an 11 percent drop. However, during that same period, radio ownership limitations have been amended from allowing common ownership of only a single AM and single FM radio station in the same market to the current regulatory regime in which, depending on the number of voices in a market, as many as eight radio stations (no more than five of which may be in the same service) may be commonly owned. This allows far more concentration of radio ownership on the local level than was available when the newspaper/broadcast cross-ownership restrictions were adopted. Nevertheless, there may be markets in which allowing waiver of the cross-ownership restriction would be healthy for the maintenance of diversity. This could occur, for example, in markets where a newspaper is failing and the only prospective purchaser is the owner of a local radio station. There may also be cases where cross-ownership, while not necessary to the viability of one or both outlets, could lead to benefits such as increased dissemination of news and information in the relevant local market and have only a negligible effect on ownership diversity and competition.[25] On the other hand, we recognize the powerful market presence that many newspapers have in their local markets and we ask for comment concerning whether this distinguishes newspaper/radio cross-ownership from other cross-ownership situations.

7. Therefore, we are soliciting comment on what changes, if any, may be desirable in our waiver policy with respect to newspaper/radio cross-ownership situations and whether we should adopt objective criteria for evaluating waiver requests. For example, should we adopt a waiver policy in which a transaction is in the public interest if it is in a market of specified numerical rank or larger and a specified number of independently owned voices would remain? Alternatively, should a waiver test turn on whether a specified minimum number of voices remains after the transaction without reference to market rank? Should such a waiver test only apply where the applicant owns no more than, for instance, a single station in each broadcast service in the community? What public interest benefits might be sufficient to overcome any detrimental effects from a reduction in diversity of voices? [26]

8. If we adopt an objective test based on number of voices and market size, a number of questions arise. One general set of questions concerns what other media outlets in the local market we should consider in computing the number of independent voices, and how we should assess those outlets in evaluating waiver requests. For purposes of a newspaper/radio cross-ownership waiver standard, if we adopt an objective test for favorable waiver consideration, should we count both radio and television voices and, if so, should we count them equally? We have previously determined that a television station is, relatively speaking, more a source of news than is a radio station. In adopting the rule at issue, we stated, ''[r]ealistically, a radio station cannot be considered the equal of either the paper or the television station in any sense, least of all in terms of being a source for news or for being the medium turned to for discussion of matters of local concern.'' [27] Does this lead to the conclusion that they should be counted differently in assessing the number of independent voices that would remain after a waiver? Should we give equal consideration to waiver requests irrespective of the strength of the particular media outlets involved or should we, for example, give different consideration to requests depending on whether the newspaper involved is a major paper or the radio station involved has a certain level of market penetration, has a certain level of authorized power, or is of a particular class of station? Should we favor newspaper/radio combinations only if the proposed purchaser would hold no more than a specified number of radio stations in the market after the transaction and a specified minimum level of independent voices remains?

9. Two separate but related matters concern which radio stations to count in assessing the number of independent voices and whether to count non-broadcast media. When we count the number of radio stations in a radio market for purposes of the radio duopoly rule, we count only commercial radio stations. For purposes of the one-to-a-market waiver standard we count both commercial and noncommercial radio and television stations. Should we count both commercial and noncommercial stations when determining the number of independent voices for purposes of newspaper/radio cross-ownership waivers? Are there other media that should also be included in calculating the number of independent voices that would remain after the waiver? For example, should we also count other independently owned daily newspapers published in the radio station's community if our determination that they are more a source of discussion concerning local issues than are radio stations remains valid? [28] Should we count the presence of cable or other video delivery services? At first blush, we do not believe that most such non-broadcast video services should be counted in any waiver standard because the newspaper/radio rule is particularly bound up with issues of local diversity, and many alternative video delivery services do not provide programming on local issues. However, there are some cable systems that carry local cable news channels. Additionally, many cable systems have public, educational and governmental access channels which cover local government and local schools and serve as forums for the

[21] *Broadcasting and Cable Yearbook—1995* at B–655.

[22] See *FCC News Release,* ''Broadcast Station Totals as of May 31, 1996,'' (June 6, 1996).

[23] Information Please Almanac - 1980, Simon and Schuster, 643 (1979). (Source: Editor and Publisher Yearbook, 1979.)

[24] Information Please Almanac - 1995, Houghton Mifflin Company, 315 (1995). (Source: Editor and Publisher International Yearbook, 1994.) This figure is as of February 1, 1994.

[25] For a more complete discussion of the Commission's diversity concerns, new approaches to diversity and other diversity related issues, see Further Notice of Proposed Rule Making in MM Docket Nos. 91–221 and 87–8, 60 FR 6490, 10 FCC Rcd 3524, 3546–59 (1995).

[26] A market rank/independent voice test would be similar to one of the tests contained in Section 73.3555, Note 7, of our Rules for favorable Commission consideration of one-to-a-market rule waivers. In one-to-a-market waiver cases, the Commission ''looks favorably'' upon waiver applications (1) in top 25 markets where there will remain 30 independent voices after grant of the waiver, or (2) where a failing station is involved. The Commission also will consider on a case-by-case basis waiver requests founded on other grounds. In Section 202(d) of the Telecommunications Act of 1996 Congress instructed the Commission to replace the ''top 25 markets'' provision of the waiver standard with a ''top 50 markets'' standard, ''consistent with the public interest, convenience, and necessity.'' Should we consider a ''top 50 market/30 voice'' waiver standard for combinations of no more than one FM, one AM, and a newspaper as well?

[27] *Second Report and Order, supra* at 1083.

[28] *Id.*

discussion of issues of local concern. Should the presence of such a channel on a local cable system count as an independent voice?[29]

10. Another set of questions concerns to what local markets any waiver should apply, and whether or not we should redefine how we measure the appropriate geographic scope of the market. Is there some standard other than a top 25 markets/30 voices, or top 50 markets/30 voices formulations for the rank of the market or number of voices that should be used? Indeed, should we consider market rank at all or, instead, simply rely on the number of independent voices that would remain after the waiver.

11. We also seek comment on defining the geographic market for purposes of assessing diversity and competition in waiving the rule. Under our existing cases, the geographic area to be considered in evaluating a radio/newspaper cross-ownership waiver is the area of overlap between the defining signal contour of the radio station (1 mV/m for FM and 2 mV/m for AM) and the area of significant circulation of the newspaper. In *Capital Cities/ABC, Inc., supra,* we rejected Disney's argument that we consider all stations licensed to the Detroit DMA to determine whether Disney could commonly own a Detroit station and a newspaper published in Pontiac. Should this standard continue to guide our consideration of waiver requests involving newspaper/radio cross-ownership and, if so, should it be revised in any way? Should the Commission take into account the possibility that even major outlets serving a metropolitan market may underserve suburban communities in the metro region, leaving smaller newspapers and broadcast outlets concentrating on the suburbs as the only outlets of any consequence for the suburban resident? In this regard, we seek comment on the extent to which metropolitan outlets concentrate on big city issues and elections with little, if any, coverage of suburban issues and candidates. It could be argued that common ownership of a radio station and a newspaper expressly focused on the urban centers could have much greater impact on viewpoint diversity than a simple count of voices might suggest. Should those major metropolitan media outlets be counted in the same way as voices located in and serving the neighboring market where the overlap is of the neighboring market?

Alternatively, should different criteria be developed? If so, what criteria should be used? There are a number of definitions of the geographic ''market'' that the Commission has utilized in various contexts. Our one-to-a-market waiver standard considers ''television licensees in the relevant ADI television market and radio licensees in the relevant television metropolitan market.''[30] While this provision may be appropriate in the one-to-a-market context, in which television stations are involved, is it also usable in the radio/newspaper context, where ownership of television stations is not involved? We note in this regard that television stations do appear to compete with newspapers in the adverstising market and do function as a significant source of news and information.

13. In implementing provisions of the Telecommunications Act of 1996,[31] we noted that we would continue to define the relevant radio market for purposes of the radio contour overlap rules ''as the area encompassed by the principal community contours (i.e., predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m for FM stations) of the mutually overlapping stations proposing to have common ownership.''[32] Does this market definition provide useful guidance for evaulating requests for waiver of the radio/newspaper cross-ownership rule?

14. Finally, we request comments on whether the radio metro market, as designated by a nationally recognized ratings service, may be a viable alternative. In this regard, we ask commenters to address the question of whether broadcast outlets licensed to other communities in the radio metro market can be counted on to provide programming on local issues in the station's community of license or the newspaper's community of publication or area of circulation?

15. Resolving how to define the boundaries of the relevant market does not entirely resolve the issue. Should we count stations as being in the relevant market only if they completely encompass the market with a certain quality signal contour; or should media outlets be counted as voices in the relevant market if a certain quality signal contour overlaps any portion of the relevant market? If the latter, should we establish a certain portion of the relevant market, either in terms of area or population, that they must overlap in order to counted as voices in that market? What level of overlapping signal contour would be the appropriate measure in order to capture accurately those media outlets that should be counted in assessing the diversity and competition effects of waiving the newspaper/radio cross-ownership rule in a local market?

16. Are there other objective criteria besides the number of independent voices and market size that we should specify that should warrant a waiver, such as saving a failing station or newspaper, reacquisition of a media property by a former owner so that the waiver would not truly be creating a new combination in the market, etc.? In situations meeting whatever objective criteria we may adopt should we also require a showing of special circumstances? What salient factors should the Commission weigh in determining whether the specific public benefits flowing from the proposed radio/newspaper combination overcome the reduction in diversity of voices? Should applicants seeking a waiver of the newspaper/radio cross-ownership rule be required to demonstrate that diversity will not be diminished, and the public interest will be served, by grant of the waiver? For example, to address the issues potentially raised in suburban communities, should the parties involved be required to describe specific plans or efforts to enhance coverage of events in a smaller community within the metropolitan region? How can we properly evaluate whether the proposed acquisition will serve the people in such neighboring municipalities and whether it will increase content diversity in such places? We seek comment on these issues.

17. Finally, as we indicated above, the newspaper/radio cross-ownership rule stands on another foundation in addition to diversity, that of competition. As we stated in the *Second Report and Order,* ''Daily newspapers tend to be much larger enterprises than television stations. Radio stations are

[29] We have previously tentatively concluded in our television ownership proceeding (MM Docket No. 91–221) that we would consider cable systems as contributing to diversity under some circumstances, and to some extent, and invited comment. *Further Notice of Proposed Rule Making* in MM Docket Nos. 91–221 and 87–8, 10 FCC Rcd 3524, 3556 (1995). We concluded that other video suppliers could not be included because they are neither as ubiquitous as cable nor do they have the capability for local origination that cable has. *Id.* at 3557. Finally, we tentatively concluded that neither a radio station nor a newspaper were the equivalent of a broadcast television station for diversity purposes and are not fungible for diversity purposes on a ''one-for-one'' basis. *Id.* at 3557–58.

[30] Section 73.3555 Note 7(1) of the Commission's Rules.

[31] Pub. L. 104–104, 110 Stat. 56 (1996).

[32] *Order,* Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996, FCC 96–90, 61 F.R. 10689 (released March 8, 1996) at para 4. (Footnotes omitted.) See also 47 C.F.R. § 73.3555(a)(3)(ii).

significantly smaller than either.'' [33] Accordingly, any move toward loosening the waiver requirements in this context must also be assessed in terms of competition. A waiver that might be acceptable in terms of its impact upon diversity might create such market power in a single entity that it would not be tolerable in terms of competition. In this regard, we note that in 1995, local newspapers captured 49% of local advertising expenditures (20.1% of all advertising) as against a total of 13.3% of local advertising (5.5% of all advertising) captured by radio stations.[34] And the 49% share is usually captured by a single newspaper while the 13.3% radio share is typically divided among a number of radio stations. In considering newspaper/radio waiver requests, should we consider from a competition standpoint the size of the newspaper involved? That is, should we view a proposed newspaper/radio combination differently if it involves a large major daily newspaper rather than a small, but not failing, local daily? If so, what test should we use to measure the size or competitive power of the newspaper involved in a waiver request? Should we require information on the percentage of local advertising dollars that the newspaper commands? Alternatively, should we look at the percentage of such dollars that would be commanded by the proposed newspaper/radio combination? [35] How should we determine whether the proposed newspaper/radio combination will possess market power? If we establish a test based on the proportion of local advertising dollars that the proposed combination would command, should we establish an objective, bright line benchmark and, if so, what should that level be? What other objective test might we use to determine whether a proposed local newspaper/radio combination would possess such market power that our competition concerns would be undermined by grant of a waiver? Will entry barriers for prospective radio broadcasters or newspaper owners be increased by relaxation of our waiver policy? What impact, if any, should the size of the media outlets involved also have on our diversity analysis?

Administrative Matters

I. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 9, 1996, and reply comments on or before January 8, 1997. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eleven copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

II. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

Ordering Clause

III. Accordingly, *it is ordered* that pursuant to the authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154 and 303, this Notice of Inquiry *is adopted*.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–26313 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–P

[33] *Second Report and Order, supra* at 1057.

[34] McCann-Ericson, *U.S. Advertising Volume*, Advertising Age (May 20, 1996).

[35] Given the present ability of an entity or individual to obtain attributable ownership interests in up to eight radio stations in a single market (depending on the number of stations in the market) a different case might be presented by a situation in which the licensee of several stations in a market purchases, or is purchased by, a major daily newspaper in that market than would be presented if a single station/newspaper combination was proposed.

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47 CFR Part 73

[MM Docket No.96–204; RM–8876]

Radio Broadcasting Services; Martin and Tiptonville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Thunderbolt Broadcasting Company, licensee of Station WCMT(FM), Channel 269A, Martin, Tennessee, requesting the substitution of Channel 267C3 for Channel 269A at Martin, Tennessee, and the modification of Station WCMT(FM)'s license to specify operation on the higher powered channel. Petitioner also requests the deletion of vacant Channel 267C3 at Tiptonville, Tennessee. Channel 267C3 can be allotted to Martin in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.1 kilometers (8.8 miles) northwest to accommodate Thunderbolt's desired site. The coordinates for Channel 267C3 at Martin, Tennessee, are 36–26–09 and 88–57–30. The coordinates for Channel 267C3 at Tiptonville, Tennessee, are 36–22–42 and 89–28–30.

DATES: Comments must be filed on or before November 25, 1996, and reply comments on or before December 10, 1996.

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: John R. Garziglia, Pepper & Corazzini, L.L.P., 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96–204, adopted September 27, 1996, and released October 4, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96–26365 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF ENERGY

48 CFR Parts 917, 950, 952, and 970

RIN 1991–AB28

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Correction to Notice of limited reopening of the comment period.

SUMMARY: This document corrects the notice of reopening of the comment period published on October 10, 1996 (61 FR 53185). The notice reopening the comment period proposed additional changes to the Department's proposed rule published on June 24, 1996 (61 FR 32588) incorporating certain contract reform initiatives. The notice reopening the comment period proposed additional changes to 48 CFR 970.5204–2, Environment, Safety and Health. The purpose of today's correction is to republish the clause proposed in the October 10, 1996 notice.

DATE: Written comments (1 copy) on this document must be submitted by October 25, 1996.

ADDRESSES: All comments are to be submitted to Connie P. Fournier, Office of Policy (HR–51), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8245; (202) 586–0545 (facsimile); connie.fournier@hq.doe.gov (Internet).

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice reopening the comment period contained errors in the clause which could be confusing to the reader. Due to the editorial nature of the changes and because the Department has sent actual copies of this notice to those who commented on the Notice of Proposed Rulemaking, the Department has not extended the comment period which remains October 25, 1996.

Correction of Publication

Accordingly, the notice reopening the comment period for 48 CFR Parts 917, 950, 952 and 970 published on October 10, 1996, which was the subject of FR Doc. 96–26083 is corrected as follows:

970.5204–2 [Corrected]

1. At page 53186, beginning at column 1, § 970.5204–2 is corrected to read:

970.5204–2 Integration of Environment, Safety and Health into Work Planning and Execution

As prescribed in 48 CFR (DEAR) 970.2303–2(a), insert the following clause.

Integration of Environment, Safety and Health into Work Planning and Execution (Month and Year TBE)

(a) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. Employees include subcontractor employees. In accomplishment of this requirement, the contractor shall implement programs to prevent accidents, releases, and exposures. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral and discernible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are clearly established and agreed-upon. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in the Safety Management System (System).

(b) The contractor shall manage and perform work in accordance with a documented System that fulfills all conditions in paragraph (a) of this clause at a minimum. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. Documentation of the System shall describe how the contractor will:

(1) define the scope of work

(2) identify and analyze hazards associated with the work

(3) develop and implement hazard controls

(4) perform work within controls, and

(5) provide feedback on adequacy of controls and continue to improve safety management.

(c) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(d) The contractor shall comply with, and assist the Department of Energy in complying with all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System addressing all aspects of ES&H is provided in DOE Guide G 450.4, ''Integrated Safety Management,'' and successor documents. Additional guidance regarding the System may be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued under this clause (including a stop work order issued by the contractor to a subcontractor in accordance with paragraph (g) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. Thereafter, an order authorizing the

resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(g) The contractor shall provide in its purchasing system, required under the clause of this contract entitled, Contractor Purchasing System, policies, practices, and procedures for the flowdown of requirements of this clause, as appropriate, to subcontract performance of work on-site at a DOE-owned or -leased facility. Depending on the complexity and hazards associated with the work, the purchasing agent may request that the subcontractor submit a Safety Management System for the purchasing agent's review and approval. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (f) of this clause.

(h) The contractor shall be responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

(I) For the purposes of this clause, safety encompasses environment, safety and health, including pollution prevention and waste minimization.

Issued in Washington, D.C. on October 9, 1996.

Steve Mournighan,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 96–26419 Filed 10–10–96; 10:47 am]

BILLING CODE 6450–01–P

Notices

Federal Register
Vol. 61, No. 200
Tuesday, October 15, 1996

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 COMMERCE

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders and Findings Nor To Terminate Suspended Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Determination not to revoke antidumping duty orders and findings nor to terminate suspended investigations.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders and findings nor to terminate the suspended investigations listed below.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Michael Panfeld or the analyst listed under Antidumping Proceeding at: Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct an administrative review of the orders and findings listed below for the most recent four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on July 1, 1996, we published in the Federal Register a notice of intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations and served written notice of the intent to each domestic interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings and to terminate the suspended investigations. Therefore, because domestic interested parties objected to our intent to revoke or terminate, we no longer intend to revoke these antidumping duty orders and findings or to terminate the suspended investigations. In addition, due to a clerical error, we inadvertently listed the antidumping duty order covering High Power Microwave Amplifiers and Components from Japan in our July 1, 1996 Notice of Intent to Revoke. We did not intend to revoke this duty order pursuant to 19 CFR 353.25(d)(4)(i).

Antidumping Proceeding

A–831–801, Armenia, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–832–801, Azerbaijan, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–833–801, Georgia, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–428–803, Germany, Industrial Nitrocellulose, Objection Date: July 29, 1996, Objector: Hercules Incorporated, Contact: Todd Peterson at (202) 482–4195

A–507–502, Iran, In-Shell Pistachio Nuts, Objection Date: July 18, 1996, Objector: California Pistachio Commission, Western Pistachio Association, Contact: Valerie Turoscy at (202) 482–0145

A–588–605, Japan, Cast Iron Pipe Fittings, Objection Date: July 23, 1996, Objector: Grinnell Corp., Ward Manufacturing, Inc., Contact: Sheila Forbes at (202) 482–5253

A–588–812, Japan, Industrial Nitrocellulose, Objection Date: July 29, 1996, Objector: Hercules Incorporated, Contact: Rebecca Trainor at (202) 482–0666

A–588–041, Japan, Synthetic Methionine, Objection Date: July 25, 1996, July 31, 1996, Objector: Degussa Corp., Novus International Inc., Contact: Charles Riggle at (202) 482–0650

A–834–801, Kazakhstan, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–835–801, Kyrgyzstan, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–449–801, Latvia, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–451–801, Lithuania, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–841–801, Moldova, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–485–601, Romania, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Tom Futtner at (202) 482–3813

A–821–801, Russia, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–580–805, South Korea, Industrial Nitrocellulose, Objection Date: July 29, 1996, Objector: Hercules Incorporated, Contact: Rebecca Trainor at (202) 482–0666

A–842–801, Tajikistan, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–570–802, The People's Republic of China, Industrial Nitrocellulose,

Objection Date: July 29, 1996, Objector: Hercules Incorporated, Contact: Rebecca Trainor at (202) 482–0666

A–823–801, The Ukraine, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–843–801, Turkmenistan, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

A–844–801, Uzbekistan, Solid Urea, Objection Date: July 19, 1996, Objector: Ad Hoc Committee of Domestic Nitrogen Producers, Contact: Thomas Barlow at (202) 482–0410

Dated: October 4, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 96–26352 Filed 10–11–96; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–820]

Notice of Postponement of Preliminary Antidumping Duty Determination: Fresh Tomatoes From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Judith Rudman or Jennifer Katt, Office of AD/CVD Enforcement, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–0192 or (202) 482–0498, respectively.

POSTPONEMENT OF PRELIMINARY DETERMINATION: On April 18, 1996, the Department of Commerce (the Department) initiated an antidumping duty investigation of fresh tomatoes from Mexico (61 FR 18377, April 25, 1996).

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930 (the Act), on July 26, 1996, the petitioners [1] made a timely request for an extension of the period within which the preliminary determination must be made. In accordance with section 733(c)(1)(A) of the Act and section 353.15(c) of the Department's regulations, on August 5, 1996, we published the *Notice of Postponement of Preliminary Antidumping Duty Determination: Fresh Tomatoes from Mexico* (61 FR 40607), postponing our preliminary determination in this investigation until no later than October 7, 1996.

The Department is further postponing the preliminary determination in this investigation until no later than October 28, 1996. This further postponement is necessary to provide additional time for the Department to consider certain novel issues which have been raised by the parties. The respondent parties have been cooperating in this investigation and thus, further postponement is appropriate.

This notice is published pursuant to section 733(c)(2) of the Act, and 19 CFR 353.15(d).

Dated: October 7, 1996.

Barbara R. Stafford,

Deputy Assistant Secretary Import Administration.

[FR Doc. 96–26357 Filed 10–11–96; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioners in this investigation are: The Florida Tomato Growers Exchange; the Florida Tomato Exchange; the Tomato Committee of the Florida Fruit and Vegetable Association; the South Carolina Tomato Association; the Gadsden County Tomato Growers Association; and an Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, and Virginia Tomato Growers.

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results and partial rescission of antidumping duty administrative review.

SUMMARY: On June 7, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC). This review covers the period August 1, 1994 through July 31, 1995.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Background

On June 7, 1996, the Department published in the Federal Register (61 FR 29073) the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the PRC (57 FR 37524, August 19, 1992). We conducted a hearing on July 24, 1996. We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2921.42.22 and 2921.42.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers 13 manufacturers/exporters of sulfanilic acid from the PRC, and the period August 1, 1994 through July 31, 1995.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from Yude Chemical Industry Co. (Yude), Zhenxing Chemical Industry Co. (Zhenxing), Sinochem Hebei Import and Export Corporation (Sinochem Hebei), PHT International, Inc. (PHT), and New Chemic (U.S.A.), Inc. (New Chemic) (collectively, respondents); and from the petitioner, Nation Ford Chemical Company. At the request of PHT and the petitioner, a public hearing was held on July 24, 1996.

Comment 1

Petitioner argues that, because sales to the United States of sulfanilic acid produced by Yude and Zhenxing were made by China National Chemical Construction Corporation (CNCCC), Yude and Zhenxing are not the proper respondents in this case. Instead, petitioner contends that CNCCC is the proper respondent.

Petitioner states that, in the preliminary results, the Department considered sales to PHT, the U.S. importer, of sulfanilic acid produced by Yude and Zhenxing to be constructed export price (CEP) sales because PHT is affiliated with Yude and Zhenxing. However, petitioner notes that Yude and Zhenxing are not related to CNCCC, Yude and Zhenxing sold the sulfanilic acid to CNCCC, CNCCC exported the sulfanilic acid produced by Yude and Zhenxing to the United States after purchasing the sulfanilic acid, and CNCCC, not PHT, paid Yude and Zhenxing for the sulfanilic acid. As a result, petitioner contends that CNCCC is the proper respondent in this review with respect to these sales, and that Yude and Zhenxing are not entitled to a separate margin and should receive the PRC-wide rate of 85.20 percent. Petitioner further argues that CNCCC is a named respondent in this review and did not respond to the questionnaire sent to it by the Department. Accordingly, petitioner claims that the margin which should be assigned to CNCCC, as the exporter, should be based on facts available and should be the PRC-wide rate of 85.20 percent.

Respondents reply that Yude and Zhenxing are the proper respondents because they set the export price, and these sales were properly reported and treated as CEP sales. According to respondents, PHT negotiates the export price with Yude and Zhenxing directly, and CNCCC simply processes the paperwork. Respondents contrast this situation with a typical sale involving a PRC trading company, in which the U.S. importer negotiates the export price with the trading company, not the factory, and the trading company sources the product from the factory, even though the U.S. importer often knows of and specifies the factory in its order. Respondents further note that the invoices to PHT are from either Yude or Zhenxing, not from CNCCC, and that, prior to the establishment of the joint ventures, the invoices were from CNCCC. Respondents cite the Department's proposed regulations, which state that the Department will normally use the date of invoice as the date of sale. As a result, respondents argue, since the invoice date establishes the date of sale, and since invoices are between either Yude and Zhenxing and PHT or between PHT and its unaffiliated U.S. customers, the first unrelated U.S. sale is between PHT and its unrelated U.S. customers, and Yude and Zhenxing are the proper respondents.

Department's Position

We disagree with petitioner, and have continued to consider these sales to be CEP sales made by Yude and Zhenxing. We found at verification that CNCCC's role in the sale of the merchandise to the United States is limited to processing paperwork, such as packing lists, and arranging for shipments, and that CNCCC receives a profit for these activities. We also found that PHT talks to the factories two or three times each year to negotiate the price between PHT and the factories, and that the price paid to the factory is fairly constant. We did find that PHT pays CNCCC, who then pays the factories. However, payment is made this way because the factories are small and do not have foreign exchange bank accounts, and the transaction between CNCCC and the factories is made in renminbi. *See* page 3 of the May 30, 1996 PHT verification report. Since the price to PHT is determined through negotiations with Yude and Zhenxing, and CNCCC's role is limited to processing paperwork, Yude and Zhenxing are the proper respondents in this review, and we have reviewed PHT's sales to its unaffiliated customers. As in the preliminary results of review, Yude and Zhenxing have received a separate rate, and CNCCC has received a rate based on facts available because it did not respond to the questionnaire.

Comment 2

Petitioner argues that use of Indian import prices of aniline as the surrogate value for aniline is inappropriate. Petitioner contends that the domestic market prices of aniline reported in *Chemical Business* and *Chemical Weekly* should be used as surrogate values because they accurately reflect the prices paid for aniline by Indian manufacturers of sulfanilic acid. It notes that the import value of aniline used for the preliminary results of review is less than half the prices reported in *Chemical Business* and *Chemical Weekly*.

Petitioner states that, in selecting surrogate values for a factors-of-production analysis, the Department attempts to calculate values for raw materials in a manner which closely approximates the actual costs of the raw materials paid by manufacturers in the surrogate country market. As support, petitioner cites to 19 U.S.C. § 1677b(c), the *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66895, December 28, 1994) (*Coumarin*), and the *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China* (59 FR 58818, November 15, 1994) (*Saccharin*).

Petitioner contends that the data it submitted from *Chemical Business* and *Chemical Weekly* provide the most accurate source of surrogate values for aniline, and points to the consistency of the data reported in those publications as an indication of the accuracy and reliability of that data. It states that the fact that the import value of aniline is so much lower than the prices reported in *Chemical Business* and *Chemical Weekly* is evidence that the prices in those publications are more reliable. Petitioner notes that these publications have been used as sources of surrogate values in other cases, including the *Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China* (59 FR 28053, May 31, 1994) (*Sebacic Acid*) and the *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (*Bicycles*), and were also used to determine surrogate values for sulfuric acid and activated carbon in the preliminary results of this review. According to petitioner, it makes no sense for the Department to use *Chemical Business* and *Chemical Weekly* for two surrogate values in this review, but to reject them for valuing aniline.

Petitioner further argues that there is nothing on the record to suggest that the PRC producers only use aniline imported into the PRC, or that Indian manufacturers of sulfanilic acid only use imported aniline. Without substantial evidence pointing to import values as the source for the surrogate values, it believes that the Department

should not rely on the low import values.

Moreover, petitioner contends that the Indian import statistics used by the Department for the preliminary results reflect the value of the aniline at the foreign port of export, and, therefore, the cost to produce aniline in the country of exportation, not India. As a result, the import statistics do not reflect costs incurred by Indian sulfanilic acid manufacturers and should be rejected.

Petitioner also claims that reliance on Indian import statistics assumes that Indian sulfanilic acid producers can purchase aniline in bulk quantities at low per-unit prices, noting that chemicals such as aniline are imported in large quantities by Indian importers. By contrast, Indian sulfanilic acid producers are small operations without the need or ability to purchase, store, or use large volumes of aniline, and would pay a higher per-unit cost than do Indian importers of such chemicals. Petitioner argues that the reported Indian domestic prices of aniline in *Chemical Business* and *Chemical Weekly* reflect the development of the Indian industry, which is similar to that of the Chinese industry and consists of smaller facilities without modern, efficient methods of production.

Petitioner contends that respondents' argument in comments submitted before the preliminary results that the Department should disregard the domestic prices of aniline, a petroleum-based product, in *Chemical Business* and *Chemical Weekly* because India is not a petroleum producing country, resulting in artificially high domestic aniline prices, is unfounded. Petitioner states that respondents have not offered support for this claim, and notes that leading aniline exporters, such as Japan or the Netherlands, do not produce large amounts of petroleum. Accordingly, petitioner contends that petroleum production does not determine the price of aniline.

Petitioner further contends that the import prices should not be used because they cover a period prior to the period of review and do not include imports during four months of the period of review. According to petitioner, by contrast, the data provided by petitioner in *Chemical Business* and *Chemical Weekly* cover the entire period of review.

Lastly, petitioner argues that the Department has considered whether Indian import statistics merit consideration as surrogate values in other cases. Petitioner cites specifically to *Coumarin,* in which the Department found that Indian import statistics for chlorine were aberrational because they varied sharply from ''numerous examples of alternative price sources,'' and therefore did not use the import values for chlorine. Instead, the Department used non-publicly available price quotes supplied by the petitioner. Petitioner also notes that counsel for respondents has argued in other cases that import values were aberrational and should not be used as surrogate values, citing to the *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China* (58 FR 7537, February 8, 1993), and *Saccharin.* Petitioner contends that the situation in this case is no different, because a number of sources of information on the record of this review indicate that the value of aniline is at least two times greater than the import value used by the Department in the preliminary results of review.

Respondents contend that the Department should continue to use import prices for valuing aniline, as was done in the less-than-fair-value (LTFV) investigation of this case (*see Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China* (57 FR 29705, July 6, 1992) (*Sulfanilic Acid*)). They state that the Department's primary objective in a review is to calculate antidumping margins as accurately as possible for the PRC producers/exporters, citing the *Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 55271, October 25, 1991) (*Fans*). To do so, the Department must determine the actual cost of aniline for an Indian manufacturer that produces sulfanilic acid for export. They state that the evidence on the record of this review shows that Indian sulfanilic acid producers use imported aniline to produce sulfanilic acid for export. They note that they have submitted to the record a letter from an Indian sulfanilic acid producer stating that it uses imported aniline to produce sulfanilic acid for export, a letter from an Indian sulfanilic acid exporter describing in detail how an Indian producer uses imported aniline for export without paying import duties, and a letter from a sulfanilic acid end user stating that Indian sulfanilic acid producers could not use domestic aniline to produce sulfanilic acid for export because their prices would not be competitive. They contend that since there is no publicly available published information regarding the source of aniline for Indian sulfanilic acid producers, the Department must rely on this next best information to show that imported aniline is used by Indian sulfanilic acid producers. They further note that there is nothing on the record showing that Indian manufacturers use domestically-produced aniline to produce sulfanilic acid for export.

According to respondents, the domestic Indian aniline market is inefficient and protected by high tariffs. Therefore, respondents argue, Indian-produced aniline is very expensive, and the Indian government allows aniline to be imported duty free for production of sulfanilic acid for export. Respondents contend that petitioner fails to take into account that Indian sulfanilic acid producers use different aniline inputs for producing sulfanilic acid for the domestic and export markets. Respondents state that, while the prices reported in *Chemical Business* and *Chemical Weekly* may reflect the cost of domestically-produced aniline, they do not reflect the cost of imported aniline used to produce sulfanilic acid for export and should therefore be rejected in favor of import prices.

They further claim that the Indian import prices are not aberrational, stating that they are close to the world market price and have remained relatively steady during the period of review. They argue that the fact that the import prices are very stable reflects a consistency in grade, type, and quality of the aniline imported into India. Lastly, respondents note that the Department is not required to choose one source of surrogate information to value all factors in the face of evidence that it will lead to inaccurate results, and that the Department has access to Indian import statistics covering the entire period of review.

Department's Position

We disagree with petitioner. The evidence placed on the record of this review by the respondents indicates that Indian sulfanilic acid producers use imported aniline in their production process when they produce sulfanilic acid for export (*see* Appendix 2B of respondents' April 11, 1996 submission). Therefore, these values best approximate the cost paid by the sulfanilic acid exporters in India, and we have continued to use import prices reported in the *Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics*) to value aniline for the final results of review, as in the LTFV investigation of this case (*see* our response to Comment 1 in *Sulfanilic Acid*). For the final results of review, we have used import statistics for the months of the period of review which were unavailable at the

time of the preliminary results of review.

With regard to petitioner's argument that the import statistics reflect the value at the port of export, we note that the introductory comments to the *Indian Import Statistics* state that the values are reported on a CIF (cost, insurance, freight) basis (*see* our response to Comment 3). Therefore, we disagree with petitioner that the import values are inappropriate because they reflect only the cost to produce in the country of exportation.

Contrary to petitioner's argument that it does not make sense to reject *Chemical Business* and *Chemical Weekly* for aniline but to use them for other factors, we believe that we can use different sources for valuing different factors when we find that the surrogate values are appropriate. Therefore, it is not inappropriate to use the *Indian Import Statistics* to value aniline and to use *Chemical Business* and *Chemical Weekly* to value other factors.

Comment 3

Petitioner argues that, if the Department continues to use import prices as the surrogate value for aniline, the import prices should be adjusted to account for ocean freight from the port of export to India, Indian port terminal and brokerage charges, the Indian importers' mark-up, and the Indian import duty, in order to approximate costs incurred by Indian sulfanilic acid producers. Petitioner contends that the aniline import values relied upon by the Department in the preliminary results are FOB values at the foreign port of export, and, therefore, do not include such costs. Petitioner states that the ultimate purchaser of the aniline, the Indian sulfanilic acid producer, would clearly be charged these expenses, and that an upward adjustment is necessary to reflect the total cost of the aniline. Petitioner contends that even the respondents have acknowledged the fact that the import values should be adjusted upwards, citing the letter from a sulfanilic acid end user, submitted by respondents, in which the end user stated that when determining an appropriate delivered price to a sulfanilic acid producer in India, one must ''add typical ocean freight and delivery charges.'' Petitioner suggests that the profit margin reported to the Department by PHT be used to make the adjustment for the importer's markup.

With regard to import duties, petitioner states that aniline imported into India during the period of review was subject to an *ad valorem* duty of 85 percent which was not added to the surrogate value for aniline in the preliminary results of this review. According to petitioner, the letter from the sulfanilic acid exporter provided by the respondents, which states that import duties on aniline are not collected when the sulfanilic acid is exported, does not demonstrate that this 85 percent duty should not be included in the surrogate value. Petitioner notes that the Department has previously concluded that the import duty exemption for aniline was a countervailable subsidy under the U.S. law, citing the *Preliminary Affirmative Countervailing Duty Determination: Sulfanilic Acid from India* (57 FR 35784, August 11, 1992), and argues that the alleged forgiveness of import duties, a countervailable subsidy, does not warrant the disregarding of the import duty in the factors-of-production analysis.

Respondents reply that the Department should not make any adjustments to the import value of aniline. They state that, in previous cases, such as *Sebacic Acid, Saccharin,* and the *Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from the People's Republic of China* (61 FR 14057, March 29, 1996) (*Polyvinyl Alcohol*), the Department has eliminated from the surrogate values excise taxes, freight, and all other charges associated with the surrogate values because the Department already adds amounts for freight charges and other markups. Respondents note that, in this review, the Department has added to the surrogate value for aniline freight costs for transporting the aniline from the supplier in the PRC to the sulfanilic acid factory and PRC brokerage and handling costs. Therefore, respondents contend, the petitioner is arguing that the Department double count such expenses.

Respondents also state that they have submitted evidence to the record of this review showing that, pursuant to the Indian government's duty drawback program, Indian importers of aniline import the chemical duty free and export the sulfanilic acid without the payment of the import duty. Therefore, the import duty would not be included in the cost of the aniline to the sulfanilic acid producer.

Respondents further argue that the Department should not add to the surrogate value for aniline an amount for the importer's markup. First, respondents state that the petitioner has not submitted any evidence as to what the importer's markup would be for aniline. Further, since the surrogate value should be as close as possible to the price at the factory gate and the import value of aniline represents the closest approximation of the actual aniline cost to the Indian manufacturer, it should not include any upward adjustments after importation which would artificially inflate the aniline cost.

Department's Position

We agree with petitioner that, in order for the surrogate values to reflect the true costs to India for the raw materials, the surrogate values should include freight to India. However, the introductory notes to the *Indian Import Statistics,* used to determine the surrogate value for aniline, state that the values reported are reported on a CIF basis. Thus, the reported import values include the costs of transporting the merchandise to India, and an adjustment for ocean freight from the port of export to India and for Indian port terminal and brokerage charges is not necessary. This does not double count freight charges, as argued by respondents. We add freight costs to the cost of manufacturing to account for costs for transporting the raw materials from the suppliers of the raw materials to the factory producing the subject merchandise, not freight to the surrogate country.

We also disagree that we should add an importer's markup to the surrogate value. There is no evidence on the record of the review indicating who imports the aniline, the sulfanilic acid producer or an importer who sells the aniline to the sulfanilic acid producer. Accordingly, there is no basis for determining that an importer's markup would be included in the price to the Indian sulfanilic acid producer and for adjusting the surrogate value for such a markup.

With respect to petitioner's argument that we should include an amount for import duties in the surrogate value for aniline, we note that respondents have placed on the record evidence showing that the import duty is not paid when the sulfanilic acid is exported. Therefore, we disagree with petitioner, and have not made an adjustment for import duties.

Comment 4

Petitioner argues that the Department should deduct commissions paid by PHT from the U.S. starting price. Respondents reply that, if the Department decides to make an adjustment for commissions, it should only make the adjustment to those sales for which a commission expense was incurred, as verified by the Department.

Department's Position

We agree with petitioner that such commissions should be deducted in calculating CEP. However, as noted in the May 30, 1996 analysis memorandum, commissions have already been deducted. The commission amounts deducted were the verified amounts.

Comment 5

Petitioner argues that, if CNCCC is not treated as the respondent, then the Department should deduct from the U.S. starting price the profit earned by CNCCC for these sales. Petitioner contends that this profit is a commission earned for export services rendered and would be paid by Yude, Zhenxing, and PHT.

Department's Position

We agree with petitioner. The amount paid to CNCCC for processing paperwork on each sale was paid by PHT and is directly related to each sale. Therefore, this amount should be deducted in the calculation of CEP.

Comment 6

Petitioner argues that the Department should use facts available to value sales it claims that the Department was unable to verify. Petitioner cites to the PHT verification report to show that the Department found at verification a pattern of inconsistencies in PHT's monthly sales account balances between April and September 1995. Specifically, petitioner notes that PHT was unable to account for the difference between the ending sales account balance for June and the beginning sales account balance for July. According to petitioner, the lack of documentation and internal control calls into question the integrity of the reported June and July sales information. As a result, petitioner argues that the Department could not verify the June and July sales and should use facts available for any sales made by PHT in June and July 1995. As facts available, petitioner suggests the highest margin calculated for any sale made by PHT which the Department was able to verify.

Respondents reply that the September 1995 ending balance in PHT's sales account matches the total sales revenue amount reported on PHT's end-of-year financial statement and tax return. Further they note that, at verification, PHT informed the Department that the reason for any differences between the ending balance in the sales account for one month and the beginning balance for the next month is due to manual adjustments made at the end of each month to account for errors. They further state that there is no indication that the relatively small amount of the difference between the June ending balance and the July beginning balance has anything to do with sulfanilic acid. Moreover, respondents state that the PHT verification report indicates that the Department was able to verify that all sales of sulfanilic acid during the period of review had been reported.

Department's Position

We disagree with petitioner. At verification, we were unable to use PHT's sales account (*i.e.*, PHT's accounting system used to prepare its financial statements) to determine whether all sales of sulfanilic acid had been reported. However, we were able to review internal worksheets kept by PHT in the ordinary course of business listing all sales of all products. These worksheets tied to PHT's financial statements and tax returns. From these worksheets, we were able to determine that all sales of sulfanilic acid made by PHT during the period of review had been reported. *See* page 5 of the PHT verification report. As we are satisfied that all sales were reported, we have not used facts available for PHT's June and July sales.

Comment 7

Respondents argue that the Department should exclude from the U.S. sales database certain sales made by PHT to the petitioner because, they claim, the Department has ''no jurisdiction'' over these sales. Respondents state that, on May 2, 1996, they submitted to the Department documents establishing that these sales should be excluded from the analysis. However, the Department returned the submission on May 20, 1996 stating that, because the documents were submitted after verification, it could not accept them.

Petitioner responds that PHT's sales to the petitioner were reported by the respondents, were verified by the Department, and should not be excluded from the analysis. Petitioner argues that the respondents' arguments are based entirely on their May 2, 1996 submission, which petitioner believes did not raise any jurisdictional issues or provide any reasons for disregarding these sales. Moreover, petitioner argues that this submission was submitted to the Department after verification and after the deadline for submission of factual information set forth in section 353.31 of the Department's regulations, and was therefore returned by the Department. It notes that the Department stated in its letter returning the submission that it would not consider the information in its preliminary or final results of review. According to petitioner, respondents never disputed the fact that the submission was untimely, and, without this submission, there is no support for respondents' ''jurisdictional'' argument.

Department's Position

We disagree with respondents. On May 2, 1996, Yude and Zhenxing submitted new information which we returned as untimely filed. As stated in our May 20, 1996 letter, we had not requested such information, and the information was submitted after the deadline for submission of factual information provided in section 353.31(a)(11) of our regulations. We also stated that this information was submitted after the verification which took place at PHT. At verification, we verified PHT's sales to petitioner, and found nothing which would indicate that these sales were not properly included in the analysis.

Respondents' claim that the information contained in its May 2, 1996 submission raised a ''jurisdictional'' issue is unfounded. Because Yude and Zhenxing made undisputed sales to the United States during the period of review, they are parties subject to this review, and we may examine or, for proper cause supported by information on the record, decline to examine all of their sales of subject merchandise during the period of review, whether to the United States, in the home market, or to third countries. We do not need to demonstrate ''jurisdiction'' on a sale-by-sale basis. Yude's and Zhenxing's objection to our analysis of the sales at issue, therefore, raises no ''jurisdictional'' issue. It is simply a challenge to our selection of sales for the U.S. database, which we need not address on its merits because it was raised after the deadline for submitting new factual information and because the alleged facts upon which it is based can no longer be verified. Accordingly, we have included these sales in our analysis.

Comment 8

Respondents argue that the Department should extend the deadline for allowing Sinochem Hebei to submit its questionnaire response and should accept Sinochem Hebei's questionnaire response. Respondents cite as support *Bowe-Passat* v. *United States*, 17 CIT 335, 1993 WL 179269 (1993), in which the Court of International Trade (CIT) stated that the Department routinely accepts data after the deadlines and found that the Department acted

arbitrarily and capriciously in rejecting plaintiff's submission of facts.

Respondents contend that the facts of this case are unique. Respondents state that the previous administrative review, covering the period August 1, 1993 through July 31, 1994 (93/94 review), was initiated in September 1994, and that verification of that review was conducted during May and July 1995. Respondents note that they were informed that the preliminary results of the 93/94 review were scheduled to be issued in August 1995, but that the results were not issued until May 1996, despite letters and phone calls by counsel for respondents and the Embassy of the PRC. In the preliminary results of the 93/94 review, published on May 20, 1996, Sinochem Hebei received a margin of 2.01 percent.

Respondents continue that the Department conducted verification of the current review in April 1996, before the verification reports from the 93/94 review were issued. In the current review, Sinochem Hebei received an 85.20 percent margin for failing to respond to the questionnaire. Respondents submit that Sinochem Hebei would have responded to the Department's questionnaire in the current review within the time frame specified in the questionnaire had it known its preliminary margin from the 93/94 review at the time its response in the current review was due.

Respondents note that, while the margin is assigned to the exporter, Sinochem Hebei, the U.S. importer is the party which must bear the consequences as a result of the retroactive nature of the antidumping review process. They contend that New Chemic, an importer of subject merchandise from Sinochem Hebei during this period of review, would be ''wiped out'' as a result of this retroactive duty. Respondents state that the purpose of the antidumping law is to determine margins as accurately as possible, in accordance with the goals of fairness, accuracy, and predictability, citing to *Fans*, 56 FR at 55275 (Comment 1). They argue that the failure of the Department to issue the preliminary results of the 93/94 review in a timely manner unnecessarily penalizes the U.S. importer, does not serve the purpose of the antidumping duty law, and is contrary to the intent of the U.S. Congress in protecting the U.S. industry. They further claim that denying New Chemic the right to have Sinochem Hebei's response considered by the Department would unfairly and unjustly destroy a small business because of the Department's delay in issuing the preliminary results of the 93/94 review.

Petitioner responds that the Department cannot accept Sinochem Hebei's questionnaire response after verification and after publication of the preliminary results of review. Petitioner states that Sinochem Hebei, as a named respondent, was sent a questionnaire by the Department on October 6, 1995 and was represented by counsel. Sinochem Hebei disregarded the deadlines for responding to the questionnaire, and its counsel withdrew its appearance on behalf of Sinochem Hebei. Petitioner notes that the Department assigned to Sinochem Hebei the PRC-wide rate of 85.20 percent in the preliminary results because it did not respond to the questionnaire. Petitioner further notes that Sinochem Hebei's questionnaire response was submitted to the Department several weeks after the preliminary results of the review had been published, and contends that the Department cannot allow respondents to dictate how and when they should respond to questionnaires.

According to petitioner, respondents' argument that Sinochem Hebei would have responded to the questionnaire had it known the adverse consequences for not doing so is unavailing. Petitioner notes that Sinochem Hebei had counsel which knew that failure to submit timely requests for information can lead to adverse consequences in the form of facts available, and that the questionnaire sent to Sinochem Hebei stated this.

Department's Position

We disagree with respondents. In this administrative review, Sinochem Hebei was originally represented by U.S. counsel and actively requested an administrative review of its own sales. We note that petitioner also requested a review of Sinochem Hebei's sales. Accordingly, on October 6, 1995, we sent a questionnaire to Sinochem Hebei. Sinochem Hebei was required to respond to the questionnaire by the applicable due dates, which were October 27, 1995 for Section A of the questionnaire and November 20, 1995 for Sections C and D of the questionnaire. Sinochem Hebei did not submit a questionnaire response or request an extension of time for filing its questionnaire response by these deadlines pursuant to section 353.31(b)(3) of our regulations, and Sinochem Hebei's counsel withdrew its representation of Sinochem Hebei on November 29, 1995, after the due dates for Sinochem Hebei's questionnaire responses. Section 776(a)(2)(B) of the Act provides that if an interested party fails to provide necessary information by the deadline for submission, the Department *shall* use the facts available in reaching the applicable determination. The fact that the results of the 93/94 review of this case were not yet issued did not relieve Sinochem Hebei of its legal responsibility to respond to the Department's questionnaire for the current review period as requested by the Department. Each antidumping review is a separate proceeding covering merchandise entering the United States during a specific time period, and the facts of each review are considered separately based on information submitted for that proceeding. Therefore, in the preliminary results of this review, we correctly assigned a margin to Sinochem Hebei based on facts available.

We note that New Chemic requested on June 19, 1996, more than seven months after Sinochem Hebei's questionnaire response was due, that we extend the deadline for accepting Sinochem Hebei's questionnaire response. We also note that Sinochem Hebei submitted a questionnaire response on June 28, 1996, after the preliminary results of this review were published, and that we returned this response on July 23, 1996. We cannot extend Sinochem Hebei's time to respond to the questionnaire. Our regulations require that Sinochem Hebei submit any request for extension in writing before the time limit for submitting the information expires (*see* section 353.31(b)(3)). Therefore, the request for extension was untimely, and, further, it was not submitted by Sinochem Hebei. Moreover, section 353.31(a)(ii) of our regulations states that submissions of factual information are to be submitted not later than the earlier of the date of publication of the notice of preliminary results or 180 days after the publication of the notice of initiation of the review. The preliminary results of this administrative review were published in the Federal Register on June 7, 1996, and the notice of initiation was published on September 15, 1995. Therefore, the questionnaire response was untimely and was correctly rejected.

We also note that Sinochem Hebei was involved in the LTFV investigation of this case and in the 93/94 review, and, in both of those proceedings, responded to the Department's requests for information. Further, in both of those proceedings, we verified the reported information at Sinochem Hebei's facilities in the PRC. Therefore, Sinochem Hebei was not unfamiliar with the way in which antidumping proceedings are conducted, and could

have consulted either its own counsel or the Department regarding the consequences of not responding to the questionnaire. The questionnaire sent to Sinochem Hebei provided the name and telephone number of the appropriate Department official to contact if it had any questions or if it was unable to respond to the questionnaire within the specified time limits. Furthermore, any claims as to what Sinochem Hebei ''would have done'' had the 93/94 preliminary results been issued prior to the time its response was due are purely speculative. New Chemic, which was required to post antidumping duty deposits on imports of the subject merchandise from the PRC, knew or should have known that these deposits were not necessarily equivalent to the antidumping rates which will ultimately be assessed on such entries and should have sought the cooperation of its supplier at an appropriate stage in the review process.

As a result, for the final results, we have continued to base Sinochem Hebei's margin on facts available. As facts available, we have used the highest rate from any segment of the proceeding, 85.20 percent, the rate from the LTFV investigation of this case.

Comment 9

Respondents contend that, in past cases, the Department has not deducted indirect selling expenses and profit in the calculation of the CEP because of the difficulty in isolating expenses used in surrogate country values. Therefore, such expenses could be double counted. As support, respondents cite to *Fans,* in which the Department determined that there was insufficient information to adjust the surrogate country expenses; therefore, the Department stated that, for purchase price sales, it would be unfair to make an upward adjustment to foreign market value (FMV) for selling expenses incurred on the U.S. sales without making a downward adjustment to FMV for selling, general, and administrative (SG&A) expenses, and that, for exporter's sales price sales, an adjustment for selling expenses should not be made since these expenses could not be isolated. Respondents also note that the Department made similar determinations in numerous other cases, such as the *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Ukraine* (60 FR 16432, March 30, 1995) and Saccharin.

Respondents contend that the implementation of the URAA does not require a change in this policy. They argue that a comparison of the statute in effect prior to January 1, 1995 and the statute in effect since that date shows that there has been no significant change in the law requiring the Department to reconsider its past position. Moreover, respondents state that Congress' failure to amend the law in this respect is tantamount to approval, citing *United States* v. *Federal Ins. Co.,* 805 F.2d 1012, 1017 (Fed. Cir. 1986), *cert. denied,* 481 U.S. 1048 (1987).

In addition, respondents argue that the Department provided an inadequate explanation of its reasons for changing its position in *Bicycles.* They state that an analysis of the public record in *Bicycles* appears to indicate that the reason for the change is based on a change in the statutory language. Therefore, respondents claim that, at a minimum, the Department should provide an extensive analysis to justify such a change in its longstanding policy.

Petitioner responds that the plain meaning of the law under which this review is being conducted requires that the Department deduct from CEP indirect selling expenses and profit, and note that the Department made the same deductions in *Bicycles.* It cites to section 772(d)(3) of the Act to show that the Department must deduct from CEP all selling expenses, including both direct and indirect selling expenses, and profit. Petitioner contests respondents' argument that the Department's deduction of indirect selling expenses and profit was incorrect because it is inconsistent with practice prior to the 1994 amendments to the law. It contends that the amended law requires the deduction of indirect selling expenses and profit from CEP, without exception for non-market-economy (NME) country cases, and that the Department changed its practice in order to comply with the provisions of the amended law, as was done in *Bicycles.* According to petitioner, the fact that Congress allegedly failed to expressly reject the Department's prior practice in this area does not constrain the Department from adopting a new practice under the changed language of the amended law. Further, the amended law did make relevant changes in this respect because it now requires a deduction for indirect selling expenses and for profit, as is discussed in the Statement of Administrative Action (SAA) accompanying the URAA (*see* SAA at 153).

Petitioner further argues that the respondents have not made an argument that deductions to CEP for direct selling expenses are improper. According to petitioner, section 772(d)(1) of the Act, which states that ''any selling expenses'' be deducted, includes both direct and indirect selling expenses, and it is impossible to interpret the section as permitting the deduction of some selling expenses but not others.

Department's Position

We disagree with respondents. As discussed in *Bicycles,* section 772(c)(2)(d)(1) of the Act states that CEP shall be reduced by the amount of expenses incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise, and section 772(c)(2)(d)(3) of the Act states that CEP shall be reduced by the amount of profit allocated to such expenses. The statute provides no exceptions for NME cases. Consequently, we have continued to deduct from CEP all selling expenses, including indirect selling expenses, and CEP profit, as we did in *Bicycles.* We note that we have been following this practice in recent cases (*see, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from the People's Republic of China* (61 FR 43337, August 22, 1996)).

Comment 10

Respondents contend that, if the Department persists in making circumstance-of-sale adjustments to U.S. price for direct selling expenses, then it should make a similar adjustment to normal value (NV), which is authorized by section 773(a)(6)(C)(iii) of the Act. Failure to do so, according to respondents, results in inherently unfair results. Respondents argue that the data from the *Reserve Bank of India Bulletin* used for the preliminary results of this review to determine surrogate values for factory overhead, SG&A expenses, and profit can be used to calculate the adjustments necessary to NV for direct selling expenses, such as commissions, advertising, and credit.

Petitioner responds that there is nothing in the SAA or in *Bicycles* which states that circumstance-of-sale adjustments to NV are required by deductions made to CEP. Petitioner further argues that the respondents incorrectly cite to section 773(a)(6)(C)(iii) of the Act for authority for the circumstance-of-sale adjustment. According to petitioner, that section of the Act is superseded by the statutory provisions relevant to this review, *i.e.,* the NME country provisions provided for by section 773(c) of the Act. Petitioner states that application of section 773(c) of the Act is premised on a finding that a determination under section 773(a) of the Act regarding NV

is not appropriate, and that a circumstance-of-sale adjustment pursuant to section 773(a) of the Act therefore must be rejected.

Petitioner states that if the Department makes a circumstance-of-sale adjustment as requested by respondents, it cannot accept respondents' calculation of the adjustment for credit and should not make a reduction to NV for this expense. Petitioner contends that the expense cited to by respondents as a credit expense is really an interest expense, which is a general and administrative expense, not a selling expense.

Department's Position

We do not believe that circumstance-of-sale adjustments to NV are either necessarily required by the statute or by the existence of deductions made to CEP. As discussed in *Bicycles,* section 773(a)(6)(C) of the Act allows NV to be increased or decreased for differences in circumstances of sale as long as it has been established to the satisfaction of the administering authority that such adjustments are warranted.

In this case, we do not have enough information about the selling expenses included in the surrogate SG&A expenses to make such an adjustment to NV or to determine whether such an adjustment is warranted. Therefore, for the final results, we have not made such an adjustment to NV.

Comment 11

Respondents argue that, in contrast to the situation with respect to aniline, there is no evidence on the record of this review which indicates that Indian sulfanilic acid producers use imported activated carbon to produce sulfanilic acid for export. They believe that it makes sense that Indian sulfanilic acid producers would use domestically-produced activated carbon, which is substantially cheaper than imported activated carbon. Respondents thus argue that the Department should use as the surrogate value the export price of activated carbon reported in *Chemical Weekly*, which they submitted to the Department before the preliminary results of review were issued, because it reflects the actual price in the Indian market used to produce sulfanilic acid for export. As support for their argument, they cite to section 773(c)(1) of the Act, which requires the Department to use the best available information for valuing the factors of production *in* the surrogate country (emphasis added).

Respondents also note that in *Polyvinyl Alcohol*, the Department rejected the very same import price for activated carbon in favor of the export price reported in *Chemical Weekly*.

Further, respondents contend that the Department did not take into consideration the quality of the activated carbon used by respondents or the quality of the activated carbon imported into India. Respondents state that the Kirk-Othmer *Encyclopedia of Chemical Technology* designates activated carbon as either gas-phase or liquid-phase absorbents. Respondents argue that, even though the data are old, activated carbon prices from 1976 quoted in that publication indicate that gas-phase activated carbon is more expensive than liquid-phase activated carbon. According to respondents, the factories use liquid-phase activated carbon, as is shown by the production process described in their questionnaire response, whereas the price level of the imported activated carbon indicates that the imports were of the gas-phase activated carbon or specialty grades unsuitable for sulfanilic acid production. Therefore, respondents argue that the Department should determine the types of activated carbon represented by the import figures and decide whether it is appropriate to value respondents' activated carbon with those import prices.

Lastly, they claim that the quantities of imported activated carbon are inadequate for valuing the factories' factors of production because they are much smaller than the quantities used by the factories and purchases by the respondents would be in large quantities which would merit discounts not reflected by these import prices. Respondents further claim that the small quantities are a further indication that the imports are of the more expensive gas-phase activated carbon or are of specialty grades which are not suitable for the production of sulfanilic acid.

Petitioner responds that the Department properly based the surrogate value on the prices reported in *Chemical Weekly* during March and May 1995, the only publicly available data on the record covering this period of review. It notes that the price which the respondents urge the Department to use is from a September 1993 issue of *Chemical Weekly*, nearly one year before the beginning of the period of review. According to petitioner, respondents' argument regarding the valuation of activated carbon is fundamentally at odds with its argument regarding aniline. It notes that the respondents are arguing that the Department use import prices for aniline, but that import prices for activated carbon are aberrational. Petitioner states that, if the import prices for activated carbon are aberrational, then the Department should also find that import prices are also aberrational for aniline.

Petitioner argues that the respondents' submission in its case brief of information from the *Encyclopedia of Chemical Technology* is new factual information which must be rejected and returned to the respondents, and therefore, their arguments based on information in this publication should not be considered.

According to petitioner, respondents reliance on *Polyvinyl Alcohol* is misplaced. Petitioner notes that, in that case, the Department compared import and export prices to other price data to determine which were more reliable. In this proceeding, however, the only publicly available published information from the period of review is that from the March and May 1995 issues of *Chemical Weekly*, and there is no other data from the period of review with which to compare these prices.

Moreover, petitioner contends that the volumes of sales used to determine the surrogate value for the preliminary results are sufficient for use in determining the surrogate value, and note that the value supported by the respondents is based on a smaller volume. Petitioner contends that this weakens respondents' argument that the export data be used as the surrogate value. Petitioner contends, however, that the contemporaneity of the data is more important that the relative volume of the sales in question.

Petitioner lastly contends that the Department should increase the surrogate value for activated carbon by the amount of the 85 percent import duty, in order to approximate the true cost of the activated carbon to the Indian sulfanilic acid manufacturer. It states that because the activated carbon is not physically incorporated into the sulfanilic acid, imports of activated carbon would not be eligible for any import duty exemption upon export of the sulfanilic acid.

Department's Position

We disagree with respondents. There is no evidence on the record of this review which indicates whether Indian sulfanilic acid producers use domestic or imported activated carbon to produce sulfanilic acid. Further, there is no evidence on the record of this review which indicates whether the prices supported by either the respondents or the petitioner are for gas-phase or liquid-phase activated carbon. We note that respondents never stated in their questionnaire responses that they used

a certain type of activated carbon in their production, or indicated in their surrogate value comments that there was more than one type of activated carbon.

In determining the surrogate value used for activated carbon in the preliminary results of review, we considered the information placed on the record by the petitioner and by the respondents. We selected the data submitted by the petitioner because they are more contemporaneous, covering imports during the period of review, than those provided by respondents, which are from a September 1993 issue of *Chemical Weekly* and are for an export during June 1993. Moreover, with respect to respondents' argument that the import prices should not be used because of the small quantity of imports, we note that the price which respondents urge us to use is from an export involving an even smaller quantity. Therefore, for the final results of review, we have continued to use the import prices reported in *Chemical Weekly* during the period of review.

We disagree with petitioner that we should adjust this value for import duties. We calculate surrogate values used to value raw materials on a tax-exclusive basis, as we have discussed in previous cases, such as the *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China* (60 FR 56045, November 6, 1995) (*Manganese Metal*). *See* also our response to Comment 12 below. Therefore, it is not appropriate to include in the surrogate values amounts for import duties.

We disagree with petitioner that the information submitted by the respondents from the *Encyclopedia of Chemical Technology* constitutes new information which should be rejected. As the title of the source indicates, the information cited by the respondents in support of their argument that the price used in the preliminary results of review to value activated carbon was incorrect was of a general, definitional nature.

Comment 12

Respondents argue that the Department should calculate a surrogate value for sulfuric acid which is exclusive of taxes. Respondents state that the issues of *Chemical Weekly* used by the Department in the preliminary results to value sulfuric acid clearly state that the sulfuric acid prices contained therein are inclusive of excise and Maharashtra sales taxes. Respondents argue that the Department has a long and consistent history in NME country cases of valuing the factors of production with tax-exclusive prices, citing to *Bicycles, Manganese Metal,* and *Sebacic Acid*. Respondents further cite to *Polyvinyl Alcohol,* in which the Department valued sulfuric acid at exactly the same price from the same source, but adjusted the values to exclude taxes. Respondents note that they submitted documentation on the relevant tax rates to the record of this review.

Petitioner responds that the Department should not revise the surrogate value for sulfuric acid. According to petitioner, there is no evidence on the record concerning the applicable Indian tax rate for sulfuric acid, and, without such information, the Department cannot determine a tax-exclusive price. Petitioner contends that, in *Polyvinyl Alcohol*, the respondent was able to specifically identify the applicable tax rates. Moreover, petitioner argues that the Department only excludes taxes on raw materials where such taxes are refunded upon exportation, and that there is no evidence on the record which indicates whether taxes paid on sulfuric acid are refunded upon exportation. Petitioner notes that, in *Aimcor* v. *United States,* 19 CIT __, Slip Op. 95–130 (July 20, 1995), (*Aimcor*), at 22, the CIT stated that ''material costs, such as value-added taxes must be included in constructed value if they are incurred prior to exportation, with the exception of tax remitted or refunded upon exportation.''

Department's Position

We agree with respondents that the surrogate values used to value the raw materials should be exclusive of taxes, as we have discussed in previous cases, such as *Manganese Metal*. The issues of *Chemical Weekly*, contained in Attachment 3 of the May 30, 1996 factor value memorandum, used to determine the surrogate value for sulfuric acid in the preliminary results of this review, state that the prices reported for sulfuric acid are inclusive of Excise and Maharashtra taxes. Accordingly, we have adjusted the surrogate value or sulfuric acid to exclude taxes for the final results of review. To adjust the prices to exclude taxes, we have used the *Central Excise Tariff of India, 1994–95*, submitted to the record of this review by respondents in their April 11, 1996 submission and used to determine the tax-exclusive surrogate value for sulfuric acid in *Manganese Metal* and *Polyvinyl Alcohol*.

We disagree with petitioner that *Aimcor* is relevant in NME country cases. *Aimcor* deals with the construction of NV in market economy cases pursuant to section 773(e) of the Act, and with material costs incurred as a result of the taxes levied by the country whose sales of the subject merchandise to the United States constitute the U.S. price to which that NV is compared. In this case, by way of contrast, the NV being calculated (by applying Indian surrogate values to the PRC factors) is a surrogate for material costs in the PRC for comparison to the U.S. sales of the Chinese merchandise. Therefore, Indian value-added taxes, which do not affect PRC sales to the United States, should be removed from such surrogate costs.

Comment 13

Respondents note that, in determining surrogate values for overhead, SG&A expenses, and profit, the Department used data contained in the April 1995 *Reserve Bank of India Bulletin*. In making its calculation, respondents argue that the Department arbitrarily and without explanation allocated 50 percent of the expenses in three categories, ''provident fund,'' ''salaries, wages and bonuses,'' and ''employees' welfare expenses,'' to SG&A expenses and 50 percent to the cost of manufacture. As a result, the cost of manufacturing is understated and the overhead rate, SG&A rate, and profit rate are overstated. They contend that 100 percent of these three categories should be applied to the cost of manufacture, as was done in *Polyvinyl Alcohol*.

Department's Position

We agree with respondents that 100 percent of these labor categories should be included in the cost of manufacturing. In the absence of any information to the contrary, it makes sense that most of these expenses would be applicable to the cost of manufacturing rather than to SG&A expenses. In addition, we note that in *Polyvinyl Alcohol*, although we did not use information from the *Reserve Bank of India Bulletin* as surrogate values for overhead, SG&A expenses, and profit, we compared values from this source to values from financial statements from Indian producers; in each instance, we allocated 100 percent of these labor categories to the cost of manufacturing. We have also reexamined our classification of other categories in the *Reserve Bank of India Bulletin*, and have determined that several cateogries were misclassified in the preliminary results of review. This has been corrected for the final results.

Clerical Errors

Respondents contend that the Department made three clerical errors in

its preliminary results. First, they state that, in valuing activated carbon, the Department left out an importation in May 1995. Second, they argue that, in calculating the cost of packing materials, the Department used the wrong weights for the bags used to pack the sulfanilic acid. Third, they state that the Department inaccurately determined the freight cost for transporting the raw materials between the supplier factories and the sulfanilic acid factories. We have reviewed the calculations, and agree that these errors were made. They have been corrected for the final results.

Non-Shippers

Baoding and Hainan Garden stated that they did not have shipments during the period of review, and we confirmed this with the United States Customs Service. Therefore, we are treating them as non-shippers for this review, and are rescinding this review with respect to these companies. *See 19 CFR Parts 351, 353, and 355 Antidumping Duties; Countervailing Duties; Proposed Rule*, section 351.213(d)(3) (61 FR 7365, February 27, 1996). The cash deposit rates for these firms will continue to be the rates established in the most recently completed final determination.

Final Results of Review

As a result of our review of the comments received, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Yude Chemical Industry Company.	8/1/94–7/31/95	*16.86
Zhenxing Chemical Industry Company.	8/1/94–7/31/95	*16.86
PRC Rate [1]	8/1/94–7/31/95	85.20

*Yude and Zhenxing have been collapsed for the purposes of this administrative review. However, we have listed them separately on this chart for Customs purposes.

[1] This rate will be applied to all firms which have not demonstrated that they are separate from the PRC government, including, but not limited to, the following firms for which a review was requested: China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Jinxing Chemical Factory; Mancheng Xinyu Chemical Factory, Beijing; Mancheng Xinyu Chemical Factory, Shijiazhuang; Shunping Lile; Sinochem Hebei Import and Export Corporation; Sinochem Qingdao; and Sinochem Shandong.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rates for reviewed companies named above which have separate rates will be the rates for those firms listed above; (2) for the companies named above which were not found to have a separate rate, as well as for all other PRC exporters, the cash deposit rate will be the highest margin ever in the LTFV investigation or in this or prior administrative reviews, the PRC-wide rate; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 7, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–26358 Filed 10–11–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 20, 1996, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC). This review covers the period August 1, 1993 through July 31, 1994.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Karin Price or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

Applicable Statute

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 20, 1996, the Department published in the Federal Register (61 FR 25196) the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the PRC (57 FR 37524, August 19, 1992). We conducted a hearing on July 24, 1996. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 (the Act).

Scope of the Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2921.42.22 and 2921.42.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers 10 manufacturers/exporters of sulfanilic acid from the PRC, and the period August 1, 1993 through July 31, 1994.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from China National Chemical Construction Corporation (CNCCC), Hainan Garden Trading Company (Hainan Garden), PHT International, Inc. (PHT), a U.S. importer, Sinochem Hebei Import and Export Corporation (Sinochem Hebei), Yude Chemical Industry Co. (Yude), and Zhenxing Chemical Industry Co. (Zhenxing) (collectively, respondents); and from the petitioner, Nation Ford Chemical Company. At the request of the petitioner, a public hearing was held on July 24, 1996.

Comment 1

Petitioner argues that CNCCC, Hainan Garden, Sinochem Hebei, Yude, and Zhenxing should be collapsed and given a single margin because of the relationships among these companies and the significant transactions they had with each other. As a result, petitioner contends there is a high probability of price manipulation and circumvention of the antidumping duty order if these five companies retain their separate cash deposit rates.

According to petitioner, the Department ''collapses'' related firms where the type and degree of relationship is so significant that we find that there is a strong possibility of price manipulation, citing to *Nihon Cement Co., Ltd.* v. *United States*, 17 CIT 400 (1993) (*Nihon*). Petitioner notes that the Department considers five factors in evaluating whether respondents should be collapsed, and that these factors were used in the preliminary results of this review to determine whether to collapse Yude and Zhenxing. Petitioner states that the Department need not find that each of these factors is present in order to warrant collapsing. Rather, the relationships among the various entities are examined to determine whether collapsing is warranted to avoid price manipulation and circumvention of the order. It argues that, although these companies do not have interlocking boards of directors, they meet each of the other factors. Petitioner contends that these factors demonstrate that there exists a strong possibility of price manipulation, and that, by trading sulfanilic acid among themselves, these companies can avoid dumping duties. By collapsing the respondents and applying a single rate to them all, the Department can prevent this. Petitioner wants the Department to weight average the rates for each of the respondents, recalculated as argued by petitioner (*see* comments 2–9 below), to determine the single rate to apply to each company.

Respondents reply that CNCCC, Hainan Garden, and Sinochem Hebei should not be collapsed with Yude and Zhenxing because they are independent entities and are not related to or affiliated with Yude, Zhenxing, or PHT. Respondents note that only related companies can be collapsed and given a single antidumping rate, citing *Nihon*, and that Yude and Zhenxing were collapsed by the Department because they had the same joint venture partner, PHT. Respondents point to the record of the review to show that, prior to the joint venture agreements, Yude and Zhenxing were privately owned and owned by ''All the People,'' respectively, and were not related to PHT. Further, CNCCC, Hainan Garden, and Sinochem Hebei are either owned by ''All the People'' or are privately owned, and are therefore not related to PHT. Respondents cite to the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994), in which the Department stated that ownership by ''All the People'' means that no one person can own the company, as evidence that companies owned by ''All the People'' cannot be related to PHT. Respondents argue that the sales arrangements between these companies do not make them related parties with relationships significant enough to warrant collapsing them and treating them as a single entity, and that, contrary to petitioner's assertion, the relationships between these companies lack all of the five factors used to determine whether to collapse related parties.

Department's Position

We collapse *related* parties when the type and degree of relationship is so significant that we find that there is a strong possibility of price manipulation (*see Nihon*). For purposes of determining United States price (USP) and foreign market value (FMV), the statute defines a ''related party'' in terms of agency, stock ownership, control, or ''any interest'' in the business in question. *See* section 771(13) of the Act. We have taken the position in a number of cases and in our questionnaire that ''any interest'' means at least a five percent ownership interest between the parties, arguing that five percent ownership is an appropriate indicator of the possibility of price manipulation (*see, e.g., Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan* (58 FR 37154, July 9, 1993).

In this review, we considered whether Yude and Zhenxing should be collapsed because each formed a joint venture with PHT; PHT has an ownership interest in each joint venture. However, the information on the record of this review shows that CNCCC, Hainan Garden, and Sinochem Hebei are not related to Yude, Zhenxing, or PHT; CNCCC and Sinochem Hebei are owned by ''All the People,'' and Hainan Garden is privately owned. Therefore, we have not collapsed CNCCC, Hainan Garden, and Sinochem Hebei with Yude, Zhenxing, and PHT. As we did in the preliminary results of review, we have calculated separate antidumping margins for CNCCC, Hainan Garden, and Sinochem Hebei; we have also calculated a separate margin for Yude and Zhenxing, which were collapsed due to their relationship with PHT.

Comment 2

Petitioner argues that CNCCC and Hainan Garden had such serious deficiencies in their questionnaire responses that the Department must base the final results for them on best information available (BIA). With respect to CNCCC, petitioner contends that the Department cannot rely on certain of CNCCC's records because of problems found at verification. Second, petitioner states that the Department was unable to trace 1993 sales to the

source records because CNCCC did not keep a ''contract book'' for 1993 as it had for 1994. Petitioner further contends that CNCCC did not cooperate with the Department by refusing to provide copies of loan documents and books that the Department had requested at verification.

With respect to Hainan Garden, petitioner notes two discrepancies at verification. First, Hainan Garden failed to record sales in a timely manner, causing Hainan Garden to be in violation of Generally Accepted Accounting Principles (GAAP) under both U.S. and PRC practice and preventing the Department from tracing Hainan Garden's reported sales to its financial statement. Second, petitioner complains that Hainan Garden failed to maintain a separate accounts receivable ledger, which also violates U.S. and PRC GAAP.

As a result of the above, petitioner argues that CNCCC and Hainan Garden impeded the Department's verifications, and that the Department is therefore required to rely on BIA, citing to 19 U.S.C. § 1677e(c) and section 353.37(a)(1) of the Department's regulations. Petitioner also cites as support *Uddeholm Corp.* v. *United States,* 676 F. Supp. 1234, 1236 (Ct. Int'l Trade 1987); *NSK Ltd.* v. *United States,* 910 F. Supp., 663, 670 (Ct. Int'l Trade 1995); *N.A.R., S.p.A.* v. *United States,* 741 F. Supp. 936, 941 (Ct. Int'l Trade 1990); and *Allied Signal Corp.* v. *United States,* 996 F.2d 1991 (Fed. Cir. 1994). Petitioner contends that CNCCC and Hainan Garden should receive as BIA the PRC-wide rate of 85.20 percent.

Respondents reply that CNCCC and Hainan Garden are both entitled to a separate antidumping margin, and that the Department was able to verify these companies with only minor discrepancies. They contend that, at CNCCC's verification, the Department traced CNCCC's 1993 and 1994 reported sales to the export sales ledgers, tied the export sales ledgers to CNCCC's financial statements, and found that all sales of sulfanilic acid made to the United States during the period of review had been reported. Next, they state that CNCCC never refused to give the Department access to requested information and, in almost every instance, allowed the Department to take copies of the documents. Lastly, they note that, in CNCCC's records, CNCCC is listed as the vendor for sales made prior to the establishment of the joint ventures between PHT and Yude and Zhenxing, and that Yude and Zhenxing are listed as the vendors for sales made subsequent to the establishment of the joint ventures.

With respect to Hainan Garden, respondents state that the PRC GAAP to which petitioner cites is a June 1, 1994 regulation, which was therefore not applicable for most of the period of review. Second, they note that Hainan Garden made it clear at verification that they had not issued an invoice for the reported sales to PHT because they had not been paid by Hainan Nationalities, the company it used to export the merchandise from the PRC, for certain other sales. Respondents also note that, despite the Department's inability to tie the sales payments to the financial statements, the Department was able to verify completeness by examining the shipping journal. Respondents lastly argue that, although Hainan Garden does not keep an ''accounts receivable'' ledger, it showed the Department its ''subsidiary ledger,'' which keeps track of payments to the factory and payments from Hainan Nationalities.

Respondents conclude that CNCCC and Hainan Garden fully cooperated with the Department, and that the Department was able to verify their questionnaire responses. Accordingly, they contend that the Department should use their questionnaire responses to calculate a margin for these companies.

Department's Position

We disagree with petitioner. At verifications, CNCCC and Hainan Garden fully cooperated with our requests for information, and, with the exception of some minor discrepancies, we were able to verify the information provided in CNCCC's and Hainan Garden's questionnaire responses. Therefore, we have used their questionnaire responses to determine their antidumping duty rates.

With regard to CNCCC, we do not find that the problems found at verification with some of CNCCC's records are such that the documents cannot be relied upon. Further, we were able to conduct our completeness test using CNCCC's export sales ledgers for 1993 and for 1994, and we found that all sales of sulfanilic acid to the United States during the period of review had been reported (*see* pages 5–6 of the May 30, 1996 CNCCC verification report). The ''contract book'' to which petitioner refers is a workbook kept by the sales person in charge of sulfanilic acid for her personal use. The sales person did not maintain such a workbook for sales made in 1993. We reviewed the 1994 contract book as an additional check to ensure that all sales had been reported. That the sulfanilic acid sales person did not maintain such a book for 1993 sales does not mean that we were not able to verify that sales made in 1993 had been properly reported; as mentioned above, we were able to verify completeness using the export sales ledgers. Lastly, although CNCCC did not allow us to take copies of certain documents, we were allowed to review those documents, and the results of our review have been reported in the verification report. We do not believe that this hindered our verification such that use of BIA is warranted.

Whether Hainan Garden maintains its records in a manner conforming to the PRC or the U.S. GAAP is not an issue which warrants the use of BIA for that company. Rather, at verification, we examined the company's records to determine whether the information reported to us in the questionnaire responses is complete and accurate. At Hainan Garden's verification, we found that we could not tie the sales made to PHT to the financial statement because the sales had not yet been recorded in the company's records, and we found that Hainan Garden had not received payment for two of these sales. Hainan Garden provided the following explanation, which is described in the September 14, 1995 Hainan Garden verification report. Hainan Garden used another company, Hainan Nationalities, to export the merchandise. Sometimes Hainan Garden received payment from Hainan Nationalities and it paid the factories, and sometimes Hainan Nationalities paid the factories and remitted to Hainan Garden its revenues. Hainan Garden stated that, for the sales to PHT, Hainan Nationalities had not paid Hainan Garden because of a payment problem on sales of other products, but that Hainan Nationalities had paid the factories. Because of the amount outstanding, Hainan Garden had not sent to Hainan Nationalities an invoice and had not recorded the sales on its financial statements.

At verification, we reviewed Hainan Garden's shipping journal, sales journal, and subsidiary ledger showing payments to the factories and payments from Hainan Nationalities. From the documentation we reviewed, we were able to verify that all sales of sulfanilic acid to the United States during the period of review had been reported. With regard to the subsidiary ledger, we are satisfied that Hainan Garden maintains a record of the amounts which it is owed. As we are satisfied that Hainan Garden, with some minor discrepancies, reported to us its sales information accurately and completely, we have not used BIA to calculate its margin.

Comment 3

Petitioner argues that use of Indian import prices as the surrogate value for aniline is inappropriate. Petitioner contends that the domestic market prices of aniline reported in *Chemical Business* and *Chemical Weekly* should be used as surrogate values because they accurately reflect the prices paid for aniline by Indian manufacturers of sulfanilic acid. It notes that the import value of aniline used for the preliminary results of review is approximately 30 percent of the prices reported in *Chemical Business* and *Chemical Weekly*.

Petitioner states that, in selecting surrogate values for a factors-of-production analysis, the Department attempts to calculate values for raw materials in a manner which closely approximates the actual costs of the raw materials paid by manufacturers in the surrogate country market. As support, petitioner cites to 19 U.S.C. § 1677b(c), the *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66895, December 28, 1994) (*Coumarin*), and the *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China* (59 FR 58818, November 15, 1994) (*Saccharin*).

Petitioner contends that the data it submitted from *Chemical Business* and *Chemical Weekly* provide the most accurate source of surrogate values for aniline, and stresses that they are consistent with information provided by the U.S. Embassy in India for the less-than-fair-value (LTFV) investigation of this case (*see Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China* (57 FR 29705, July 6, 1992) (*Sulfanilic Acid*)). It states that the fact that the import value of aniline is so much lower than the prices reported in *Chemical Business* and *Chemical Weekly* is evidence that the prices in those publications are more reliable. Petitioner notes that these publications have been used as sources of surrogate values in other cases, including the *Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China* (59 FR 28053, May 31, 1994) (*Sebacic Acid*) and the *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (*Bicycles*), and were also used to determine surrogate values for sulfuric acid and activated carbon in the preliminary results of this review. According to petitioner, it makes no sense for the Department to use *Chemical Business* and *Chemical Weekly* for two surrogate values in this review, but to reject them for valuing aniline.

Petitioner further argues that there is nothing on the record to suggest that the PRC producers only use aniline imported into the PRC, or that Indian manufacturers of sulfanilic acid only use imported aniline. It cites to a letter from the president of R-M Industries (now called Nation Ford Chemical Company) stating that none of the Indian importers of aniline are sulfanilic acid producers. Without substantial evidence pointing to import values as the source for the surrogate values, petitioner believes that the Department should not rely on the low import values.

Moreover, petitioner contends that the Indian import statistics used by the Department for the preliminary results reflect the value of the aniline at the foreign port of export, and, therefore, the cost to produce aniline in the country of exportation, not India. As a result, the import statistics do not reflect costs incurred by Indian sulfanilic acid manufacturers and should be rejected.

Petitioner also claims that reliance on Indian import statistics assumes that Indian sulfanilic acid producers can purchase aniline in bulk quantities at low per-unit prices, noting that chemicals such as aniline are imported in large quantities by Indian importers. By contrast, Indian sulfanilic acid producers are small operations without the need or ability to purchase, store, or use large volumes of aniline, and would pay a higher per-unit cost than do Indian importers of such chemicals. Petitioner argues that the reported Indian domestic prices of aniline in *Chemical Business* and *Chemical Weekly* reflect the development of the Indian industry, which is similar to that of the Chinese industry and consists of smaller facilities without modern, efficient methods of production.

Petitioner contends that respondents' argument in comments submitted before the preliminary results that the Department should disregard the domestic prices of aniline, a petroleum-based product, in *Chemical Business* and *Chemical Weekly* because India is not a petroleum producing country, resulting in artificially high domestic aniline prices, is unfounded. Petitioner states that respondents have not offered support for this claim, and notes that leading aniline exporters, such as Japan or the Netherlands, do not produce large amounts of petroleum. Accordingly, petitioner contends that petroleum production does not determine the price of aniline.

Petitioner further contends that the import prices should not be used because the import statistics contain significant unexplained aberrations. For example, petitioner notes that the U.S. export statistics show that the United States exported to India over four times the amount of aniline than is indicated by the Indian import statistics.

Lastly, petitioner argues that the Department has considered whether Indian import statistics merit consideration as surrogate values in other cases. Petitioner cites specifically to *Coumarin*, in which the Department found that Indian import statistics for chlorine were aberrational because they varied sharply from ''numerous examples of alternative price sources,'' and therefore did not use the import values for chlorine. Instead, the Department used non-publicly available price quotes supplied by the petitioner. Petitioner contends that the situation in this case is no different, because a number of sources of information on the record of this review indicate that the value of aniline is at least three times greater than the import value used by the Department in the preliminary results of review.

Respondents contend that the Department should continue to use import prices for valuing aniline, as was done in the LTFV investigation of this case (*see Sulfanilic Acid*). They state that the Department's primary objective in a review is to calculate antidumping margins as accurately as possible for the PRC producers/exporters, citing the *Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 55271, October 25, 1991) (*Fans*). To do so, the Department must determine the actual cost of aniline for an Indian manufacturer that produces sulfanilic acid for export. They state that the evidence on the record of this review shows that Indian sulfanilic acid producers use imported aniline to produce sulfanilic acid for export, and that there is no evidence to show that they use domestic aniline to produce sulfanilic acid for export. They further state that the evidence shows that exported sulfanilic acid would not be competitive if they used domestic aniline.

Respondents note that they have submitted to the record a letter from an Indian sulfanilic acid producer stating that it uses imported aniline to produce sulfanilic acid for export, a letter from an Indian sulfanilic acid exporter describing in detail how an Indian producer uses imported aniline for export without paying import duties, and a letter from a sulfanilic acid end

user stating that Indian sulfanilic acid producers could not use domestic aniline to produce sulfanilic acid for export because their prices would not be competitive. They contend that since there is no publicly available published information regarding the source of aniline for Indian sulfanilic acid producers, the Department must rely on this next best information to show that imported aniline is used by Indian sulfanilic acid producers. They further note that there is nothing on the record showing that Indian manufacturers use domestically-produced aniline to produce sulfanilic acid for export.

According to respondents, the domestic Indian aniline market is inefficient and protected by high tariffs. Therefore, respondents argue, Indian-produced aniline is very expensive, and the Indian government allows aniline to be imported duty free for production of sulfanilic acid for export. Respondents contend that petitioner fails to take into account that Indian sulfanilic acid producers use different aniline inputs for producing sulfanilic acid for the domestic and export markets. Respondents state that, while the prices reported in *Chemical Business* and *Chemical Weekly* may reflect the cost of domestically-produced aniline, they do not reflect the cost of imported aniline used to produce sulfanilic acid for export and should therefore be rejected in favor of import prices. They argue that use of import prices does not mean that the surrogate country is Japan or some other country, because the import prices are actual market prices paid by Indian, not Japanese, sulfanilic acid producers.

They further claim that the Indian import prices are not aberrational, are close to the world market price, and have remained steady during the period of review; this leads to a more accurate calculation of the export price for sulfanilic acid. Lastly, respondents note that the Department is not required to choose one source of surrogate information to value all factors in the face of evidence that it will lead to inaccurate results.

Department's Position

We disagree with petitioner. The evidence placed on the record of this review by the respondents indicates that Indian sulfanilic acid producers use imported aniline in their production process when they produce sulfanilic acid for export. Therefore, these values best approximate the cost incurred by the sulfanilic acid exporters in India, and we have continued to use import prices reported in the *Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics*) to value aniline for the final results of review, as in the LTFV investigation of this case (*see* our response to Comment 1 in Sulfanilic Acid).

With regard to petitioner's argument that the import statistics reflect the value at the port of export, we note that the introductory comments to the *Indian Import Statistics* state that the values are reported on a CIF (cost, insurance, freight) basis (*see* our response to Comment 4). Therefore, we disagree with petitioner that the import values are inappropriate because they reflect only the cost to produce in the country of exportation.

Contrary to petitioner's argument that it does not make sense to reject *Chemical Business* and *Chemical Weekly* for aniline but to use them for other factors, we believe that we can use different sources for valuing different factors when we find that the surrogate values are appropriate. Therefore, it is not inappropriate to use the *Indian Import Statistics* to value aniline and to use *Chemical Business* and *Chemical Weekly* to value other factors.

Comment 4

Petitioner argues that, if the Department continues to use import prices as the surrogate value for aniline, the import prices should be adjusted to account for ocean freight from the port of export to India, Indian port terminal and brokerage charges, the Indian importers' mark-up, and the Indian import duty, in order to approximate costs incurred by Indian sulfanilic acid producers. Petitioner contends that the aniline import values relied upon by the Department in the preliminary results are FOB values at the foreign port of export, and, therefore, do not include such costs. Petitioner states that the ultimate purchaser of the aniline, the Indian sulfanilic acid producer, would clearly be charged these expenses, and that an upward adjustment is necessary to reflect the total cost of the aniline. Petitioner contends that a comparison of the customs import values used for the preliminary results and CIF import prices reported in *Chemical Weekly* show that the CIF values are considerably higher, and that the use of the customs values, which are FOB foreign port of export, confers a substantial unfair benefit upon respondents. Petitioner suggests that an upward adjustment of eight percent, the statutory minimum profit, be used to make the adjustment for the importer's markup.

With regard to import duties, petitioner states that aniline imported into India during the period of review was subject to an *ad valorem* duty of 85 percent which was not added to the surrogate value for aniline in the preliminary results of this review. According to petitioner, the letter from the sulfanilic acid exporter provided by the respondents, which states that import duties on aniline are not collected when the sulfanilic acid is exported, does not demonstrate that this 85 percent duty should not be included in the surrogate value. Petitioner notes that the Department has previously concluded that the import duty exemption for aniline was a countervailable subsidy under the U.S. law, citing the *Preliminary Affirmative Countervailing Duty Determination: Sulfanilic Acid from India* (57 FR 35784, August 11, 1992) (*Sulfanilic Acid CVD Determination*), and argues that the alleged forgiveness of import duties, a countervailable subsidy, does not warrant the disregarding of the import duty in the factors-of-production analysis.

Respondents reply that the Department should not make any adjustments to the import value of aniline. They state that, in previous cases, such as *Sebacic Acid, Saccharin*, and the *Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol from the People's Republic of China* (61 FR 14057, March 29, 1996) (*Polyvinyl Alcohol*), the Department has eliminated from the surrogate values excise taxes, freight, and all other charges associated with the surrogate values because the Department already adds amounts for freight charges and other markups. Respondents note that, in this review, the Department has added to the surrogate value for aniline freight costs for transporting the aniline from the supplier in the PRC to the sulfanilic acid factory and PRC brokerage and handling costs. Therefore, respondents contend, the petitioner is arguing that the Department double count such expenses.

Respondents also state that they have submitted evidence to the record of this review showing that, pursuant to the Indian government's duty drawback program, Indian importers of aniline import the chemical duty free and export the sulfanilic acid without the payment of the import duty. Therefore, the import duty would not be included in the cost of the aniline to the sulfanilic acid producer. They further state that the Department determined in the *Sulfanilic Acid CVD Determination* that the duty drawback for aniline was a countervailable subsidy based on BIA, using information provided by petitioner which misled the Department into believing that aniline is removed

from the sulfanilic acid during the production process.

Respondents further argue that the Department should not add to the surrogate value for aniline an amount for the importer's markup. First, respondents state that the petitioner has not submitted any evidence as to what the importer's markup would be for aniline. Further, since the surrogate value should be as close as possible to the price at the factory gate and the import value of aniline represents the closest approximation of the actual aniline cost to the Indian manufacturer, it should not include any upward adjustments after importation which would artificially inflate the aniline cost.

Department's Position

We agree with petitioner that, in order for the surrogate values to reflect the true costs to India for the raw materials, the surrogate values should include freight to India. However, the introductory notes to the *Indian Import Statistics,* used to determine the surrogate value for aniline, state that the values are reported on a CIF basis. Thus, the reported import values include the costs of transporting the merchandise to India, and an adjustment for ocean freight from the port of export to India and for Indian port terminal and brokerage charges is not necessary. This does not double count freight charges, as argued by respondents. We add freight costs to the cost of manufacturing to account for costs for transporting the raw materials from the suppliers of the raw materials to the factory producing the subject merchandise, not freight to the surrogate country.

We also disagree that we should add an importer's markup to the surrogate value. There is no evidence on the record of the review indicating who imports the aniline, the sulfanilic acid producer or an importer who sells the aniline to the sulfanilic acid producer. Accordingly, there is no basis for determining that an importer's markup would be included in the price to the Indian sulfanilic acid producer and for adjusting the surrogate value for such a markup.

With respect to petitioner's argument that we should include an amount for import duties in the surrogate value for aniline, we note that respondents have placed on the record evidence showing that the import duty is not paid when the sulfanilic acid is exported. Therefore, we disagree with petitioner, and have not made an adjustment for import duties.

Comment 5

Petitioner argues that the Department should include a factor for water in its factors-of-production calculation. It contends that water is a significant input in the production of sulfanilic acid, and, therefore, should not be included in factory overhead. According to petitioner, the fact that the PRC producers may not incur any charges for water is not relevant to what the proper valuation should be in a factors-of-production analysis, arguing that surrogate values are used in non-market-economy (NME) country cases because the valuation of inputs is unreliable in the NME country. Therefore, since water is used in the production of sulfanilic acid, it should be valued in India without regard to the value that may be assigned that factor in the PRC.

Respondents reply that, in past cases, the Department has determined that water was part of factory overhead because it was already included in Indian overhead numbers. As support, they cite to *Polyvinyl Alcohol, Sebacic Acid, Saccharin,* and *Sulfanilic Acid.* They state that petitioner has provided no reason in this case to overturn this established precedent.

Department's Position

We disagree with petitioner. As was stated in Yude's and Zhenxing's questionnaire responses, and verified, Yude and Zhenxing have their own wells from which they pump water for use in the production process; the water is then recirculated. As we have stated in *Saccharin,* the *Notice of Final Determination of Sales at Less Than Fair Value; Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, May 5, 1995), and *Coumarin,* it is normal practice to include such costs in factory overhead. Moreover, the data provided in the *Reserve Bank of India Bulletin,* used to determine the surrogate value for factory overhead, did not indicate to the contrary. Therefore, we have included water in factory overhead and have not valued it separately.

Comment 6

Petitioner argues that the Department erroneously based Sinochem Hebei's ocean freight on surrogate costs. It notes that when an input is sourced from a market economy country and is paid for in a convertible currency, the Department's policy is to use actual costs, not surrogate costs.

Respondents reply that the verification report for Sinochem Hebei states that ocean freight was always provided by NME carriers. Therefore, they contend that ocean freight should be valued using surrogate values, even if the expense was paid for in U.S. dollars.

Department's Position

We agree with petitioner that when an input is provided by a market economy country in a convertible currency, we value the input using the actual cost. However, we found at verification that ocean freight for Sinochem Hebei's sales was always provided by NME carriers (*see* page 5 of the May 30, 1996 Sinochem Hebei verification report), even though it was sometimes paid in U.S. currency and sometimes paid in renminbi. Accordingly, we have valued ocean freight for all of Sinochem Hebei's purchase price (PP) and exporter's sales price (ESP) sales using surrogate values.

Comment 7

Petitioner contends that the Department should make an adjustment to Sinochem Hebei's ESP and PP sales for commissions and warehousing expenses paid by Alchemy International (Alchemy), Sinochem Hebei's U.S. subsidiary, and an adjustment to Yude's/Zhenxing's ESP sales for commissions paid by PHT, citing sections 353.41(e) and 353.56(a)(2) of the Department's regulations. Petitioner notes that, in their questionnaire responses, Sinochem Hebei and Yude/Zhenxing stated that they did not pay these expenses on their sales to the United States, but that the Department discovered these expenses for the first time at verifications. According to petitioner, since the respondents did not report these expenses in their responses, the Department should use BIA to adjust for them. It also argues that the Department should made an adjustment to the USP for Sinochem Hebei for credit expenses incurred on U.S. sales, citing *Bicycles,* 61 FR at 19028–29.

Petitioner further argues that the Department must deduct indirect selling expenses incurred by Alchemy in the calculation of ESP for Sinochem Hebei. According to petitioner, these expenses should be deducted even though this is an NME proceeding, because the Department found in *Bicycles* that the statute requiring that indirect selling expenses be deducted ''provides no exception for cases involving non-market-economy countries.'' It contends that this analysis governs this proceeding even though the decision in *Bicycles* was made under the Act as amended in 1994, rather than the prior version of the statute governing this review.

Respondents reply that, at the verification of Alchemy, the Department

found no evidence that commissions were paid on sales of sulfanilic acid and was able to verify the specific ESP sales for which warehousing expenses were paid. Further, they state that the credit expenses referred to in the Alchemy verification report were not related to sales of sulfanilic acid. They also reply that, at the verification of PHT, the Department verified the sales for which commissions were paid and, if it makes an adjustment for commissions, should make the adjustment only for those sales.

With regard to the deduction of indirect selling expenses from ESP, respondents reply that it has been the Department's long-standing practice not to deduct indirect selling expenses and profit in NME cases because of the difficulty in isolating these expenses in the surrogate values. As support, they cite *Fans, Coumarin, Notice of Final Determination of Sales at less Than Fair Value: Pure Magnesium from Ukraine* (60 FR 16432, March 30, 1995), and *Saccharin.* According to respondents, the Department needs to make a fair comparison between USP and FMV, citing *The Budd Co.* v. *United States,* 746 F. Supp. 1093, 1098 (Ct. Int'l Trade 1990) and *Smith Corona Group* v. *United States,* 713 F.2d 1568 (Fed. Cir. 1983), and should stand by this long-standing decision that such adjustments would lead to inaccurate results. They further argue that to implement this policy retroactively as a result of *Bicycles* would be unfair. Respondents also contend that the U.S. Congress' failure to amend the antidumping law to overrule the longstanding policy not to deduct indirect selling expenses shows it was aware of this practice and approved it.

Lastly, respondents point out that any required adjustments resulting from the Uruguay Round Agreements Act (URAA) are not applicable to this review as it was requested before implementation of the URAA.

Department's Position

With regard to whether direct and indirect selling expenses should be deducted from ESP in the calculation of our margins, we have reexamined our position. In *Bicycles,* we stated that we had reevaluated our practice in this area and concluded that selling expenses should be deducted in the calculation of constructed export price (CEP) under section 772(c)(2)(d) of the statute effective January 1, 1995, the effective date of the amendments made to the Act by the URAA (*see Bicycles,* 61 FR at 19031 (Comment 1)). Although the provisions which became effective January 1, 1995 are not applicable to this review, as it was requested prior to January 1, 1995, the language of section 772(e) of the provisions as they existed on December 31, 1994 and applicable to this review clearly state that ESP shall be reduced by the amount of commissions for selling in the United States the particular merchandise under consideration and expenses generally incurred by or for the account of the exporter in the United States. This language requires the same deductions to ESP as does the language requiring deductions to CEP under the provisions effective January 1, 1995. We have therefore changed our practice in this respect from that described in the cases cited to by respondents. Pursuant to our current practice as described in *Bicycles,* we have deducted from ESP for Sinochem Hebei and for Yude/Zhenxing direct selling expenses, including credit, warehousing expenses, and commissions, as applicable and verified, and indirect selling expenses incurred in the United States.

Comment 8

Petitioner argues that the Department failed to exclude sales made by Sinochem Hebei to a related party in its analysis. According to petitioner, Sinochem Hebei did not clarify the relationship between these parties in its supplemental questionnaire response, as requested by the Department, and did not reveal that it sold to this party until verification.

Respondents reply that there is no information on the record of this review to indicate that Sinochem Hebei is related to Sinochem U.S.A. They cite to the verification report for Sinochem Hebei, which states that the Department reviewed the related party ledger for Sinochem Hebei and did not find any companies other than those listed in the organization chart.

Department's Position

We disagree with petitioner. At the verification of Sinochem Hebei, we inquired about Sinochem Hebei's relationship to Sinochem U.S.A., and were told that Sinochem Hebei is independent of Sinochem U.S.A., that Sinochem U.S.A. is part of Sinochem China, and that Sinochem Hebei made sales to Sinochem U.S.A. We reviewed Sinochem Hebei's organization chart and related party ledger, and found no indication that Sinochem Hebei is related to Sinochem U.S.A. *See* page 2 of the May 30, 1996 Sinochem Hebei verification report. Therefore, sales made to Sinochem U.S.A. have not been treated as related party sales in our analysis.

Comment 9

Petitioner argues that the Department must rely on BIA to calculate freight expenses incurred by PHT because, at verification, the Department discovered that PHT's freight records were inconsistent and undocumented; therefore, the freight records cannot be relied upon. According to petitioner, PHT's accountants stated that there were no documents to support an adjustment they had made to PHT's freight expenses in preparing PHT's financial statements and the reason for the adjustment was explained unsatisfactorily.

Respondents reply that, with regard to freight costs, the Department examined at verification the original freight documents for specific sales and verified the fact that ocean freight and marine insurance was provided by PRC companies. Therefore, the fact that the Department could not tie all freight costs to the financial statements is irrelevant because actual costs will not be used in the calculation.

Department's Position

We disagree with petitioner. Although we were not able to trace the freight account in the general ledger to the financial statements at verification, we are satisfied that, except for minor discrepancies, Yude and Zhenxing reported their sales information accurately and completely. At PHT's verification, we reviewed the actual freight documents for each ESP sale made by PHT during the period of review. Accordingly, we were able to use the actual freight amounts charged to PHT to determine the per unit amount of U.S. inland freight deducted from ESP. We also found that ocean freight and marine insurance was always provided by NME companies, and, therefore, we used surrogate values to value both expenses.

Clerical Errors

Respondents contend that the Department made two clerical errors in its preliminary results. First, they argue that, in calculating the cost of packing materials, the Department used the wrong weights for the bags used to pack the sulfanilic acid. Second, they state that the Department inaccurately determined the freight cost for transporting the raw materials between the supplier factories and the sulfanilic acid factories. We have reviewed the calculations, and agree that these errors were made. They have been corrected for the final results.

Final Results of Review

As a result of our review of the comments received, we have determined that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
China National Chemical Construction Corporation	8/1/93–7/31/94	60.68
Hainan Garden Trading Company	8/1/93–7/31/94	67.05
Sinochem Hebei Import & Export Corporation	8/1/93–7/31/94	7.70
Yude Chemical Industry Company*	8/1/93–7/31/94	0.00
Zhenxing Chemical Industry Company*	8/1/93–7/31/94	0.00
PRC Rate	8/1/93–7/31/94	85.20

* Yude and Zhenxing have been collapsed for the purposes of this administrative review. However, we have listed them separately on this chart for Customs purposes.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for reviewed companies named above which have separate rates will be the rates for those firms listed above; (2) for the companies which were not found to have a separate rate, Baoding No. 3 Chemical Factory, China National Chemical Construction Corporation, Qingdao Branch, Jinxing Chemical Factory, Sinochem Qingdao, and Sinochem Shandong, as well as for all other PRC exporters, the cash deposit rate will be the highest margin ever in the LTFV investigation or in this or prior administrative reviews, the PRC-wide rate; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: October 7, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–26368 Filed 10–11–96; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 960909249–6276–02]

RIN 0693–XX23

National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice; request for public comment.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) received a letter dated July 25, 1996 from The National Board of Boiler and Pressure Vessel Inspectors requesting the development of a new program under the National Voluntary Conformity Assessment Systems Evaluation (NVCASE) Program. The letter requests NVCASE to evaluate and accredit that Board as an ISO–9000 registrar so that it, in turn, can conduct audits of manufacturers of pressure vessels according to ISO–9000, formally registering those which are in compliance. The Board's goal is to achieve acceptance by Canada and other governments of ISO 9000 registrations performed in the United States on an equal basis with those performed in those other countries.

DATES: Comments on this request must be received by December 30, 1996.

ADDRESSES: Comments should be submitted in writing to Robert L. Gladhill, NVCASE Program Manager, NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by fax at 301–963–2871, or email rlglad@nist.gov.

FOR FURTHER INFORMATION CONTACT: Robert L. Gladhill, NVCASE Program Manager, at NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by telephone at 301–975–4029, by fax at 301–963–2871 or by email at rlgad@nist.gov.

SUPPLEMENTARY INFORMATION: The NVCASE procedures at 15 CFR Part 286 require NIST to seek public consultation when it receives such requests. This program involves a collection of information subject to the Paperwork Reduction Act. This collection is approved by the Office of Management and Budget under control No. 0693–0019.

The text of the request follows:

July 25, 1996.

Mr. Robert L. Gladhill, Program Manager, NVCASE Program, NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899

Dear Mr. Gladhill: The National Board of Boiler and Pressure Vessel Inspectors is requesting NIST to accredit the National Board as an ISO–9000 registrar under the NVCASE program. We would like to coordinate our activities with NIST to achieve our goal in the most expeditious manner possible. Successful efforts from both our organizations will help boiler and pressure vessel manufacturers in the global marketplace.

The National Board is the central organization in the United States that coordinates certification and enforcement activities in the boiler and pressure vessel industry. The National Board is comprised of the chief inspectors of the states and certain cities of the Unites States. These chief

inspectors are responsible for the enforcement of regulation pertaining to the construction, installation, operation, repair, and alteration of boilers and pressure vessels. Certification by a government body is consistent with the founding principles of the National Board.

Since its founding in 1919, the National Board has been assisting the states in the enforcement of boiler and pressure vessel safety legislation. Currently, most of the audits of boiler and pressure vessel manufacturers, installers, and assemblers in the United States are conducted by the National Board and its members. Also, all audits of manufacturers and assemblers of safety valves are conducted by the National Board. These audits are conducted to assure compliance with the requirements of the quality and construction standards, and to ensure compliance with the regulations of the states and cities. The ability to certify to ISO–9000 will allow manufacturers the option to expand their markets internationally.

The National Board has conducted audits at nuclear generating stations. The Nuclear Regulatory Commission in their deliberations has used results of the audits in its decisions on the licensing of stations. These audits are conducted on programs complying with 10 CFR 50 that are identical to ISO–9000.

Currently, requirements are in place by Canadian authorities requiring an accepted quality program for import into Canada. The U.S. fitting/flange manufacturers may have their quality program reviewed by provincial authorities or be in possession of a Certificate issued by an accredited registrar. The National Board is among organizations recognized by these authorities as a body that can certify manufacturers. Lacking accreditation, we are unable to assist U.S. manufacturers in their attempts to enter this market.

The National Board has been in discussions with the Registrar Accreditation Board(RAB) on the issue of certification of personnel. Their policy is that in order for an applicant for accreditation to be considered by them, RAB must certify the applicant's personnel. Other accreditors of ISO–9000 registrars recognize a registrar's ability to certify their own personnel in accordance with ISO–10011. This issue has caused a stalemate in our relationship with RAB preventing the National Board from becoming accredited by RAB.

On behalf of the members of the National Board, I look forward to working with NIST on the NVCASE program.

Yours truly,

Albert J. Justin,

Executive Director.

Interested parties should respond in writing to the above address. All comments submitted with become part of the public record and will be available for inspection and copying at the U.S. Department of Commerce Central Reference and Records and Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, Washington, DC 20230.

Dated: October 9, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 26351 Filed 10–11–96; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

Jessie W. Taylor (Appellant), filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the South Carolina Office of Ocean and Coastal Resource Management (State) to the Appellant's project which involves placing fill material in approximately 0.6 acres of wetlands for the purpose of commercial development. The site of the proposed project consists of two undeveloped lots, which are located in a commercial area adjacent to Highway 17, in Surfside Beach, Horry County, South Carolina. The Appellant has certified that the project, for which a U.S. Army Corps of Engineers permit must be obtained, is consistent with the State's coastal management program (CMP).

The CZMA provides that a timely objection by a state precludes any federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either ''consistent with the objectives'' of the CZMA (Ground I) or ''necessary in the interest of national security'' (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is ''consistent with the objectives'' of the CZMA, the Secretary must find that: (1) the proposed activity furthers one or more of the national objectives or purposes contained in section 302 or section 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with the State's CMP. 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Mr. Roger B. Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Copies of comments will also be forwarded to the Appellant and the State.

All nonconfidential documents submitted in this appeal are available for public inspection during business hours at the offices of the State and the Office of the Assistant General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Mr. Roger B. Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: October 4, 1996.

Terry D. Garcia,

General Counsel.

[FR Doc. 96–26259 Filed 10–11–96; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 100296A]

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section of ICCAT will hold its annual fall meeting on November 6–8, 1996.

DATES: The open sessions will be held on November 6, 1996, from 2 p.m. to 6 p.m. and November 7, 1996, from 8:30

a.m. to 12 p.m., and the closed sessions will be held on November 7 from 1:15 p.m. to 5:30 p.m. and on November 8 from 8 a.m. to 1 p.m. Written comments should be received no later than November 5, 1996.

ADDRESSES: The meeting will be held at NOAA Headquarters, 1325 East-West Highway (Silver Spring Metro Center Building 2), Silver Spring, MD 20910 in conference room 2358. Written comments should be sent to Kim Blankenbeker, Executive Secretary to the Advisory Committee, NOAA-NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker, (301) 713-2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section of ICCAT will meet in open session on November 6, 1996, from 2 p.m. to 6 p.m. and November 7, 1996, from 8:30 a.m. to 12 p.m. to discuss the stock status of highly migratory species, the implementation of ICCAT conservation measures by the United States and other countries, reports of the Committee's working groups, results of the Committee's regional meetings, 1995 ICCAT meeting accomplishments, upcoming issues facing ICCAT at its 1996 meeting, and other matters relating to the international management of ICCAT species. Both sessions will be open to the public; however, the November 6 session will be the only opportunity for public comment. Written comments are encouraged and, if mailed, should be received by November 5, 1996 (see **ADDRESSES**); however, they can also be submitted during the open sessions of the Advisory Committee meeting.

The Advisory Committee also will meet from 1:15 p.m. to 5:30 p.m. on November 7 and from 8 a.m. to 1 p.m. on November 8. These sessions will not be open to the public inasmuch as the discussions will involve classified information, the discussion of which relates to U.S. negotiating positions to be taken at the Tenth Special Meeting of ICCAT to be held in San Sebastian, Spain, from November 22–29, 1996. The Advisory Committee will discuss various options for the U.S. negotiating position during the closed sessions. Accordingly, the determination has been made that the Committee shall go into executive session for the afternoon session of November 7 and for the entire November 8 session.

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kim Blankenbeker at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: October 8, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–26311 Filed 10–11–96; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 17 October 1996 at 10:00 AM in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, D.C. 7 October 1996.

Charles H. Atherton,

Secretary.

[FR Doc. 96–26318 Filed 10–11–96; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 97–C0001]

The Brinkmann Corporation, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR Section 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with the Brinkmann Corporation, a Corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 30, 1996.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 97–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Jeanne M.Siebert, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 8, 1996.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. The Brinkmann Corporation (''TBC''), a corporation, enters into this Settlement Agreement and Order with the staff (''the staff'') of the Consumer Product Safety Commission (''The Commission'') in accordance with the procedures set forth in section 1118.20 of the Commission's Procedure for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), 16 C.F.R. § 1118. This agreement is a compromise resolution of the matter described herein, without a hearing or determination by the COMMISSION of any issues of law or fact or the issuance of any findings whatsoever.

I. The Parties

2. The Consumer Product Safety Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. TBC is a corporation organized and existing under the laws of the State of Texas. Its principal offices are located at 4215 McEwen Road, Dallas, TX 75244. TBC is a manufacturer of outdoor cooking and lighting equipment.

II. Staff Allegations

4. In the 15 years from 1979 to 1993, TBC manufactured and distributed over 100,000 cooker/fryers, over 100,000 electric smokers and over 1,000,000 charcoal water smokers. Those products were distributed to consumers throughout the United States for use outside a residence or in recreation. TBC, therefore, is a ''manufacturer'' of ''consumer products'' which are ''distributed in commerce,'' as those terms are defined in sections 3(a) (4) and (11) of the CPSA, 15 U.S.C. §§ 2052(a) (4) and (11).

The Cooker/Fryer

5. The cooker/fryer is a portable type of outdoor cooking equipment used to deep fry or boil food. It was manufactured and distributed under the name ''Country Cooker''. It consists of a three part set, including: a burner unit, pan, and frying basket. The burner unit consists of a stand, a regulator, a burner, and a hose assembly.

6. The cooker/fryer had a design susceptible to spillage of hot liquids and food. The base of the cooker/fryer lacked a protective lip around its burner grate to help prevent the pan from being dislodged from the grate. In addition, the pan and basket design enabled the consumer to hang the basket component to the outside of the pan which could tip the pan and the basket off the cooker/fryer. In the 13 years from 1981–1993, TBC received complaints, several of which involved grievous injury, from consumers who were burned by hot liquids or solids when the pan was dislodged from the grate. In 1992, TBC added a warning to the cooker cautioning consumers against hanging the basket component on the outside of the pan.

7. Although TBC obtained information alleging that the cooker/fryer was defective and that the defects exposed consumers to a risk of injury from burning liquids or solids, it failed to provide information concerning the defects to the Commission as required by section 15(b) of the CPSA, as amended, 15 U.S.C. 2064(b).

The Charcoal Water Smoker

8. The charcoal water smoker is a portable type of outdoor cooking equipment used to slow cook, self-baste, and smoke foods. It was manufactured under the ''Brinkmann'' label and the ''COOK'N CA'JUN'' label. The charcoal water smoker has a barrel shaped body containing brackets which support two grills, a water pan, and a charcoal pan. The charcoal pan is located beneath the water pan. The unit is equipped with a lid and a temperature gauge.

9. The charcoal water smoker had a hole in the center of the charcoal pan through which hot embers could fall. If the hot embers fell on a combustible surface, they could cause a fire. In the 14 years from 1980 to 1993, TBC received information on at least 25 incidents involving fires or charring caused by burning embers falling through the hole in the center of the charcoal pan; in one of the alleged fire incidents the smoker allegedly caused a fatal house fire. In 1992, TBC closed the hole in the charcoal pan and provided additional warnings in 1993.

10. Although TBC obtained information alleging that the hole in the charcoal pan could expose consumers to a risk of fire, it failed to provide information concerning the defect to the Commission as required by section 15(b) of the CPSA, as amended, 15 U.S.C. 2064(b).

11. The charcoal water smokers also had metal brackets and other parts with sharp edges that exposed consumers to a risk of laceration. In the 13 years from 1981 to 1993, TBC received information on at least 13 incidents involving consumers receiving lacerations, some of which involved serious lacerations, as a result of the sharp edges. In 1993, TBC retooled the dies used to produce the brackets and rounded the square corners to reduce the risk of injury.

12. Although TBC obtained information alleging that the charcoal water smokers had brackets and other components with sharp edges and could expose consumers to a risk of laceration, it failed to provide information concerning the defect to the Commission as required by section 15(b) of the CPSA, as amended, 15 U.S.C. 2064(b).

The Electric Smoker

13. The electric smoker is a type of portable outdoor cooking equipment used to slow cook, self-baste, and smoke foods. This product was sold under the name ''Smoke 'N Grill Electric.'' The electric smoker is similar to the charcoal water smoker, but instead of a charcoal pan, the electric water smoker is equipped with a solid bottom with an electric heating element and lava rocks.

14. The electric smoker had loose fitting brackets which enabled the water pan to be dislodged during use allowing the water pan to spill its contents. In the eight years from 1985–1992, TBC received at least 7 complaints from consumers who received burns when the water pan slipped off its base and spilled scalding liquids. TBC responded in 1989 by incorporating additional product warnings and in 1991 by changing the type of brackets used and their placement in the smoker.

15. Although TBC obtained information alleging that the brackets of the electric smoker were defective and could expose consumers to a risk of injury from burns, it failed to provide information concerning the defect to the Commission as required by section 15(b) of the CPSA, as amended, 15 U.S.C. § 2064(b).

III. Brinkmann's Position

16. TBC denies each and all of the staff's allegations with respect to the outdoor cooking equipment identified in this agreement, including that TBC at any time possessed information which reasonably supported the conclusion that: (i) its products contained defects which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), or (ii) its products created an unreasonable risk of serious injury or death, 15 U.S.C. 2064(b); and therefore, denies that it knowingly failed to meet its obligation to report to the Commission under section 15(b) of the CPSA.

17. The cooker/fryer does not contain any defects. The use of the cooker/fryer, similar to a stove top, requires that any cooking utensil placed on the burner be situated in such a manner so that the cooking utensil does not become imbalanced or dislodged. Further, after TBC received notice of the one (1) claim where someone had been injured by placing the frying basket outside of the pan, TBC, in 1992, incorporated additional warnings with the product.

18. As to the allegations concerning the alleged risk of fires caused by the charcoal water smoker, the design used was prevalent among the industry. The air hole in the bottom of the charcoal pan was open and obvious, and TBC advised that the charcoal water smoker should not be used on flammable surfaces and that a fire-retardant shield should be placed under the charcoal pan to guard against falling embers.

19. TBC denies all allegations concerning the alleged risks regarding the electric smoker.

IV. Agreement of the Parties

20. TBC and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

21. TBC agrees to entry of the attached Order, which is incorporated herein by reference, and to be bound by its terms.

22. By entering into this Settlement Agreement and Order, TBC does not admit any liability, statutory violation, or wrongdoing and this Settlement Agreement and Order does not constitute, and is not evidence of, or an admission of, any liability, statutory violation, or the existence of a product defect. This Settlement Agreement and Order are entered into for purposes of settlement only.

23. In accepting this Settlement Agreement, the Commission makes and will make no findings as to whether any of the consumer products mentioned above contain a defect which creates or could create a substantial product hazard or creates or could create an unreasonable risk of serious injury or

death; or that TBC knowingly violated the reporting provisions of section 15(b) of the CPSA, 15 U.S.C. 2064(b) pursuant to section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

24. The Commission may publicize the terms of the Settlement Agreement and Order.

25. The Settlement Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedure set forth in 16 CFR § 1118.20(e). If, within 15 days of publication, the Commission has not received any written request not to accept the Settlement Agreement and Order, the Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the Federal Register (16 CFR § 1118.20(f)). Upon final acceptance, the Commission shall issue and serve upon TBC the attached order incorporated herein by reference.

26. Upon final acceptance of this Settlement Agreement and Order by the Commission, TBC knowingly, voluntarily, and completely waives any rights it might have only as to the allegations in this Settlement Agreement: (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge to or contest of the validity of the Commission's attached Order, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty and (5) to any claims under the Equal Access to Justice Act. TBC reserves all rights not specifically waived above.

27. The parties further agree that the Commission shall issue the incorporated order under the CPSA, 15 U.S.C. § 2051 *et seq.* and that a violation of the Order will subject TBC to appropriate legal action.

28. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

The Brinkmann Corporation

Dated: August 8, 1996.

J. Baxter Brinkmann,
President.
The Consumer Product Safety Commission.

Dated: October 3, 1996.

David Schmeltzer,
Associate Executive Director, Office of Compliance.

Eric L. Stone,
Acting Director, Division of Administrative Litigation, Office of Compliance.

Jeanne M. Siebert,
Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent, The Brinkmann Corporation (''TBC''), a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and TBC; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further ordered, that upon final acceptance of the Settlement Agreement, TBC shall pay to the order of the United States Treasury a civil penalty in the amount of ONE HUNDRED SEVENTH FIVE THOUSAND DOLLARS ($175,000). The first payment of $35,000 is due twenty (20) days after service of this Final Order upon the Respondent, TBC, and the remaining four payments of $35,000 are due on the last day of the month for each of the four months following the initial payment. Upon the failure of TBC to make a payment or upon the making of a late payment by TBC, the entire amount of the civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 8th day of October, 1996.

By Order of the Commission:

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 96–26224 Filed 10–11–96; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Forms, and OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 209.1, Responsible Prospective Contractors, and DFARS 252.209.7002, Disclosure of Foreign Ownership or Control by a Foreign Government, OMB Number 704–0353.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 25.

Responses Per Respondent: 1.

Annual Responses: 25.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 25.

Needs and Uses: 10 U.S.C. 2536 prohibits award of a Department of Defense contract under a national security program to an entity controlled by a foreign government, if access to a proscribed category of information is necessary for the performance of the contract. This information collection is used by contracting officers to identify offers from companies controlled by a foreign government. The guidance at DFARS 209.104 (48 CFR 209.104) and the solicitation provision at DFARS 252.209–7002 (48 CFR 252.209–7002) implement the requirements of 10 U.S.C. 2536.

Affected Public: Business or Other For-Profit, Not-for-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 7, 1996.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–26233 Filed 10–11–96; 8:45 am]

BILLING CODE 5000–04–M

Garnishments Processing Fee

AGENCY: Department of Defense, Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: The Department of Defense is giving notice that it will collect a fee for processing garnishments against Department of Defense civilian employees and involuntary allotment applications against active duty military

members to satisfy debts other than for alimony or child support. The fee is $75.00, and will be collected from the monies payable to the creditor at the time the garnishment or involuntary allotment is first instituted.

EFFECTIVE DATE: November 1, 1996.

FOR FURTHER INFORMATION CONTACT: The Garnishment Operations Directorate, Defense Finance and Accounting Service, Cleveland Center, Cleveland, Ohio, (216) 522–5301.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 5520a permits a garnishment or involuntary allotment against the pay of civilian employees and active duty military members to satisfy debts owed to private parties other than for alimony and child support. That law was recently amended by Public Law 104–106, February 10, 1996, to authorize the Department of Defense to assess the creditor a fee to recover its costs in processing garnishments and involuntary allotments. Based upon a cost study, the Department of Defense has decided to impose a fee of $75.00 for processing of each garnishment or involuntary allotment. As required by the law, this fee will be charged to the creditor and deducted from the monies collected from the employee or member that are due the creditor.

The fee will be charged for each garnishment order or involuntary allotment served and processed to payment. Thus, each time the Department of Defense is served with, and honors, an order to garnish an employee's salary, or an application for an involuntary allotment for the above referenced debts, the Department of Defense will deduct the $75.00 fee. Although administrative costs are incurred for each pay period for which a garnishment or involuntary allotment is in effect, no additional fee will be charged to cover those costs.

The fee will be deducted at the time the garnishment or involuntary allotment is first instituted. It will be subtracted from the judgment amount.

The fee does not apply to garnishment for child support or alimony under Title 42 of the United States Code, Section 659.

Dated: October 8, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–26230 Filed 10–11–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Semiconductor Technology Council

ACTION: Notice.

SUMMARY: Under the provisions of P.L. 92–463, the ''Federal Advisory Committee Act,'' notice is hereby given that the Semiconductor Technology Council will hold its fifth meeting. The Council's mission is to: link industry and national security needs to opportunities for cooperative investments, foster pre-competitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c) (3) and (4), Title 5, U.S.C. There will be an open session from 1:30 p.m. to 2:00 p.m.

DATE: October 21, 1996.

ADDRESS: Marriott Courtyard, 1533 Clarendon Boulevard, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Dr. Kaigham J. Gabriel, Director, DARPA/ETO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2252.

Dated: October 8, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–26234 Filed 10–11–96; 8:45 am]

BILLING CODE 5000–04–M

Change in Schedule of Meetings

AGENCY: Department of Defense, DACOWITS.

ACTION: Notice.

SUMMARY: On October 2, 1996 (61 FR 51437), the Department of Defense published a notice on the 1996 DACOWITS Fall Conference. This notice is to notify attendees of the changes in the schedule. Change time to 8:00 a.m. to 9:00 a.m. October 27, 1996 for the Final Review and 9:10 a.m. to 10:30 a.m. October 27, 1996 for the Voting Session. All other information remains unchanged.

Dated: October 8, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–26229 Filed 10–11–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Cost Comparison Studies

The Air Force is conducting the following cost comparison studies in accordance with OMB Circular A–76, Performance of Commercial Activities.

Installation	State	USAF project title
Maxwell	AL	General library.
Maxwell	AL	Grounds maintenance.
Elemendorf	AK	Power Production.
Eielson	AK	Misc services.
Travis	CA	Military family housing maintenance.
March	CA	Airfield operations and weather.
March	CA	Transient aircraft maintenance.
March	CA	Base operating support.
Edwards	CA	Base supply.
Buckley	CO	Airfield management.
Bolling	DC	Military family housing maintenance.
Tyndall	FL	BOS and backshop aircraft maintenance.
Eglin	FL	Library.
Eglin	FL	Education services.
Homestead	FL	Air field operations and weather.
Homestead	FL	Base operating support.
Eglin	FL	Acquisition security.
Dobbins	GA	Control tower operations.
Dobbins	GA	Communication functions.

Installation	State	USAF project title
Dobbins	GA	Weather Services.
Dobbins	GA	Base operating support.
Robins	GA	Audiovisual.
Ramstein	Germany	Mess attendants.
Spangdahlem	Germany	Mess attendants.
Grissom	IN	Air field operations and weather.
Grissom	IN	Transient aircraft maintenance.
Grissom	IN	Base operating support.
Kusan	Korea	Food services.
Osan	Korea	Food services.
New Orleans NSA	LA	Base operating support.
Otis ANGB	MA	Transient aircraft maintenance.
Westover	MA	Control tower operations.
Westover	MA	Weather Services.
Westover	MA	Base Operating Support.
Hanscom	MA	Audiovisual.
Hanscom	MA	Data Automation.
Hanscom	MA	Vehicle O&M.
Minn/St Paul	MA	Communications.
Minn/St Paul	MA	Base operating support.
Columbus	MS	Base operating support.
Keesler	MS	Grounds maintenance.
Keesler	MS	Laundry.
Keesler	MS	Technical training center equipment maintenance.
Andrews	MD	Administrative support.
McGuire	NJ	Military family housing maintenance.
Cannon	NM	Military family housing maintenance.
Kirkland	NM	Base supply.
Kirkland	NM	PMEL.
Kirkland	NM	Vehicle O&M.
Niagra Falls IAP	NY	Weather Services.
Niagra Falls IAP	NY	Base operating support.
Nellis	NV	Military family housing maintenance.
Youngstown	OH	Base operating support.
Wright Patterson	OH	Base operating support.
Tinker	OK	Communication functions.
Pittsburgh	PA	Base operating support.
Willow Grove	PA	Base operating support.
Laughlin	TX	Base operating support.
Laughlin	TX	Aircraft maintenance.
Lackland	TX	Grounds maintenance.
Lackland	TX	Animal caretaking.
Sheppard	TX	Aircraft maintenance & supply.
Carswell	TX	Base operating support.
Hill	UT	Grounds maintenance.
Hill	UT	Recreational support.
General Mitchell	WI	Base operating support.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 96–26330 Filed 10–11–96; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Notice of Availability of the Final Environmental Impact Statement for the Disposal of Chemical Agents and Munitions Stored at Pine Bluff Arsenal, Arkansas

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Final Environmental Impact Statement (FEIS) on the construction and operation of the proposed chemical agent demilitarization facility at Pine Bluff Arsenal, Arkansas. The proposed facility will be used to demilitarize all stockpile chemical agents and munitions currently stored at Pine Bluff Arsenal. The FEIS examines the potential impacts of on-site incineration, alternative sites within the Pine Bluff Arsenal, and the ''no action'' alternative. The ''no action'' alternative is considered to be a deferral of the demilitarization with continued storage of agents and munitions at Pine Bluff Arsenal.

SUPPLEMENTARY INFORMATION: In its Record of Decision (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. On March 29, 1989 (54 FR 12944–45), the Department of the Army published a Notice of Intent in the Federal Register which provided notice that, pursuant to the National Environmental Policy Act and implementing regulations, it would prepare a draft site-specific EIS for the Pine Bluff Arsenal. In 1995, the Department of the Army prepared a Draft EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at the Pine Bluff Arsenal. A Notice of Availability was published on June 9, 1995 (60 FR 30537), which provided notice that the Draft EIS was available for comment. Comments from the DEIS have been considered and responses are included in this Final EIS. After a 30-day waiting period the Army will publish a Record of Decision. Copies of the Final EIS may be obtained by writing to the following address: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–ME, Aberdeen Proving Ground, Maryland 21010–5401.

ADDITIONAL INFORMATION: The Environmental Protection Agency (EPA) will also publish a Notice of Availability for the Final EIS in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Above address, or Ms. Cathy Stalcup at (410) 671–3629/2583.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 96–26342 Filed 10–11–96; 8:45 a.m.]

BILLING CODE 3710–08–M

Defense Special Weapons Agency

Privacy Act of 1974; Notice to Amend Record Systems

AGENCY: Defense Special Weapons Agency, DOD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Special Weapons Agency is amending two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment consists of changing the name of the 'Defense Special Weapons School' to read 'Defense Nuclear Weapons School'. This amendment affects two systems of records notices, HDSWA 004, entitled 'Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records' last published August 26, 1996, 61 FR 43743 and HDSWA 014, entitled 'Student Records' last published August 26, 1996, 61 FR 43750.

DATES: The amendments will be effective on November 14, 1996, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to General Counsel, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: The Defense Special Weapons Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The amendment consists of changing the name of the 'Defense Special Weapons School' to read 'Defense Nuclear Weapons School'. This amendment affects two systems of records notices, HDSWA 004, entitled 'Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records' and HDSWA 014, entitled 'Student Records'. The record systems being amended are set forth below as amended, published in their entirety.

Dated: October 8, 1996.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDNA 004

SYSTEM NAME:

Nuclear Weapons Accident Exercise Personnel Radiation Exposure Records.

SYSTEM LOCATION:

Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian employees of the Department of Defense and other

federal, state, and local government agencies, contractor personnel, and visitors from foreign countries, who participated in planned exercises.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date of birth; service; grade/rank; specialty code; job series or profession; experience with radioactive materials such as classification as 'radiation worker;' use of film badge or other dosimetric device; respiratory protection equipment; training and actual work in anti-contamination clothing and respirators; awareness of radiation risks associated with exercises; previous radiation exposure; role in exercise; employer/organization mailing address and telephone; unit responsible for individuals radiation exposure records; time in exercise radiological control area; and external and internal radiation monitoring and/or dosimetry results.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2013 and 2201 (Atomic Energy Act of 1954) and 10 CFR parts 10 and 20; 5 U.S.C. 7902 and 84 Stat. 1599 (Occupational Safety and Health Act of 1970) and 29 CFR subparts 1910.20 and 1910.96; E.O. 12196, as amended, February 26, 1980, (Occupational Safety and Health Programs for Federal Employees); and E.O. 9397.

PURPOSE(S):

For use by agency officials and employees in determining and evaluating individual and exercise collective radiation doses and in reporting dosimetry results to individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Officials and employees of other government agencies, authorized government contractors, current or potential employers, national, state and local government organizations and foreign governments in the performance of official duties related to evaluating, reporting and documenting radiation dosimetry data.

Officials of government investigatory agencies in the performance of official duties relating to enforcement of Federal rules and regulations.

The 'Blanket Routine Uses' published at the beginning of DSWA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer printouts and in paper files folders.

RETRIEVABILITY:

Records may be retrieved by names, Social Security Number, service or organization, grade/rank, dosimeter number, or date and place of participation.

SAFEGUARDS:

Records and computer printouts are available only to authorized persons with an official need to know. The files are in a secure office area with limited access during duty hours. The office is locked during non-duty hours.

RETENTION AND DISPOSAL:

All records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, NM 87117–5669.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Commander, Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, NM 87117–5669.

Inquiry should contain full name and Social Security Number of the individual and applicable dates of participation, if available. Visits can be arranged with the system manager.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Commander, Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard, SE, Kirtland Air Force Base, NM 87117–5669.

Inquiry should contain full name and Social Security Number of the individual and applicable dates of participation, if available. Visits can be arranged with the system manager.

Requests from current or potential employers must include a signed authorization from the individual.

CONTESTING RECORD PROCEDURES:

The DSWA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DSWA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information in this system of records was supplied directly by the individual; or derived from information supplied by the individual; or supplied by a contractor or government dosimetry service; or developed by radiation measurements at the exercise site.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 014

SYSTEM NAME:

Student Records.

SYSTEM LOCATION:

Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, NM 87117–5669.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

Any student attending the Defense Nuclear Weapons School.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student academic records consisting of course completion; locator information; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, 4103; and E.O. 9397.

PURPOSE(S):

To determine applicant eligibility, as a record of attendance and training, completion or elimination, as a locator, and a source of statistical information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSWA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper files and on computer media.

RETRIEVABILITY:

Information may be retrieved by name or Social Security Number.

SAFEGUARDS:

Records and computer printouts are available only to authorized persons with an official need to know. The files are in a secure office area with limited access during duty hours. The office is locked during non–duty hours.

RETENTION AND DISPOSAL:

Individual academic records are retained for 75 years. Records are maintained at the school for five years, then subsequently retired to the Federal Records Center, Fort Worth, TX for the remaining 70 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, NM 87117–5669.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Commander, Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, NM 87117–5669.

Individuals should provide their name, Social Security Number, current address, and proof of identity (photo identification for in person access).

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Defense Nuclear Weapons School, Field Command, Defense Special Weapons Agency, 1900 Wyoming Boulevard SE, Kirtland Air Force Base, NM 87117–5669.

Individuals should provide name, Social Security Number, current address, and sufficient information to permit locating the record.

For personal visits, the individual should provide military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DSWA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DSWA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Special Weapons Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–26231 Filed 10–11–96; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

Notice of Renewal of the Charter of the American Statistical Association Committee on Energy Statistics

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that the renewal of the charter of the American Statistical Association Committee on Energy Statistics is in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR 101–6.1029.

The purpose of the Committee is to provide advice on a continuing basis to the Administrator of the Energy Information Administration (EIA), including:

1. Periodic reviews of the elements of EIA information collection and analysis programs and the provision of recommendations;

2. Advice on priorities of technical and methodological issues in the planning, operation, and review of EIA statistical programs; and

3. Advice on matters concerning improved energy modeling and forecasting tools, particularly regarding their functioning, relevancy, and results.

Further information concerning this Committee can be obtained from Rachel M. Samuel (202) 586–3279.

Issued in Washington, D.C. on: September 30, 1996.

JoAnne Whitman,

Deputy Advisory Committee Management Officer.

[FR Doc. 96–26306 Filed 10–11–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia); Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, October 16, 1996: 6:50 pm–9:30 pm (Mountain Daylight Time).

ADDRESSES: Mesa Verda Community Center, 7900 Marquette Boulevard, NE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:50 pm Public Comment Period
7:00 pm Approval of Agenda
7:05 pm Approval of 9/18/96 Minutes
7:10 pm Chair's Report
—Appreciation for Outgoing Officers
—SNL/DOE Rush Inlow, Deputy Manager, DOE/AL and John Crawford, Deputy Director, SNL
7:25 pm DOE/SNL Ten-Year Plan—Ad Hoc Committee Report/Discussion
7:40 pm Off-site Disposition of Environmental Restoration Waste
7:55 pm Board Budget Report/Approval
8:10 pm Break
8:20 pm Management Area 7 Recommendation/Approval
8:45 pm Board Committees/Approval
8:55 pm Minutes—Form/Approval
9:00 pm New/Other Business
9:10 pm Agenda Items for Next Meeting
9:15 pm Public Comment
9:25 pm Announcement of Next Meeting/Adjourn

A final agenda will be available at the meeting Wednesday, October 16, 1996.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed

above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on October 8, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–26308 Filed 10–11–96; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Wednesday, November 6, 6:00 pm–9:30 pm.

ADDRESSES: Oak Ridge Inn (formerly Holiday Inn), 420 South Illinois Avenue, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

November Meeting Topics

This meeting will include a technical presentation on the identification and screening of candidate sites for the Environmental Waste Management Facility.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on October 4, 1996.

Rachel Murphy Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–26309 Filed 10–11–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770), notice is hereby given of the following meeting:

Name: State Energy Advisory Board.

Date and Time: November 14, 1996 from 9:00 am to 5:00 pm, and November 15, 1996 from 9:00 am to 12:00 pm.

Place: The Holiday Inn Financial District, 750 Kearny Street, San Francisco, CA (415) 433–6600.

Contact: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- The FY 1997 Federal budget request for Energy Efficiency and Renewable Energy programs.
- Issues related to DOE National Laboratories, relating to deployment of technology through the States.
- Review and approval of any committee activity.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on October 8, 1996.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 96–26307 Filed 10–11–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–24–000]

Carnegie Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1996.

Take notice that on October 2, 1996, Carnegie Interstate Pipeline Company (CIPCO) tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, to become effective on November 1, 1996:

Tenth Revised Sheet No. 7

CIPCO states that this is its Annual filing pursuant to Section 32.2 of the General Terms and Conditions of its FERC Gas tariff to reflect prospective changes in transportation costs associated with unassigned upstream capacity held by CIPCO on Texas Eastern Transmission Corporation for the 12-month period commencing November 1, 1996 and under-recovered Transportation Costs for the period October 30, 1995 to August 31, 1996. The filing reflects a Transportation Cost Rate (''TCR'') of $0.9551, consisting of a TCR Adjustment of $1.3313 and a TCR Surcharge credit of $0.3762.

CIPCO states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26257 Filed 10–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–190–005]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1996.

Take notice that on October 2, 1996, Colorado Interstate Gas Company, (CIG) submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Seventh Revised Sheet No. 10
Nineteenth Revised Sheet No. 11

CIG states that the filing is being filed to correct its Mesa Negative Surcharge and the Account No. 858 Stranded Cost Surcharge.

CIG requests that the tariff sheets become effective October 1, 1996.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26256 Filed 10–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–25–000]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

October 8, 1996.

Take notice that on October 3, 1996, K N Interstate Gas Transmission Co. (KNI) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume 1–A, the following revised tariff sheets, to be effective October 1, 1996:

First Revised Sheet No. 4–A
First Revised Sheet No. 4–B
First Revised Sheet No. 4–C
Second Revised Sheet No. 4–D

KNI states that these tariff sheets are being filed to update KNI's Tariff to reflect the elimination of KNI's Account 858 rate component commencing October 1, 1996, in accordance with Section 30.6 of its tariff.

Any person desiring to be heard or to protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26258 Filed 10–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–180–001]

Stingray Pipeline Company; Notice of Compliance Filing to Effectuate Changes in FERC Gas Tariff

October 8, 1996.

Take notice that on October 4, 1996, pursuant to ''Order After Technical Conference'' issued herein on September 19, 1996 (Order), Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, proposed tariff sheets to become effective December 1, 1996.

Stingray states that the purpose of the filing is to comply with the Order addressing revised cashout procedures.

Stingray requests whatever waivers may be necessary to permit the tariff sheets as submitted to become effective December 1, 1996.

Stingray states that copies of the filing are being mailed to Stingray's jurisdictional customers, interested state regulatory agencies and all parties set out on the official service list at Docket No. RP96–180–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26255 Filed 10–11–96; 8:45 am]

BILLING CODE 6717–01–M

Sunshine Act Meeting

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 16, 1996, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 660th Meeting—October 16, 1996, Regular Meeting; (10:00; a.m.)

CAH–1.
Docket# P–400, 031, Public Service Company of Colorado
Other#S P–1005, 004, Public Service Company of Colorado
P–2187, 007, Public Service Company of Colorado
P–2275, 002, Public Service Company of Colorado
P–2351, 007, Public Service Company of Colorado

CAH–2.
Omitted

CAH–3.
Docket# P–2727, 046, Bangor Hydro-Electric Company

CAH–4.
Docket# P–7267, 017, Joseph M. Keating

CAH5.
Docket# P–2458, 009, Great Northern Paper, Inc.

CAH–6.
Docket# P–2572, 005, Great Northern Paper, Inc.

CAH–7.
Docket# P–4797, 042, Cogeneration, Inc.
Other#S P–4797, 043, Cogeneration, Inc.
P–4797, 044, Cogeneration, Inc.
P–4797, 045, Cogeneration, Inc.
P–4797, 048, Cogeneration, Inc.

CAH–8.
Docket# P–10813, 011, City of Summersville, West Virginia
Other#S P–10813, 022, City of Summersville, West Virginia

Consent Agenda—Electric

CAE–1.
Docket# ER96–2466, 000, New York State Electric & Gas Corporation

CAE–2.
Docket# ER96–2741, 000, Arizona Public Service Company

CAE–3.
Docket# ER96–2817, 000, Montaup Electric Company

CAE–4.
Docket# ER96–2850, 000, Sierra Pacific Power Company

CAE–5.
Docket# ER96–2869, 000, State Line Energy, L.L.C.

CAE–6.
Docket# ER96–2830, 000, Washington Gas Energy Services, Inc.

CAE–7.
Docket# EC94–14, 000, The Cleveland Electric Illuminating Company and Toledo Edison Company

CAE–8.
Docket# OA96–1, 000, Pacific Gas & Electric Company
Other Nos. OA96–7, 000, Niagara Mohawk Power Corporation
OA96–9, 000, Pacificorp
OA96–20, 000, Wisconsin Power & Light Company
OA96–22, 000, Allegheny Power (Monongahela Power Company, et al.)
OA96–27, 000, Southern Company Services, Inc.
OA96–29, 000, Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)
OA96–31, 000, Central Louisiana Electric Company, Inc.
OA96–32, 000, Southern Company Services, Inc.
OA96–36, 000, Central Illinois Light Company
OA96–37, 000, Green Mountain Power Corporation
OA96–39, 000, Florida Power & Light Company
OA96–46, 000, Duke Power Company
OA96–48, 000, Union Electric Company
OA96–49, 000, South Carolina Electric & Gas Company
OA96–54, 000, New England Power Company
OA96–55, 000, Public Service Company of New Mexico
OA96–57, 000, Duquesne Light Company
OA96–61, 000, Black Hills Power & Light Company
OA96–62, 000, Black Hills Power & Light Company
OA96–63, 000, General Public Utilities (Jersey Central Power & Light Company, et al.)
OA96–67, 000, Montaup Electric Company
OA96–68, 000, Sierra Pacific Power Company
OA96–70, 000, Boston Edison Company
OA96–79, 000, Wisconsin Public Service Corporation
OA96–80, 000, Public Service Electric & Gas Company
OA96–82, 000, Portland General Electric Company
OA96–83, 000, Northeast Utilities Service Company
OA96–84, 000, Commonwealth Edison Company
OA96–85, 000, El Paso Electric Company
OA96–86, 000, Allegheny Power
OA96–89, 000, Virginia Electric & Power Company
OA96–90, 000, Delmarva Power & Light Company
OA96–91, 000, Central Vermont Public Service Corporation
OA96–92, 000, Florida Power Corporation
OA96–93, 000, Puget Sound Power & Light Company
OA96–95, 000, Puget Sound Power & Light Company
OA96–96, 000, Oklahoma Gas & Electric Company
OA96–98, 000, Public Service Company of Colorado
OA96–99, 000, Southern California Edison Company
OA96–100, 000, Western Resources, Inc.
OA96–101, 000, Utilicorp United, Inc.
OA96–106, 000, Unitil Power Corporation
OA96–108, 000, Fitchburg Gas & Electric Light Company
OA96–110, 000, Midamerican Energy Company
OA96–112, 000, Detroit Edison Company
OA96–113, 000, Southwestern Public Service Company
OA96–115, 000, Mt. Carmel Public Utility Company
OA96–116, 000, Tampa Electric Company
OA96–118, 000, Minnesota Power & Light Company, et al.
OA96–119, 000, Potomac Electric Power Company
OA96–120, 000, Potomac Electric Power Company
OA96–121, 000, Arizona Public Service Company
OA96–123, 000, Maine Public Service Company
OA96–125, 000, IES Utilities Inc.
OA96–127, 000, Central Maine Power Company
OA96–129, 000, Montana Power Company
OA96–130, 000, Cambridge Electric Light Company
OA96–131, 000, Dayton Power & Light Company
OA96–134, 000, Consumers Power Company
OA96–136, 000, Southern Indiana Gas & Electric Company
OA96–151, 000, Old Dominion Electric Cooperative, Inc.
OA96–158, 000, Entergy Services, Inc.
OA96–169, 000, Cinergy Services, Inc., et al.
OA96–175, 000, Long Island Lighting Company
OA96–176, 000, Tucson Electric Power Company
OA96–179, 000, Nevada Power Company
OA96–183, 000, American Electric Power System

OA96–187, 000, Wisconsin Electric Power Company
OA96–191, 000, Bangor Hydro-Electric Company
OA96–192, 000, Otter Tail Power Company
OA96–193, 000, Kentucky Utilities Company
OA96–198, 000, Carolina Power & Light Company
OA96–204, 000, Cleveland Electric Illuminating Company and Toledo Edison Company
OA96–205, 000, CSW Operating Company (Central Power & Light Company, et al).
OA96–212, 000, Central Illinois Light Company
OA96–213, 000, Interstate Power Company
OA96–218, 000, Idaho Power Company
OA96–221, 000, Pennsylvania Power & Light Company
OA96–226, 000, Orange & Rockland Utilities, Inc.
OA96–232, 000, Lockhart Power Company
OA96–233, 000, Empire District Electric Company
OA96–234, 000, Midwest Energy, Inc.

CAE–9.
Docket # OA96–5, 000, Midwest Energy, Inc.
Other # S OA96–24, 000, Bangor Hydro-Electric Company
OA96–35, 000, Maine Public Service Company
OA96–60, 000, Black Hills Corporation
OA96–72, 000, St. Joseph Light & Power Company
OA96–102, 000, Utilicorp United, Inc.
OA96–157, 000, United Illuminating Company
OA96–215, 000, Central Illinois Public Service Company
OA96–222, 000, Northwest Public Service Company
OA96–224, 000, Citizens Utilities Company
OA96–225, 000, People's Electric Cooperative

CAE–10.
Docket # OA96–41, 000, Central Electric Cooperative, Inc.
Other # S OA96–51, 000, Public Utility District No. 1 of Lewis County, Washington
OA96–87, 000, Delta-Montrose Electric Association
OA96–97, 000, Wake Electric Membership Corporation
OA96–111, 000, Jones-Onslow Electric Membership Corporation
OA96–132, 000, Concho Valley Electric Cooperative, Inc.
OA96–135, 000, Dakota Electric Association
OA96–144, 000, Lower Valley Power & Light, Inc.
OA96–145, 000, Stamford Electric Cooperative, Inc.
OA96–146, 000, Niobrara Valley Electric Membership Corporation
OA96–147, 000, Licking Rural Electrification, Inc.
OA96–152, 000, Glacier Electric Cooperative, Inc.
OA96–168, 000, Seminole Electric Cooperative, Inc.
OA96–177, 000, Jacksonville Electric Authority
OA96–209, 000, Lee County Electric Cooperative, Inc.
OA96–214, 000, Oklahoma Municipal Power Authority
OA96–220, 000, Florida Keys Electric Cooperative Association, Inc.
OA96–223, 000, Vineland Municipal Electric Utility
OA96–228, 000, City of Dover, Delaware
OA96–230, 000, Incorporated County of Los Alamos, New Mexico

CAE–11.
Docket# TX96–9, 000, Boroughs of Lansdale, Catawissa, Duncannon, Ephrata, Hatfield, and Kutztown, et al., Pennsylvania

CAE–12.
Docket# EC96–7, 000, Union Electric Company and Central Illinois Public Service Company
Other#S ER96–677, 000, Union Electric Company and Central Illinois Public Service Company
ER96–679, 000, Union Electric Company and Central Illinois Public Service Company

CAE–13.
Omitted

CAE–14.
Docket# ER96–1471, 001, Cleveland Electric Illuminating Company

CAE–15.
Omitted

CAE–16.
Omitted

Consent Agenda—Gas and oil

CAG–1.
Omitted

CAG–2.
Docket# RP96–284, 000, Viking Gas Transmission Company

CAG–3.
Docket# RP92–237, 029, Alabama-Tennessee Natural Gas Company

CAG–4.
Docket# RP95–197, 015, Transcontinental Gas Pipe Line Corporation
Other#S RP95–197, 017, Transcontinental Gas Pipe Line Corporation
RP96–211, 002, Transcontinental Gas Pipe Line Corporation
RP96–211, 004, Transcontinental Gas Pipe Line Corporation
RP96–359, 001, Transcontinental Gas Pipe Line Corporation

CAG–5.
Docket# RP96–185, 002, Algonquin Gas Transmission Company

CAG–6.
Docket# RP96–268, 000, Tennessee Gas Pipeline Company
Other#s, RP96–269, 000, East Tennessee Natural Gas Company

CAG–7.
Docket# RP96–279, 001, Texas Eastern Transmission Corporation

CAG–8.
Docket# RP95–190, 003, Williams Natural Gas Company

CAG–9.
Docket# RP95–409, 000, Northwest Pipeline Corporation
Other#s RP95–409, 005, Northwest Pipeline Corporation
RP95–409, 006, Northwest Pipeline Corporation

CAG–10 Omitted.

CAG–11.
Docket# RP96–350, 000, K N Interstate Gas Transmission Company

CAG–12.
Docket# PR96–9, 000, Louisiana State Gas Corporation

CAG–13.
Docket# PR96–10, 000, Dow Intrastate Gas Company

CAG–14.
Docket# RP94–227, 006, Transwestern Pipeline Company
Other#s RP95–271, 003, Transwestern Pipeline Company

CAG–15.
Docket# RP96–317, 001, Great Lakes Gas Transmission Limited Partnership

CAG–16.
Docket# RP91–143, 036, Great Lakes Gas Transmission Limited Partnership
Other#s RP95–422, 005, Great Lakes Gas Transmission Limited Partnership

CAG–17.
Docket# RP95–187, 005, Northwest Pipeline Corporation
Other#s RP94–220, 014, Northwest Pipeline Corporation
TM95–2–37, 005, Northwest Pipeline Corporation

CAG–18.
Docket# RM96–1, 001, Standards for Business Practices of Interstate Natural Gas Pipelines

CAG–19.
Docket# RP93–206, 011, Northern Natural Gas Company
Other#s RP96–347, 000, Northern Natural Gas Company

CAG–20.
Docket# RP96–184, 002, Natural Gas Pipeline Company of America

CAG–21.
Docket# RP96–272, 002, Northern Natural Gas Company

CAG–22.
Docket# RP96–265, 000, Peco Energy Company v. Texas Eastern Transmission Corporation

CAG–23.
Docket# IS92–27, 000, Lakehead Pipe Line Company, Limited Partnership
Other#s IS93–4, 000, Lakehead Pipe Line Company, Limited Partnership
IS93–33, 000, Lakehead Pipe Line Company, Limited Partnership
IS94–20, 000, Lakehead Pipe Line Company, Limited Partnership
IS94–24, 000, Lakehead Pipe Line Company, Limited Partnership
IS95–5, 000, Lakehead Pipe Line Company, Limited Partnership
IS95–26, 000, Lakehead Pipe Line Company, Limited Partnership
IS95–27, 000, Lakehead Pipe Line Company, Limited Partnership
IS96–15, 000, Lakehead Pipe Line Company, Limited Partnership

CAG–24.
Docket# OR96–17, 000, Ultramar Inc. v. SFPP, L.P.
Other#S OR96–2 et al., 000, Texaco Refining and Marketing, Inc. and Arco Products Company v. SFPP, L.P.

CAG–25.

Docket# MG96–16, 000, Mojave Pipeline Company
CAG–26.
Docket# MG96–17, 000, El Paso Natural Gas Company
CAG–27.
Docket# CP87–92, 009, Texas Eastern Transmission Corporation
CAG–28.
Docket# CP96–35, 001, Steuben Gas Storage Company
Other#S CP96–35, 002, Steuben Gas Storage Company
CAG–29.
Docket# CP96–226, 001, Transcontinental Gas Pipe Line Corporation
Other#S CP96–238, 001, Transcontinental Gas Pipe Line Corporation and National Fuel Gas Supply Corporation
CAG–30.
Docket# CP96–221, 000, Florida Gas Transmission Company
CAG–31.
Docket# CP77–193, 002, Northern Natural Gas Company
CAG–32.
Omitted
CAG–33.
Docket# CP96–544, 000, Pacific Interstate Transmission Company
CAG–34.
Omitted
CAG–35.
Docket# CP95–565, 003, Equitrans, Inc.
Other#S CP95–565, 002, Equitrans, Inc.
CAG–36.
Docket# CP96–770, 000, Coastal States Gas Transmission Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Pipeline Certificate Matters

PC–1.
Reserved

Dated: October 9, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 96–26538 Filed 10–10–96; 3:44 pm]

BILLING CODE 6717–01–M

Establishment of Performance Review Board: Names of Board Members

October 8, 1996.

Section 4314(c) of Title 5, United States Code requires that the Federal Energy Regulatory Commission (FERC) establish one or more Performance Review Boards to review, evaluate, and make final recommendations on performance appraisals assigned to members of the Senior Executive Service in the Commission. The Performance Review Board also makes written commendations to the FERC Chair regarding Senior Executive Service performance bonuses, awards and performance-related activities.

Section 4314(c) of Title 5, United States Code requires that notices of appointment of Performance Review Board members be published in the Federal Register. The following persons have been appointed to serve on the Performance Review Board standing register for the Federal Energy Regulatory Commission:

John H. Clements
J. Steven Herod
Kevin P. Madden
Christie L. McGue
Richard P. O'Neill
Rebecca F. Schaffer
Susan Tomasky

Lois D. Cashell,

Secretary.

[FR Doc. 96–26254 Filed 10–11–96; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

Proposed Rate Design Development; Notice of Opportunities for Public Comment

AGENCY: Southwestern Power Administration, DOE.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), is requesting public input for consideration during a review of the current Integrated System rate design. Any rate design changes ultimately resulting from this review are expected to address the requirements and intent of the Federal Energy Regulatory Commission's (FERC) Rule 888 on Open Access Transmission Services and the Department of Energy's Open Access Transmission Policy setting forth the requirement to publish open access wholesale transmission tariffs, including ancillary services. During this process, Southwestern is seeking comments on recommended alternatives to achieving full cost recovery through an effective rate design process.

DATES: A Public Forum has been scheduled for 1:00 p.m. (c.s.t), October 29, 1996, at Southwestern's offices located in Tulsa, Oklahoma. Written comments are due on or before December 13, 1996. Southwestern is conducting a public notice and comment period to seek input related to alternative approaches to designing cost-based transmission and generation rates and ancillary services.

ADDRESSES: Written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 595–6696.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95–91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of the Interior to the Department of Energy, effective October 1, 1977.

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers. These projects are located in the States of Arkansas, Missouri, Oklahoma and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise an Integrated System rate and are interconnected through Southwestern's transmission system and exchange agreements with other utilities. The Sam Rayburn Dam project, located in eastern Texas, is not interconnected with Southwestern's Integrated System hydraulically, electrically, or financially. Instead, the power produced by the Sam Rayburn Dam project is marketed by Southwestern as an isolated project under a contract through which the customer purchases the entire power output of the project at the dam. The Robert D. Willis project, located on the Neches River downstream from the Sam Rayburn Dam, consists of two 4,000 kilowatt hydroelectric generating units. It, like the Sam Rayburn Dam project, is marketed as an isolated project under a contract through which the customer, Sam Rayburn Municipal Power Agency, receives the entire output of the project as a result of funding the construction of the hydroelectric facilities at the project. A special rate is developed for the entire output of each project based on its isolated condition.

Following Department of Energy guidance in its response to FERC's April 24, 1996, Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities), Southwestern is reviewing its rate design structure to ensure

compliance with the intent of Order 888 for open access wholesale electric transmission rates.

A Public Forum is scheduled to be held at 1:00 p.m., central standard time (c.s.t.) Tuesday, October 29, 1996, in Southwestern's offices, room 1402, Williams Center Tower 1, One West Third Street, Tulsa, Oklahoma. The Forum is being held to explain the goals of the rate design review process and identify areas of specific concern or interest to customers and other parties. The Forum will also seek comments and opinions regarding potential approaches to the rate design of ancillary services and the unbundling of the generation and transmission rates. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions or comments concerning potential rate development structures presented at the forum may be submitted from interested persons and will be answered, to the extent possible, at the forum. Questions not answered at the Forum will be answered in writing, except the questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices.

A transcript of the Public Forum will be made. Copies of the transcript may be obtained from the transcribing service. Copies of all documents introduced at the Forum will be available as part of the transcript from the transcribing service, for a fee.

An interested parties list will be developed for those parties that are unable to attend the Public Forum, but would like to receive any mailings regarding this issue in the future. Please provide mailing information to Mr. Forrest E. Reeves at the above address.

Also, to further ensure an understanding of the information furnished at the Forum, a Technical Conference will be convened before the end of February 1997. The purpose of this Conference will be to review the comments and encourage discussions to help narrow the rate design alternatives to those that will best address Southwestern's goal to provide the lowest possible rates consistent with sound business principles and still achieve full cost recovery for the services provided, while meeting the intent of Rule 888. Following this conference, Southwestern will complete its rate and repayment process and develop rate schedules for the Integrated System based on the rate design information developed as a result of this public participation process.

Issued in Tulsa, Oklahoma, this 7th day of October 1996.

Francis R. Gajan,

Acting Administrator.

[FR Doc. 96–26310 Filed 10–11–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

October 7, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by December 16, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0343.

Title: Section 25.140—Qualifications of Satellite Space Station Licensees.

Form No.: N/A.

Type of Review: Revision to existing collection.

Respondents: Not-for-profit institutions; Business or other for-profit; Small businesses and organizations.

Number of Respondents: 25.

Estimated Time per Response: 10 hours.

Total Annual Burden: 2500 hours.

Estimated Cost per Respondent: Based on the assumption that applicants will hire outside counsel at an approximate cost of $150 per hour, it is estimated that the cost per submission will be $150,000.00.

Needs and Uses: On January 19, 1996, the Commission adopted a Report and Order revising its rules and policies regarding satellite space and earth station licensing. Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Satellite and Separate International Satellite Systems, IB Docket No. 95–41, 61 FR 9946 (March 12, 1996). The Commission sought emergency approval of this voluntary collection, OMB Number 0380–0343, at 61 FR 37896 (July 22, 1996). The revisions to this information collection will permit all U.S.-licensed satellite operators to provide both domestic and international service via U.S.-licensed facilities. The revisions adopted in the Report and Order removes all reference to ''domestic'' in Section 25.140 of the rules, 47 CFR 25.140. A one-step financial showing policy was adopted which broadly applies the existing policy to all applicants for space station facilities. Exceptions to the one-step showing may be granted upon appropriate request by applicants seeking authority to operate in an uncongested portion of the orbital arc. Applicants with pending applications for separate systems authorizations will be afforded time to bring their applications into conformance with the one-step financial showing policy or to request authority for processing under the existing two-step policy.

The collections of information contained in Part 25 are used by Commission staff in carrying out its duties as set forth in Section 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Section 308 and 309, to determine the technical, legal and other qualifications of an applicant to operate a satellite space station. The one-step financial showings, including amendments to pending applications filed under this policy, will be used by the Commission to determine whether applicants are qualified to construct, launch and operate satellite space station facilities in order to provide timely service to the public. The

information collected is used to determine whether the public interest, convenience and necessity will be served, in accordance with Section 309 of the Communications Act of 1934, as amended, 47 USC 309.

OMB Approval Number: 3060–0383.

Title: Part 25—Satellite Communications.

Form No.: N/A.

Type of Review: Revision to existing collection.

Respondents: Not-for-profit institutions; Business or other for-profit; Small businesses and organizations.

Number of Respondents: 2500.

Estimated Time Per Response: 1.5 hours.

Total Annual Burden: 3,750 hours.

Estimated Cost Per Respondent: Based on the assumption that applicants will hire outside counsel at an approximate cost of $150 per hour, it is estimated that the cost per submission will be $450.00.

Needs and Uses: On January 19, 1996, the Commission adopted a Report and Order revising its rules and policies regarding satellite space and earth station licensing. Amendment of the Commission's Regulatory Policies Governing Domestic Fixed Stellite and Separate International Satellite Systems, IB Docket No. 95–41, 61 FR 9946 (March 12, 1996). The Commission sought emergency approval of this voluntary collection, OMB Number 0380–0383, at 61 FR 37897 (July 22, 1996).

The revisions to this information collection will permit all U.S.-licensed satellite operators to provide both domestic and international service via U.S.-licensed facilities without submitting modification applications. In addition, applicants may designate whether their services will be offered on a common carrier or non-common carrier basis in the initial application for service. Should their service requirements change, a letter indicating a change in status will be submitted, rather than an application to modify the license.

An increase in the Intelsat Article XIV(d) consultation submissions may occur as applicants and licensees entering the international service market will be required to consult their operations with Intelsat under Article XIV(d).

The collections of information contained in Part 25 are used by Commission staff in carrying out its duties as set forth in Section 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. Section 308 and 309, to determine the technical, legal and other qualifications of an applicant to operate a station. Article XIV(d) consultations will be used by the Commission to verify that licensees are fully coordinated with other users in the band. The information collected is used to determine whether the public interest, convenience and necessity will be served, in accordance with Section 309 of the Communications Act of 1934, as amended, 47 USC 309.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 96–26242 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

October 9, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 14, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0390.

Title: Broadcast Station Annual Employment Report.

Form No: FCC 395–B.

Type of Review: Revision of an existing collection.

Respondents: Business or other for-profit; State, Local or Tribal Governments.

Number of Respondents: 14,000.

Estimated Time Per Response: .88 hours per report.

Total Annual Burden: 12,320 hours.

Estimated Costs Per Respondent: 0.

Needs and Uses: The FCC 395–B is a data collection device used to assess and enforce the Commission's EEO requirements. It is filed by all AM, FM, TV, international and low power TV broadcast licensees/permittees. The data is used by FCC staff to monitor a licensee's permittee's efforts to comply with the broadcast EEO rules.

OMB Approval Number: 3060–0215.

Title: Section 73.3527 Local Public Inspection file of noncommercial educational stations.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,168 noncommercial educational radio and televison stations will maintain a public inspection file and 15 noncommercial TV stations will elect must-carry status for cable systems that change the number of channels.

Estimated Time Per Response: 104 hours annually per noncommercial education radio and television station maintaining public inspection files; and 1 hour per noncommerical TV station per statement.

Total Annual Burden: 225,487 hours.

Estimated Costs Per Respondent: 0.

Needs and Uses: Section 73.3527 requires that each licensee/permittee of a noncommercial broadcast station maintain a file for public inspection at its main studio or at another accessible location in its community of license. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership

reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, a list of donors supporting specific programs, etc. In addition, Section 73.3527(a)(7) requires that each broadcast licensee of a noncommercial educational station place in a public inspection file a list of community issues addressed by the station's programming. This list is kept on a quarterly basis and contains a brief description of how each issue was treated. This rule also specifies the length of time, which varies by document type, that each record must be retained in the public file. The data is used by the public and FCC to evaluate information about the licensee's performance and to ensure that station is addressing issues concerning the community to which it is licensed to serve.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–26360 Filed 10–11–96; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 96–N–7]

Notice of Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new Section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Housing Finance Board) promulgated Community Support regulations (12 CFR Part 936). Under the review process established in the regulations, the Housing Finance Board will select a certain number of members for review each quarter, so that all members that are subject to the Community Reinvestment Act of 1977, 12 U.S.C. 2901 *et seq.*, (CRA), will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the third quarter review (1996–97 cycle) under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: Due Date For Member Community Support Statements for Members Selected in Third Quarter Review: November 29, 1996.

Due Date For Public Comments on Members Selected in Third Quarter Review: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Mitchell Berns, Director, Office of Supervision, (202) 408–2562, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006. A telecommunications device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Housing Finance Board currently reviews all FHLBank System members that are subject to CRA approximately once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Housing Finance Board each calendar quarter. To date, only members that are subject to CRA have been reviewed. In selecting members, the Housing Finance Board follows the chronological sequence of the members' CRA Evaluations post-July 1, 1990, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Housing Finance Board will postpone review of new members until they have been System members for one year.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank members to be reviewed in the third quarter, grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1, P.O. Box 9106, Boston, Massachusetts 02205–9106		
Great Country Bank	Ansonia	CT
Community Savings Bank	Bristol	CT
Collinsville Savings Society	Collinsville	CT
The Bank of Darien	Darien	CT
Guilford Savings Bank	Guilford	CT
First National Bank of Litchfield	Litchfield	CT
First New London S&LA, Inc.	New London	CT
Fairfield County Savings Bank	Norwalk	CT
Norwich Savings Society	Norwich	CT
Southington Savings Bank	Southington	CT
Tolland Bank	Vernon	CT
Northwest Bank for Savings	Winsted	CT
Abington Savings Bank	Abington	MA
Boston Bank of Commerce	Boston	MA
Massachusetts Company, Inc.	Boston	MA
Security Federal Savings Bank	Brockton	MA
Canton Institution for Savings, Bank of Canton	Canton	MA
Charlestown Cooperative Bank	Charlestown	MA
Clinton Savings Bank	Clinton	MA
Danvers Savings Bank	Danvers	MA
Lafayette Federal Savings Bank	Fall River	MA
Falmouth Co-operative Bank	Falmouth	MA

Member	City	State
Family Federal Savings, FA	Fitchburg	MA
Florence Savings Bank	Florence	MA
Colonial Co-operative Bank	Gardner	MA
Greenfield Co-operative Bank	Greenfield	MA
United Savings Bank	Greenfield	MA
Hingham Institution for Savings	Hingham	MA
Ipswich Co-operative Bank	Ipswich	MA
Ipswich Savings Bank	Ipswich	MA
Roxbury-Highland Co-operative Bank	Jamaica Plain	MA
Leicester Savings Bank	Leicester	MA
Equitable Co-operative Bank	Lynn	MA
Mansfield Co-operative Bank	Mansfield	MA
Milford Federal Savings and Loan Association	Milford	MA
Orange Savings Bank	Orange	MA
Woronoco Savings Bank	Westfield	MA
Weymouth Savings Bank	Weymouth	MA
Bar Harbor Banking and Trust Company	Bar Harbor	ME
Calais Federal Savings and Loan Association	Calais	ME
Camden National Bank	Camden	ME
Damariscotta Bank and Trust Company	Damariscotta	ME
Franklin Savings Bank	Farmington	ME
Katahdin Trust Company	Patten	ME
Coastal Saving Bank	Portland	ME
Peoples Heritage Savings Bank	Portland	ME
Rockland Savings and Loan Association	Rockland	ME
Berlin City Bank	Berlin	NH
Bow Mills Bank and Trust	Bow	NH
Cornerstone Bank	Derry	NH
Village Bank and Trust	Gilford	NH
Milford Co-op Bank	Milford	NH
New London Trust F.S.B	New London	NH
Newport Federal Savings Bank	Newport	RI
First Vermont Bank and Trust Company	Brattleboro	VT
Merchants Bank	Burlington	VT
Lyndonville Savings Bank and Trust Company	Lyndonville	VT
National Bank of Middlebury	Middlebury	VT
Union Bank	Morrisville	VT
Northfield Savings Bank	Northfield	VT
Franklin-Lamoille Bank St	Albans	VT

Federal Home Loan Bank of New York—District 2
Seven World Trade Center
22nd Floor
New York, New York 10048–1185

Equity National Bank	Atco	NJ
Bogota Savings & Loan Association	Bogota	NJ
Peoples Savings Bank, SLA	Bordentown	NJ
Somerset Savings Bank, SLA	Bound Brook	NJ
Century FS&LA of Bridgeton	Bridgeton	NJ
Colonial Bank, FSB	Bridgeton	NJ
Summit Bank	Chatham	NJ
NVE Savings Bank, S.L.A	Englewood	NJ
Premium Federal Savings Bank	Gibbsboro	NJ
Glen Rock Savings and Loan Association	Glen Rock	NJ
Statewide Savings Bank, SLA	Jersey City	NJ
Kearny Federal Savings Bank	Kearny	NJ
Schuyler Savings Bank, SLA	Kearny	NJ
Lincoln Park Savings and Loan Association	Lincoln Park	NJ
Metuchen Savings Bank	Metuchen	NJ
City National Bank	Newark	NJ
Boiling Springs Savings Bank	Rutherford	NJ
Gloucester County Federal Savings Bank	Sewell	NJ
Sturdy Savings Bank	Stone Harbor	NJ
Roma Federal Savings Bank	Trenton	NJ
South Jersey Savings and Loan Association	Turnersville	NJ
Penn Federal Savings Bank	West Orange	NJ
Westwood Savings Bank	Westwood	NJ
First Financial Savings Bank, SLA	Woodbridge	NJ
Woodstown National Bank and Trust Company	Woodstown	NJ
Evans National Bank	Angola	NY
Elmira Savings Bank, F.S.B	Elmira	NY
Abacus Federal Savings Bank	New York	NY
Chinatown Federal Savings Bank	New York	NY

Member	City	State
Commercial Bank of New York	New York	NY
Independence Savings Bank	New York	NY
Savings Bank of Utica	Utica	NY
Wallkill Valley FS&LA	Wallkill	NY
Doral Federal Savings Bank	Catano	PR
Oriental Bank and Trust	Humacao	PR

Federal Home Loan Bank of Pittsburgh—District 3
601 Grant Street
Pittsburgh, Pennsylvania 15219–4455

Altoona First Savings Bank	Altoona	PA
Reeves Bank	Beaver Falls	PA
Bernville Bank, N.A	Bernville	PA
Wilbur Savings & Loan Association	Bethlehem	PA
Bridgeville Savings Bank	Bridgeville	PA
Founders' Bank	Bryn Mawr	PA
Pennsylvania State Bank	Camp Hill	PA
Financial Trust Company	Carlisle	PA
First FS&LA of Carnegie	Carnegie	PA
Coatesville Savings Bank	Coatesville	PA
Slovenian S&LA of Franklin-Conemaugh	Conemaugh	PA
Corry Savings Bank	Corry	PA
First National Community Bank	Dunmore	PA
Halifax National Bank	Halifax	PA
People's N.B. of Susquehanna County	Hallstead	PA
Pennsylvania National Bank & Trust Company	Harrisburg	PA
Frankford Bank, N.A	Horsham	PA
Mauch Chunk Trust Company	Jim Thorpe	PA
First Summit Bank	Johnstown	PA
First National Bank of McConnellsburg	McConnellsburg	PA
Mifflinburg Bank and Trust Company	Mifflinburg	PA
Community Banks, N.A	Millersburg	PA
Union National Mount Joy Bank	Mount Joy	PA
Muncy Bank and Trust Company	Muncy	PA
First Bank of Philadelphia	Philadelphia	PA
Pennsylvania Savings Bank	Philadelphia	PA
Polonia Federal Savings & Loan Association	Philadelphia	PA
United Valley Bank	Philadelphia	PA
Eureka Federal Savings and Loan Association	Pittsburgh	PA
Iron and Glass Bank	Pittsburgh	PA
Pittsburgh Home Savings Bank	Pittsburgh	PA
Slovak Savings Bank	Pittsburgh	PA
United-American Savings Bank	Pittsburgh	PA
Berks County Bank	Reading	PA
Peoples Savings Bank	Ridgway	PA
Century National Bank and Trust Company	Rochester	PA
Merchants Bank of Pennsylvania	Shenandoah	PA
Northwest Savings Bank	Warren	PA
Franklin First Savings Bank	Wilkes-Barre	PA
Northern Central Bank	Williamsport	PA
Peoples State Bank	Wyalusing	PA
Drovers & Mechanics Bank	York	PA
First Capitol Bank	York	PA
York Federal Savings and Loan Association	York	PA
City National Bank	Charleston	WV
One Valley Bank of Clarksburg, NA	Clarksburg	WV
WesBanco Bank Fairmont, Inc	Fairmont	WV
FNB of Hinton	Hinton	WV
Citizens Bank of Morgantown, Inc	Morgantown	WV
One Valley Bank of Morgantown, Inc	Morgantown	WV
First National Bank in Ronceverte	Ronceverte	WV
Advance Financial Savings Bank	Wellsburg	WV

Federal Home Loan Bank of Atlanta—District 4
P.O. Box 105565
Atlanta, Georgia 30348

Exchange Bank of Alabama	Altoona	AL
Central State Bank	Calera	AL
First FS&LA of Chilton County	Clanton	AL
First Federal Savings and Loan	Cullman	AL
Commercial National Bank of Demopolis	Demopolis	AL
Southland Bank	Dothan	AL
First Federal Savings & Loan Association	Gadsden	AL

Member	City	State
First Bank and Trust	Grove Hill	AL
First National Bank of Hamilton	Hamilton	AL
Headland National Bank	Headland	AL
New South Federal Savings Bank	Irondale	AL
Independent Bank of Oxford	Oxford	AL
Bank of Prattville	Prattville	AL
Citizens' Bank, Inc	Robertsdale	AL
Valley Federal Savings Bank	Sheffield	AL
Slocomb National Bank	Slocomb	AL
First Liberty National Bank	Washington	DC
Riggs Bank, N.A	Washington	DC
First National Bank of Florida-Bonita Springs	Bonita Springs	FL
BankUnited, FSB	Coral Gables	FL
UniBank	Coral Gables	FL
Charter Bank	Delray Beach	FL
BankAtlantic, A FSB	Fort Lauderdale	FL
Natbank, F.S.B	Hollywood	FL
Suncoast Savings and Loan Association	Hollywood	FL
Unifirst Federal Savings Bank	Hollywood	FL
Enterprise National Bank of Jacksonville	Jacksonville	FL
First FS & LA of Florida	Lakeland	FL
Eagle National Bank of Miami	Miami	FL
Kislak National Bank	Miami Lakes	FL
Murdock Florida Bank	Murdock	FL
Mercantile Bank of Naples	Naples	FL
First FSB of New Smyrna	New Smyrna Beach	FL
Metro Savings Bank, FSB	Orlando	FL
First Federal S&LA of Putnam County	Palatka	FL
Pointe Bank	Pembroke Pines	FL
Port St. Lucie National Bank	Port St. Lucie	FL
Huntington National Bank of Florida	Sebring	FL
Anchor Savings Bank	St. Petersburg	FL
Capital City Bank	Tallahassee	FL
Bay Financial Savings Bank, FSB	Tampa	FL
Beneficial Savings Bank, FSB	Tampa	FL
City First Bank	Tampa	FL
Republic Security Bank	West Palm Beach	FL
Bank of Winter Park	Winter Park	FL
Federal Trust Bank, a FSB	Winter Park	FL
Embry National Bank	Atlanta	GA
Summit National Bank	Atlanta	GA
The Prudential Savings Bank, FSB	Atlanta	GA
Georgia Bank and Trust Company of Augusta	Augusta	GA
First Bank of Brunswick	Brunswick	GA
First Georgia Bank	Brunswick	GA
Habersham Bank	Cornelia	GA
Newton Federal Savings & Loan Association	Covington	GA
First National Bank of Coffee County	Douglas	GA
Douglas Federal Bank, a FSB	Douglasville	GA
Colonial Bank	Dunwoody	GA
Elberton FS&LA	Elberton	GA
Citizens Union Bank	Greensboro	GA
Griffin Federal Savings Bank	Griffin	GA
United Bank of Griffin	Griffin	GA
Crescent Bank & Trust Co	Jasper	GA
First National Bank of Baldwin County	Milledgeville	GA
Milton National Bank	Roswell	GA
Farmers & Merchants Bank	Statesboro	GA
Thomaston Federal Savings Bank	Thomaston	GA
Tucker Federal Savings & Loan Association	Tucker	GA
First Federal Savings & Loan Association	Valdosta	GA
Charter FS&LA	West Point	GA
Severn Savings Bank, FSB	Annapolis	MD
Advance Federal Savings & Loan Association	Baltimore	MD
American National Savings Association, F.A	Baltimore	MD
Baltimore American Savings Bank, FSB	Baltimore	MD
Baltimore County Savings Bank, F.S.B	Baltimore	MD
Bohemian American FS&LA, Inc	Baltimore	MD
Fraternity FS&LA	Baltimore	MD
Hamilton FS&LA	Baltimore	MD
Leeds Federal Savings Bank	Baltimore	MD
Madison and Bradford FS&LA, Inc	Baltimore	MD
Saint Casimirs Savings Bank	Baltimore	MD
Presidential Savings Bank, FSB	Bethesda	MD

Member	City	State
Peoples Bank of Elkton	Elkton	MD
Glen Burnie Mutual Savings Bank	Glen Burnie	MD
Eastern Savings Bank, FSB	Hunt Valley	MD
Maryland Federal Savings & Loan Association	Hyattsville	MD
Wyman Park Federal Savings and Loan Assoc	Lutherville	MD
Key Federal Savings Bank	Owings Mills	MD
Enterprise Federal Savings Bank	Oxon Hill	MD
Baltimore Savings and Loan Association, F.A	Pikesville	MD
American Federal Savings Bank	Rockville	MD
First Shore FS&LA	Salisbury	MD
Sykesville Federal Savings Association	Sykesville	MD
Harbor Federal Savings Bank	Towson	MD
Ashburton Federal Savings & Loan Association	Westminster	MD
Equitable Federal Savings Bank	Wheaton	MD
Home Savings Bank, SSB of Eden	Eden	NC
Gaston Federal Savings and Loan Association	Gastonia	NC
High Point Bank and Trust Company	High Point	NC
Old North State Bank	King	NC
First Carolina Federal Savings Bank	Kings Mountain	NC
Scotland Savings Bank, S.S.B	Laurinburg	NC
The Community Bank	Pilot Mountain	NC
Roanoke Valley Savings Bank, SSB	Roanoke Rapids	NC
Centura Bank	Rocky Mount	NC
United Federal Savings Bank	Rocky Mount	NC
First Federal Savings Bank of Moore County	Southern Pines	NC
Haywood Savings Bank, Inc., SSB	Waynesville	NC
Ashe Federal Savings & Loan Association	West Jefferson	NC
Piedmont Federal Savings & Loan Association	Winston-Salem	NC
Perpetual Bank, FSB	Anderson	SC
Colonial Savings Bank of South Carolina, Inc	Camden	SC
First Palmetto Savings Bank, FSB	Camden	SC
Spratt Savings and Loan Association	Chester	SC
Peoples FS&LA of South Carolina	Conway	SC
First Piedmont FS&LA of Gaffney	Gaffney	SC
Greenville National Bank	Greenville	SC
Heritage FS&LA	Laurens	SC
Plantation Federal Savings Bank, Inc	Pawleys Island	SC
Spartanburg National Bank	Spartanburg	SC
Woodruff Federal Savings & Loan Association	Woodruff	SC
Virginia Commerce Bank, N.A	Arlington	VA
Bedford Federal Savings Bank	Bedford	VA
Fredericksburg S&LA, FA	Fredericksburg	VA
Franklin FS&LA of Richmond	Glen Allen	VA
Eastern American Bank, FSB	Herndon	VA
Black Diamond Savings Bank, FSB	Norton	VA
Farmers & Merchants Bank, Eastern Shore	Onley	VA
Shore Savings Bank, F.S.B	Onley	VA
First Federal Savings Bank of Virginia	Petersburg	VA
Southwest Virginia Savings Bank, FSB	Roanoke	VA
Community Federal Savings Bank	Staunton	VA
Southside Bank	Tappahannock	VA

Federal Home Loan Bank of Cincinnati—District 5
P.O. Box 598
Cincinnati, Ohio 45201

Bank of Ashland	Ashland	KY
Catlettsburg Federal Savings Bank	Catlettsburg	KY
Citizens Federal Savings and Loan Association	Covington	KY
South Central Bank, F.S.B	Edmonton	KY
Farmers Deposit Bank	Flemingsburg	KY
Peoples Bank of Fleming County	Flemingsburg	KY
State National Bank	Frankfort	KY
First Southern National Bank of Garrard Cty	Lancaster	KY
Citizens Bank and Trust Company	Leitchfield	KY
Peoples Security Bank	Louisa	KY
Commonwealth Bank & Trust Company	Louisville	KY
Republic Bank & Trust Company	Louisville	KY
First Southern National Bank of Wayne County	Monticello	KY
First FS&LA of Morehead	Morehead	KY
Exchange Bank of Kentucky	Mount Sterling	KY
Montgomery & Traders Bank & Trust Co	Mount Sterling	KY
Mount Sterling National Bank	Mount Sterling	KY
Commonwealth Bank, F.S.B	Mt. Sterling	KY

Member	City	State
Farmers National Bank	Walton	KY
Farmers National Bank	Williamsburg	KY
Summit Bank	Akron	OH
Belmont Savings Bank	Bellaire	OH
Citizens National Bank	Bluffton	OH
First Federal Bank	Bowling Green	OH
First FS&LA of Bucyrus	Bucyrus	OH
First Federal Savings and Loan Association	Centerburg	OH
BenchMark Federal Savings Bank	Cincinnati	OH
Columbia Savings Bank	Cincinnati	OH
Franklin Savings and Loan Company	Cincinnati	OH
North Cincinnati Savings Bank	Cincinnati	OH
Oak Hills Savings & Loan Company, F.A	Cincinnati	OH
Suburban Federal Savings Bank	Cincinnati	OH
Warsaw Federal Savings and Loan Association	Cincinnati	OH
Charter One Bank, F.S.B	Cleveland	OH
Third FS&LA of Cleveland	Cleveland	OH
State Savings Bank	Columbus	OH
Midwest Savings Bank	DeGraff	OH
Hicksville Building Loan and Savings Company	Hicksville	OH
Merchants National Bank	Hillsboro	OH
NCB Savings Bank, FSB	Hillsboro	OH
First Federal Savings Bank of Kent	Kent	OH
Home Savings Bank	Kent	OH
Home Savings and Loan Company of Kenton	Kenton	OH
Kenwood Savings and Loan Association	Kenwood	OH
First FS&LA of Lakewood	Lakewood	OH
Fairfield Federal Savings & Loan Association	Lancaster	OH
First National Bank	Lebanon	OH
Leesburg FS&LA	Leesburg	OH
First-Knox National Bank	Mount Vernon	OH
Market Building and Saving Company	Mt. Healthy	OH
New Carlisle Federal Savings Bank	New Carlisle	OH
Park National Bank	Newark	OH
Home FS&LA of Niles	Niles	OH
Fidelity Federal Savings Bank	Norwood	OH
First Savings & Loan Association	Norwood	OH
Third Savings and Loan Company	Piqua	OH
American Savings Bank	Portsmouth	OH
Republic Savings Bank	Richmond Heights	OH
Home City FS&LA	Springfield	OH
Belmont National Bank	St. Clairsville	OH
Perpetual Federal Savings Bank of Urbana	Urbana	OH
First FS&LA of Warren	Warren	OH
First Federal Savings Bank	Washington C.H.	OH
Jefferson Savings Bank	West Jefferson	OH
Milton Federal Savings Bank	West Milton	OH
Liberty Savings Bank, FSB	Wilmington	OH
Bank of Alamo	Alamo	TN
Bank of Crockett	Bells	TN
Peoples Bank	Dickson	TN
Chester County Bank	Henderson	TN
First Bank of East Tennessee, N.A	La Follette	TN
Wilson Bank and Trust	Lebanon	TN
First National Bank of Cumberlands	Livingston	TN
Citizens Bank	New Tazewell	TN
Newport Federal Savings and Loan Association	Newport	TN
Citizens National Bank	Sevierville	TN

Federal Home Loan Bank of Indianapolis—District 6
P.O. Box 60
Indianapolis, Indiana 46205–0060

Boonville Federal Savings Bank	Boonville	IN
First State Bank	Brazil	IN
Riddell National Bank	Brazil	IN
Union Savings and Loan Association	Connersville	IN
Union FS&LA of Crawfordsville	Crawfordsville	IN
First Federal Savings Bank	Evansville	IN
Citizens Savings Bank	Frankfort	IN
First Citizens Bank and Trust Company	Greencastle	IN
City Savings Bank	Hartford City	IN
Kentland Bank	Kentland	IN
Indiana Community Bank, SB	Lebanon	IN

Member	City	State
Logansport Savings Bank, FSB	Logansport	IN
Home Bank, S.B	Martinsville	IN
Community Bank, FSB	Michigan City	IN
Peoples Bank SB	Munster	IN
First Bank Richmond, S.B	Richmond	IN
Mid-Southern Savings Bank	Salem	IN
Owen County Bank, S.B	Spencer	IN
Citizens Bank of Western Indiana	Terre Haute	IN
Liberty Savings Association, F.A	Whiting	IN
Homestead Savings Bank, FSB	Albion	MI
Commercial Bank	Alma	MI
LaSalle Federal Savings Bank	Buchanan	MI
Branch County FS&LA	Coldwater	MI
FMB-State Savings Bank	Lowell	MI
MFC First National Bank	Marquette	MI
Marshall Savings Bank, FSB	Marshall	MI
New Buffalo Savings Bank	New Buffalo	MI
Thumb National Bank and Trust	Pigeon	MI
Citizens Federal Savings Bank	Port Huron	MI
Dent County Bank	Salem	MI
First National Bank of Three Rivers	Three Rivers	MI
First National Bank of Wakefield	Wakefield	MI

Federal Home Loan Bank of Chicago—District 7
East Wacker Drive
Suite 700
Chicago, Illinois 60601

Batavia Savings Bank, FSB	Batavia	IL
Farmers State Bank of Beecher	Beecher	IL
Midwest Savings Bank	Bolingbrook	IL
First National Bank in Carlyle	Carlyle	IL
Centralia Savings Bank	Centralia	IL
BankIllinois	Champaign	IL
Bank Champaign, N.A	Chicago	IL
Illinois Service FS&LA	Chicago	IL
Liberty Federal Bank for Savings	Chicago	IL
Mid Town Bank and Trust Co. of Chicago	Chicago	IL
New Asia Bank	Chicago	IL
North Federal Savings Bank	Chicago	IL
Northwestern Savings Bank	Chicago	IL
Preferred Savings Bank	Chicago	IL
Pulaski Savings Bank	Chicago	IL
South Central Bank and Trust Company	Chicago	IL
Washington Federal Bank for Savings	Chicago	IL
Family Federal Savings of Illinois	Cicero	IL
West Town Savings Bank	Cicero	IL
Home FS & LA of Elgin	Elgin	IL
Galena State Bank and Trust Company	Galena	IL
Highland Savings and Loan Association	Highland	IL
Hinsdale Federal Bank for Savings	Hinsdale	IL
Lawrenceville FS&LA	Lawrenceville	IL
Fairfield Savings and Loan Association	Long Grove	IL
Omni Bank	Macomb	IL
McHenry Savings Bank	McHenry	IL
City National Bank	Metropolis	IL
MidAmerica Bank, N.A	Moline	IL
Wabash Savings Bank	Mt. Carmel	IL
The Farmers Bank	Mt. Pulaski	IL
Hawthorn Bank	Mundelein	IL
Regency Savings Bank, FSB	Naperville	IL
Superior Bank FSB	Oakbrook Terrace	IL
Financial Federal Trust and Savings Bank	Olympia Fields	IL
Herget National Bank of Pekin	Pekin	IL
Pekin Savings, S.B	Pekin	IL
Peru Federal Savings and Loan Association	Peru	IL
National Bank of Petersburg	Petersburg	IL
First National Bank of Raymond	Raymond	IL
HomeBanc, fsb	Rockford	IL
Citizens State Bank of Shipman	Shipman	IL
Illini Bank	Springfield	IL
Town & Country Bank of Springfield	Springfield	IL
Union Bank of Illinois	Swansea	IL
Tremont Savings Bank	Tremont	IL

Member	City	State
Tuscola National Bank	Tuscola	IL
Northwest Savings Bank	Amery	WI
First National Bank of Baldwin	Baldwin	WI
Banner Banks	Birnamwood	WI
Boscobel State Bank	Boscobel	WI
North Shore Bank, FSB	Brookfield	WI
First American Bank and Trust Company	Fort Atkinson	WI
Greenleaf Wayside Bank	Greenleaf	WI
Security State Bank	Iron River	WI
Greenswood State Bank	Lake Mills	WI
State Bank of Lodi	Lodi	WI
Anchor Bank, S.S.B	Madison	WI
The Home Savings Bank	Madison	WI
Peoples State Bank	Mazomanie	WI
Milton Savings and Loan Association	Milton	WI
Maritime Savings Bank	Milwaukee	WI
Mutual Savings Bank	Milwaukee	WI
Associated Bank, N.A	Neenah	WI
Fox Cities Bank, F.S.B	Neenah	WI
Oshkosh Savings Bank, f.s.b	Oshkosh	WI
State Bank of Random Lake	Random Lake	WI
Reedsburg Bank	Reedsburg	WI
Dairy State Bank	Rice Lake	WI
South Milwaukee Savings Bank	South Milwaukee	WI
Superior Savings Bank	Superior	WI
West Bend Savings Bank	West Bend	WI
First Citizens Bank of Whitewater	Whitewater	WI

Federal Home Loan Bank of Des Moines—District 8
907 Walnut Street
Des Moines, Iowa 50309

First State Bank	Brunsville	IA
Perpetual Savings Bank, F.S.B	Cedar Rapids	IA
Dubuque Bank and Trust Company	Dubuque	IA
Firstar Bank, FSB	Dubuque	IA
First National Bank in Fairfield	Fairfield	IA
First Federal Savings Bank of Fort Dodge	Fort Dodge	IA
Farmers State Savings Bank	Independence	IA
State Central Bank	Keokuk	IA
Lisbon Bank and Trust Company	Lisbon	IA
Security Bank	Marshalltown	IA
Farmers State Bank	Merrill	IA
State Bank	Spirit Lake	IA
First State Bank	Sumner	IA
Community State Bank	Tipton	IA
Webster City Federal Savings Bank	Webster City	IA
Citizens State Bank	Wyoming	IA
First American Bank of Alexandria	Alexandria	MN
First National Bank of Bertha-Verndale	Bertha	MN
Credit America Savings	Brainerd	MN
First National Bank of Deerwood	Deerwood	MN
American Federal Savings Bank	East Grand Forks	MN
Community First National Bank	Fergus Falls	MN
Harmony State Bank	Harmony	MN
United Prairie Bank—Jackson	Jackson	MN
Lake Elmo Bank	Lake Elmo	MN
Community FS&LA	Little Falls	MN
First Federal Savings Bank	Morris	MN
Community National Bank	North Branch	MN
Northwoods Bank of Minnesota	Park Rapids	MN
Pelican Valley State Bank	Pelican Rapids	MN
Pine City State Bank	Pine City	MN
Farmers Independent Bank	Russell	MN
First National Bank	Thief River Falls	MN
Investors Savings Bank, FSB	Wayzata	MN
Winona National and Savings Bank	Winona	MN
Community First National Bank	Worthington	MN
O'Bannon Banking Company	Buffalo	MO
South East Missouri Bank	Cape Girardeau	MO
Union Planters Bank of Southeast Missouri	Cape Girardeau	MO
The Farmers Bank	Carrollton	MO
Joachim Savings and Loan Association	DeSoto	MO
Rockwood Bank	Eureka	MO

Member	City	State
Fulton Savings Bank	Fulton	MO
Bank of Hayti	Hayti	MO
Mutual Savings Bank, f.s.b	Jefferson City	MO
Blue Ridge Bank and Trust Company	Kansas City	MO
Boatmen's First National Bank of Kansas City	Kansas City	MO
Bank of Kimberling City	Kimberling City	MO
First National Bank	Lamar	MO
First Savings Bank, f.s.b	Mt. Vernon	MO
Neosho Savings and Loan Association, F.A	Neosho	MO
Bank of New Madrid	New Madrid	MO
Peoples Bank of the Ozarks	Nixa	MO
Charter 1 Bank	Owensville	MO
Belgrade State Bank	Potosi	MO
Peoples Savings Bank of Rhineland	Rhineland	MO
Progressive Ozark Bank, fsb	Salem	MO
First National Bank of Sarcoxie	Sarcoxie	MO
Union Planters Bank of Sikeston	Sikeston	MO
Central West End Bank, A FSB	St. Louis	MO
Missouri State Bank and Trust Company	St. Louis	MO
Reliance FS&LA of St. Louis County	St. Louis	MO
South Side National Bank in St. Louis	St. Louis	MO
First Financial Bank of Ste. Genevieve	Ste. Genevieve	MO
Bank of Thayer	Thayer	MO
Citizens State Bank of Pembina County	Cavalier	ND
Community First National Bank & Trust Co	Dickinson	ND
First State Bank Langdon	Langdon	ND
Valley Bank, N.A	Elk Point	SD
Dakota State Bank	Milbank	SD
CorTrust Bank	Mitchell	SD
Farmers and Merchants State Bank	Plankinton	SD
First PREMIER Bank	Sioux Falls	SD
First Western Bank Sturgis	Sturgis	SD

Federal Home Loan Bank of Dallas—District 9
P.O. Box 619026
Dallas/Forth Worth, Texas 75261–9026

Elk Horn Bank and Trust Company	Arkadelphia	AR
Charter State Bank	Beebe	AR
Benton Savings and Loan Association	Benton	AR
First National Bank of Howard County	Dierks	AR
Planters and Merchants Bank	Gillett	AR
Calhoun County Bank	Hampton	AR
Pulaski Bank and Trust Company	Little Rock	AR
Farmers Bank and Trust Company	Magnolia	AR
Union Bank and Trust Company	Monticello	AR
Newport Federal Savings and Loan Association	Newport	AR
River Valley Savings Bank, FSB	Ozark	AR
United Bank	Springdale	AR
Farmers and Merchants Bank	Stuttgart	AR
First FS&LA of Texarkana	Texarkana	AR
Abbeville Building and Loan, a SCSB	Abbeville	LA
Community Trust Bank	Choudrant	LA
Crowley Building and Loan Association	Crowley	LA
Jefferson Federal Savings Bank	Gretna	LA
Bank of LaPlace	LaPlace	LA
Bank of Logansport	Logansport	LA
Iberia Savings Bank	New Iberia	LA
Fidelity Homestead Association	New Orleans	LA
West Carroll National Bank of Oak Grove	Oak Grove	LA
Iberville Building & Loan Association	Plaquemine	LA
Bank of Zachary	Zachary	LA
National Bank of Commerce of Corinth	Corinth	MS
Grand Bank for Savings, FSB	Leakesville	MS
Merchants and Farmers Bank	Macon	MS
First Federal Savings and Loan	Pascagoula	MS
Union Savings Bank	Albuquerque	NM
Western Bank of Clovis	Clovis	NM
Gallup Federal Savings Bank	Gallup	NM
Citizens Bank of Las Cruces	Las Cruces	NM
Bank of Las Vegas	Las Vegas	NM
Bank of Santa Fe	Santa Fe	NM
Century Bank, FSB	Santa Fe	NM
Lamar Bank	Beaumont	TX

Member	City	State
First National Bank of Carthage	Carthage	TX
Shelby Savings Bank, SSB	Center	TX
Nueces National Bank	Corpus Christi	TX
First National Bank of Crockett	Crockett	TX
First National Bank in Dalhart	Dalhart	TX
Inwood National Bank	Dallas	TX
First State Bank of Texas	Denton	TX
Bank of South Texas	Floresville	TX
Pioneer National Bank	Fredericksburgh	TX
Henderson Federal Savings Association	Henderson	TX
Coastal Bank ssb	Houston	TX
First Heights Bank, fsb	Houston	TX
Guardian Savings & Loan Association	Houston	TX
Navigation Bank	Houston	TX
Riverway Bank	Houston	TX
University State Bank	Houston	TX
Community State Bank	Iola	TX
Bayshore National Bank of La Porte	La Porte	TX
Spring Hill State Bank	Longview	TX
Angelina Savings Bank	Lufkin	TX
First National Bank of Palestine	Palestine	TX
Olympic Savings Association	Refugio	TX
Canyon Creek National Bank	Richardson	TX
First State Bank	Stratford	TX
Sulphur Springs State Bank	Sulphur Springs	TX
First State Bank	Temple	TX
First FS&LA of Tyler	Tyler	TX
Fidelity Bank, N.A	University Park	TX
First National Bank of Weatherford	Weatherford	TX

Federal Home Loan Bank of Topeka—District 10
P.O. Box 176
Topeka, Kansas 66601

Pitkin County Bank and Trust Company	Aspen	CO
Aurora National Bank	Aurora	CO
Valley Bank	Brighton	CO
First National Bank of Canon City	Canon City	CO
Vectra Bank—Denver	Denver	CO
Burns National Bank of Durango	Durango	CO
First National Bank of Durango	Durango	CO
First National Bank of Flagler	Flagler	CO
Morgan County Federal S&L Association	Fort Morgan	CO
First National Bank in Lamar	Lamar	CO
Colorado Federal Savings Bank	Sterling	CO
Citizens National Bank of Fort Scott	Fort Scott	KS
Central Bank and Trust Company	Hutchinson	KS
Inter-State FS&LA	Kansas City	KS
State Bank of Kingman	Kingman	KS
Citizens Savings & Loan Association, F.S.B	Leavenworth	KS
First Savings Bank, F.S.B	Manhattan	KS
First State Bank	Norton	KS
First FS&LA of Olathe	Olathe	KS
First National Bank and Trust	Osawatomie	KS
Roxbury Bank	Roxbury	KS
Columbian National Bank and Trust	Topeka	KS
Cedar Security Bank	Fordyce	NE
First Federal Lincoln Bank—Iowa	Lincoln	NE
Commercial Federal Bank, a FSB	Omaha	NE
Security National Bank of Omaha	Omaha	NE
Pinnacle Bank	Papillion	NE
Stockmens National Bank	Rushville	NE
The First National Bank of Stromsburg	Stromsburg	NE
Lancaster County Bank	Waverly	NE
Wymore State Bank	Wymore	NE
First National Bank & Trust Company	Ardmore	OK
Republic Bank of Norman	Norman	OK
Northwest Bank and Trust Company	Oklahoma City	OK
UMB Oklahoma Bank	Oklahoma City	OK
Lakeside State Bank	Oologah	OK
First American Bank and Trust Company	Purcell	OK
First National Bank of Oklahoma	Tonkawa	OK
Arvest Savings Bank, FSB	Tulsa	OK
State Bank and Trust, N.A	Tulsa	OK

Member	City	State
Federal Home Loan Bank of San Francisco—District 11 307 East Chapman Avenue Orange, California 92666		
Bank of Stockdale	Bakersfield	CA
Fremont Bank	Fremont	CA
Fidelity Federal Bank, FSB	Glendale	CA
Brentwood Bank of California	Los Angeles	CA
First Global Bank, FSB	Los Angeles	CA
U.S. Trust Company Bank of California, N.A	Los Angeles	CA
Westcoast Savings and Loan Association	Marina Del Rey	CA
Vintage Bank	Napa	CA
United Labor Bank, FSB	Oakland	CA
World Savings and Loan Association	Oakland	CA
Palm Desert National Bank	Palm Desert	CA
Malaga Bank, SSB	Palos Verdes Estates	CA
Pomona First Federal Bank and Trust	Pomona	CA
De Anza National Bank	Riverside	CA
Summit Savings, FSB	Rohnert Park	CA
Watsonville Federal Savings and Loan	Salinas	CA
California Savings & Loan, A FA	San Francisco	CA
Commercial Bank of San Francisco	San Francisco	CA
Norwest Bank of Nevada, FSB	Reno	NV
Federal Home Loan Bank of Seattle—District 12 1501 Fourth Avenue Seattle, Washington 98101–1693		
Northrim Bank	Anchorage	AK
Guam Savings and Loan Association	Agana	GU
Finance Factors, Limited	Honolulu	HI
Ireland Bank	Malad	ID
First Federal Savings Bank	Twin Falls	ID
United Bank of Absarokee, N.A	Absarokee	MT
Pioneer Federal Savings & Loan Association	Dillon	MT
United Savings Bank, F.A	Great Falls	MT
Pacific Continental Bank	Eugene	OR
First FS&LA of McMinnville	McMinnville	OR
Valley Community Bank	McMinnville	OR
The Prineville Bank	Prineville	OR
Douglas National Bank	Roseburg	OR
Bank of American Fork	American Fork	UT
Utah Federal Savings Bank	Odgen	UT
Home Credit Bank	Salt Lake City	UT
Heritage Savings and Loan Association	St. George	UT
American First National Bank	Everett	WA
Bank of Fairfield	Fairfield	WA
Klickitat Valley Bank	Goldendale	WA
Timberland Savings Bank	Hoquiam	WA
Kitsap Bank	Port Orchard	WA
First Savings Bank of Renton	Renton	WA
Continental Savings Bank	Seattle	WA
Washington First International Bank	Seattle	WA
First National Bank of Powell	Powell	WY

C. Due dates

Members selected for review must submit completed Community Support Statements to their FHLBanks no later than November 29, 1996.

All public comments concerning the Community Support performance of selected members must be submitted to the members' FHLBanks no later than November 29, 1996.

D. Notice to members selected

Within 15 days of this Notice's publication in the Federal Register, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Housing Finance Board will conduct the actual review.

E. Notice to public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public.

The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's

FHLBank by the due date indicated in order to be considered in the review process.

Dated: October 2, 1996.

By the Federal Housing Finance Board.

Rita I. Fair,

Managing Director.

[FR Doc. 96–25667 Filed 10–11–96; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Echo International Freight Forwarding, 13027 7th N.W., Seattle, WA 98177. Officers: Lev Shabalov, President, Ellen Thompson, Sr., Vice President.

Road Runner International, Inc., 322 49th Street, Union City, NJ 07087. Officer: Roberto E. Molina, President/Director.

Dated: October 8, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96–26260 Filed 10–11–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 29, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Robert H. Leshner, Cincinnati, Ohio; to retain a total of 7.96 percent of the voting shares of Professional Bancorp, Santa Monica, California, and thereby indirectly acquire First Professional Bank, N.A., Santa Monica, California.

Board of Governors of the Federal Reserve System, October 8, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–26263 Filed 10-11-96; 8:45 am]

BILLING CODE 6210-01-F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are 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 standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. JDOB Inc., Sandstone, Minnesota; to acquire 80 percent of the voting shares of Centennial National Bank, Walker, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, October 8, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–26262 Filed 10-11-96; 8:45 am]

BILLING CODE 6210-01-F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including 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'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 1996.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to engage *de novo*, as a joint venture, through its subsidiary, Central Federal Mortgage Company, State College, Pennsylvania, in residential mortgage lending business, pursuant to § 225.25(b)(1) of the Board's Regulation Y. The co-venturers will be Norwest Ventures, Inc., Minneapolis, Minnesota and Centre Professionals, Inc. d/b/a RE/MAX Centre Realty, State College, Pennsylvania.

Board of Governors of the Federal Reserve System, October 8, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–26264 Filed 10-11-96; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research; Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Agency for Health Care Policy and Research.

ACTION: Emergency clearance notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to reinstate two expired information collection projects as one: Formerly the 1987 Health Insurance Plans Survey (HIPS) and the 1994 National Employer Health Insurance Survey (NEHIS), now to be combined in the 1997 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC). In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3507(a)(1)(D)), AHCPR invites the public to comment on this reinstatement.

In further compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)(1)(A)(i)), AHCPR has submitted to the OMB a request for Emergency Review. This review is requested because collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR 1320.13, in order to allow for the information collection project: Pretest for the 1997 Medical Expenditure Survey—Insurance Component (MEPS–IC).

The pretest was somewhat delayed as the Department worked to achieve efficiencies by consolidating the two previous surveys under DHHS's Survey Integration Plan. The pretest is now underway and it is urgent that it not be interrupted in order to assure the quality and integrity of the pretest data. The MEPS–IC is scheduled to begin in April 1997 when employers have information readily available on health plans, which are generally offered and processed on an annual basis. Delays in the pretest results will cause resulting delays in the overall MEPS–IC survey, which is the only national level effort to collect information on the supply of private health insurance available to American workers, including annual premium expenditures, benefits paid, and administrative costs for national health accounts, maintained by HCFA. This information, along with that from the larger MEPS-Household Component, is important for evaluating current and proposed health policies by both the private and public sectors.

DATES: AHCPR is requesting that OMB provide a 2-day review and a 90-day approval. During this 90-day period AHCPR will publish a separate Federal Register notice to provide a 30-day public review and comment period on these requirements.

ADDRESSES: Written comments for the proposed information collection should be submitted within 2 working days of this notice directly to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, D.C. 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION: AHCPR intends to conduct a survey of establishments in 1997 to collect information from employers concerning employer-sponsored health insurance. This survey will be an integration of two previous surveys, now components of MEPS–IC. The two surveys which collected similar information are:

1. The 1987 Health Insurance Plans Survey sponsored by AHCPR's predecessor, the National Center for Health Services Research; and

2. The 1994 National Employer Health Insurance Survey sponsored by AHCPR, the National Center for Health Statistics (NCHS) and the Health Care Financing Administration (HCFA). Due to the integration of these two previous survey operations into the MEPS–IC, AHCPR is updating the questionnaire and data collection methodology. A data collection pretest is being proposed using a sample of potential respondents. Based upon the results of this test, the AHCPR will develop and refine the final methodology for the 1997 MEPS–IC.

Burden Estimates Follow:

Number of Respondents—350.

Number of Surveys per Respondent—1.

Average Burden/Respondent—.75 Hours.

Estimated Total Burden—263 Hours.

Copies of these data collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: October 7, 1996.

Clifton R. Gaus,

Administrator.

[FR Doc. 96–26302 Filed 10–11–96; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention

The National Institute for Occupational Safety and Health; Meeting

Name: Review of proposed protocol for the study: ''A Cohort Mortality Study with a Nested Case-control Study of Lung Cancer and Diesel Exhaust Among Non-metal Miners.''

Time and date: 9 a.m-3 p.m., November 8, 1996.

Place: National Cancer Institute (NCI), Conference Room H, Executive Plaza North, 6130 Executive Boulevard, Rockville, Maryland 20892.

Status: Open to the public for observation and participation, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The purpose of this meeting is to obtain comments and guidance

regarding the technical and scientific merits of the study: ''A Cohort Mortality Study with a Nested Case-control Study of Lung Cancer and Diesel Exhaust Among Non-metal Miners,'' being conducted jointly by NIOSH and NCI.

Matters to be Discussed: Agenda items include short presentations concerning the study protocol by the study investigators, comments from the Review Panel members, responses and discussion of comments submitted by others who have reviewed the protocol, and discussion open to all meeting attendees. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited. Written comments will be part of the review, and should be received by the contact person listed below no later than November 1, 1996. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michael Attfield, Ph.D., NIOSH Project Director, Division of Respiratory Disease Studies, M/S 234, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5751, fax 304/285–5861.

Dated: October 8, 1996.

Nancy C. Hirsch,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–26300 Filed 10–11–96; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 96F–0370]

Dover Chemical Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Dover Chemical Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 3,9-bis[2,4-bis(1-methyl-1-phenylethyl) phenoxy]-2,4,8,10-tetraoxa-3,9-diphosphaspiro[5.5]undecane as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

DATES: Written comments on the petitioner's environmental assessment by November 14, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

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 food additive petition (FAP 6B4521) has been filed by Dover Chemical Corp., 3676 Davis Rd. NW., Dover, OH 44622. 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 the safe use of 3,9-bis[2,4-bis(1-methyl-1-phenylethyl) phenoxy]-2,4,8,10-tetraoxa-3,9-diposphaspiro[5.5]undecane as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before November 14, 1996 submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, 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: October 2, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 96–26372 Filed 10–11–96; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94E–0099]

Determination of Regulatory Review Period for Purposes of Patent Extension; Neutrexin™; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that appeared in the Federal Register of August 30, 1994 (59 FR 44737). The document announced FDA's determination of the regulatory review period for purposes of patent extension for Neutrexin™ (trimetrexate glucuronate). The document was published with an error in one of the dates stated as part of the regulatory review period and requires additional clarification between the patent extension applicant's records and FDA's records.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

In FR Doc. 94–21280, appearing on page 44737 in the Federal Register of Tuesday, August 30, 1994, the following corrections are made:

On page 44737, in the second column, in the second complete paragraph, in the fourth line, ''1,934'' is corrected to read ''1,931''; and in the sixth line, ''317'' is corrected to read ''320''; in the same column, in the third complete paragraph, in the eighth line, ''However,'' is removed; in the eleventh line, ''March 10, 1987. FDA'' is corrected to read ''March 10, 1987. The applicant has documentation to suggest that an FDA official orally removed IND 29,796 from clinical hold on September 2, 1987. However, FDA''; in the fourteenth line, ''clinical hold'' is corrected to read ''clinical hold via letter''; and in the same column, in the last paragraph, beginning in the fifth line, ''February 4, 1993'' is corrected to read: ''February 1, 1993''; and the last two sentences are corrected to read: ''FDA has verified the applicant's claim that the new drug application (NDA) for Neutrexin™ (NDA 20–326) was initially submitted on February 1, 1993.''

Dated: October 8, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96–26301 Filed 10–11–96; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Institutes of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: November 6–7, 1996.

Time: November 6, 7:00 p.m.–10:00 p.m.; November 7, 8:30 a.m.–adjournment.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dr. Howard Weinstein, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: October 7, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26235 Filed 10–11–96; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: To review and evaluate grant applications.

Name of Subcommittee: Mental Retardation Research Subcommittee.

Date of Meeting: October 28–29, 1996.

Time: October 28—8:30 am–5:00 pm; October 29—9:00 am—adjournment.

Place of Meeting: The Handlery Union Square, 351 Geary Street, San Francisco, California 94102.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulevard—Rm 5E03, Telephone: 301–496–1485.

Name of Subcommittee: Medical Rehabilitation Research Subcommittee.

Date of Meeting: November 11, 1996.

Time: 8:30 am–5:00 pm.

Place of Meeting: Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Scientific Review Administrator: Ms. Anne Krey, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Name of Subcommittee: Maternal and Child Health Research Subcommittee.

Date of Meeting: November 12–13, 1996.

Time: November 12—8:30 am–5:00 pm; November 13—8:00 am—adjournment.

Place of Meeting: Holiday Inn Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1485.

Name of Subcommittee: Population Research Subcommittee.

Date of Meeting: December 9–10, 1996.

Time: December 9–8:00 am–5:00 pm; December 10–10:00 am—adjournment.

Place of Meeting: The Hyatt, 1 Metro Center, Bethesda, Maryland 20814.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—Rm. 5E03, Telephone: 301–496–1696.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 United States Code. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: October 7, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26236 Filed 10–11–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: November 4, 1996.

Time: 10:00 a.m.

Place: NIH, Natcher Bldg., Room F–1 & 2.

Contact Person: Dr. Nancy Pearson, Scientific Review Administrator, 6701 Rockledge Drive, Room 6178, Bethesda, Maryland 20892, (301) 435–1047.

Name of SEP: Biological and Physiological Sciences.

Date: November 6, 1996.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4144, Telephone Conference.

Contact Person: Dr. Paul Strudler, Scientific Review Administrator, 6701 Rockledge Drive, Room 4144, Bethesda Maryland 20892, (301) 435–1716.

Name of SEP: Biological and Physiological Sciences.

Date: November 20, 1996.

Time: 10:00 a.m.

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda Maryland 20892, (301) 435–1720.

Name of SEP: Biological and Physiological Sciences.

Date: November 21, 1996.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 4152, Telephone Conference.

Contact Person: Dr. Marcelina Powers, Scientific Review Administrator, 6701 Rockledge Drive, Room 4152, Bethesda Maryland 20892, (301) 435–1720.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26237 Filed 10–11–96; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: October 17, 1996.

Time: 10:00 a.m.

Place: Embassy Suites Hotel, Washington, DC.

Contact Person: Dr. Michael Land, Scientific Review Administrator, 6701

Rockledge Drive, Room 5122, Bethesda, Maryland 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: October 7, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–26238 Filed 10–11–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for A. Teichert & Son, Inc.'s, Vernalis Aggregate Project, San Joaquin County, California

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that A. Teichert & Son, Inc., has applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number PRT–820643. The proposed permit would authorize the incidental take of San Joaquin kit fox (*Vulpes macrotis mutica*), federally listed as endangered, and the California red-legged frog (*Rana aurora draytonii*), federally listed as threatened, and/or their habitat during aggregate extraction and the construction and operation of processing facilities and associated road improvements. The proposed permit also would authorize future incidental take of the western burrowing owl (*Athene cunicularia hypugea*), a currently unlisted species, should it become listed under the Endangered Species Act in the future. The permit would be in effect for 50 years.

The U.S. Fish and Wildlife Service also announces the availability of an Environmental Assessment for the incidental take permit application, which includes the proposed Habitat Conservation Plan fully describing the proposed project and mitigation, and the accompanying Implementing Agreement. This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, Environmental Assessment and Implementing Agreement should be received on or before November 14, 1996.

ADDRESSES: Comments regarding the application or adequacy of the environmental assessment and Implementing Agreement should be addressed to, U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino, Suite 130, Sacramento, California 95821–6340. Please refer to permit number PRT–820643 when submitting comments. Individuals wishing copies of the application, Environmental Assessment or Implementing Agreement for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Horton or Ms. Tiki Baron, Sacramento Field Office, 916–979–2725.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act prohibits the ''taking'' of a species listed as threatened or endangered. However, the U.S. Fish and Wildlife Service, under limited circumstances, may issue permits to take listed species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

A. Teichert & Son, Inc., proposes to extract aggregate from approximately 205 acres, construct and operate aggregate processing facilities on approximately 100 acres, and construct and maintain associated road improvements in San Joaquin County, California. A. Teichert & Son, Inc., seeks coverage for permanent impacts to 58 acres, and temporary impacts to an additional 25 acres, of potential San Joaquin kit fox habitat. Neither California red-legged frog or western burrowing owl are currently known to occur on the project site. During the course of the project, however, either or both of these species could become established on the site as a result of conditions created by project activities. Therefore, A. Teichert & Son, Inc., also seeks coverage for incidental take of California red-legged frog and western burrowing owl, should either occupy the site in the future.

To compensate for project impacts, A. Teichert & Son, Inc., will acquire, through a permanent conservation easement, a 192-acre mitigation site located 2.6 miles west of the project site. The mitigation site provides suitable habitat for San Joaquin kit fox and western burrowing owl (grazed annual grassland) and potential habitat for California red-legged frogs (two stock ponds). A. Teichert & Son, Inc., will convey the conservation easement to the California Department of Fish and Game and provide funding for long-term management of the mitigation site. Other measures are specified in the Habitat Conservation Plan to minimize the potential for take during excavation, construction, and operation activities.

The Environmental Assessment considers the environmental consequences of three alternatives. Alternative 1, the proposed action, consists of the issuance of an incidental take permit to A. Teichert & Son, Inc., and implementation of the Habitat Conservation Plan and its Implementing Agreement. This alternative is preferred because: (1) It satisfies the purpose and needs of the U.S. Fish and Wildlife Service and A. Teichert & Son, Inc.; (2) it is likely to result in a relatively low level of incidental take; and (3) impacts are minimized and mitigated by the acquisition of a conservation easement preserving the 192-acre mitigation site and other measures specified in the Habitat Conservation Plan. Under Alternative 2, the no action alternative, the U.S. Fish and Wildlife Service would not issue an incidental take permit. A. Teichert & Son, Inc., has indicated that they would continue to implement the Vernalis Aggregate project, incorporating precautions as described in the Habitat Conservation Plan to avoid take of listed species, regardless of whether the Habitat Conservation Plan is approved and an incidental take permit issued. If project activities did result in take of listed species, such take would be unauthorized under this alternative and would place A. Teichert & Son, Inc., in violation of state and Federal laws. Under the no action alternative, the 192-

acre mitigation site would not be preserved through a conservation easement. Alternative 3 entails development of aggregate extraction and processing facilities on an alternate site. Development of the alternate site would result in significant impacts to the Swainson's hawk by eliminating 708 acres of suitable foraging habitat. Foraging habitat for western burrowing owls, loggerhead shrikes, and California horned larks would also be lost. In addition, because the aggregate reserves on the alternate site are of lower quality than those at the proposed site, use of the alternate site would likely disturb more acres of habitat to produce the same volume of aggregate.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). The U.S. Fish and Wildlife Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the listed species. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: October 7, 1996.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 96–26298 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Indian Gaming

ACTION: Notice of Approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal/State Gaming Compact between the Quinault Indian Nation and the State of Washington, which was executed on July 9, 1996.

DATES: This action is effective October 15, 1996.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: October 1, 1996.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 96–26322 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–4N–P

Bureau of Land Management

[NV–030–1990–01]

Notice of Availability for the Talapoosa Project Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Availability for the Final Environmental Impact Statement (FEIS) for Talapoosa Mining Incorporated's Talapoosa Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act, 40 CFR 1500–1508 and 43 CFR 3809, notice is given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third-party consultant, a FEIS on Talapoosa Mining Incorporated's Talapoosa Project in Northwestern Nevada, and has made copies of the document available for public review.

DATES: Written comments on the FEIS will be accepted until close of business on November 18, 1996. No public meetings are scheduled.

ADDRESSES: A copy of the FEIS can be obtained from: Bureau of Land Management, Carson City District Office, Attn: Ron Moore, Talapoosa EIS Manager, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706.

The FEIS is available for inspection at the following locations: BLM State Office (Reno), BLM Carson City District Office, Silver Springs public library, and the University of Nevada library in Reno.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Ron Moore at (702) 885–6155.

Dated: October 8, 1996.

John O. Singlaub,

District Manager, Carson City.

[FR Doc. 96–26299 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–HC–P

[MT–067–06–1430–00]

Headwaters Resource Management Plan Amendment; Cascade and Lewis and Clark Counties, Montana

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the Headwaters Resource Management Plan (RMP) will be amended by the Great Falls Resource Area, Great Falls, Montana. The Bureau of Land Management is amending the RMP to consider certain public lands available for disposal pursuant to sections 203 and 206 of the Federal Land Policy and Management Act of 1976. The public lands comprise approximately 17,000 acres located in Cascade and Lewis & Clark Counties, Montana.

The Headwaters RMP did not identify all of these lands as suitable for disposal. However, because land exchange opportunities aid in aggregating or repositioning other public lands that lack public access and/or are scattered parcels which are difficult for BLM to manage, the public interest may well be served by disposal of these lands. An environmental assessment will be prepared by the Great Falls Resource Area to analyze the impacts of this proposal and any alternatives.

The public land being considered for disposal, comprising 17,113.36 acres, is described as follows:

Montana Principal Meridian

T. 15 N., R. 1 E., Cascade County, Montana
- Sec. 6, Lot 4;
- Sec. 8, NW¼SW¼, SW¼SW¼, and SE¼SE¼;
- Sec. 22, N½N½;

T. 16 N., R. 1 E., Cascade County, Montana
- Sec. 6, SW¼SE¼;
- Sec. 18, Lots 1 through 4, and NE¼;
- Sec. 28, NE¼, N½NW¼, SW¼NW¼, and NW¼SW¼;

T. 15 N., R. 1 W., Cascade County, Montana
- Sec. 2, Lots 1 through 4, S½N½, and S½;
- Sec. 4, Lots 1 through 4, S½N½, and S½;
- Sec. 6, Lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 8, Lots 1 through 4, N½, and N½S½;
- Sec. 10, all;
- Sec. 12, SW¼SW¼;
- Sec. 14, N½;
- Sec. 20, N½;
- Sec. 22, W½NE¼, NW¼, and NW¼SW¼;
- Sec. 30, Lots 1 through 4, E½W½;
- Sec. 32, E½SW¼, and W½SE¼;

T. 16 N., R. 1 W., Cascade County, Montana
- Sec. 2, Lots 1 through 4, S½N½, and S½;
- Sec. 12, N½NW¼;
- Sec. 14, Lots 2, 3, and 4, NE¼, and E½W½;
- Sec. 18, Lot 3;
- Sec. 19, N½NE¼SE¼;
- Sec. 20, S½NW¼, and S½;
- Sec. 22, Lots 1 through 4, S½N½, and S½;

Sec. 24, all;
Sec. 26, all;
Sec. 28, all;
Sec. 30, Lots 1 through 4, E½;
Sec. 32, Lots 1 through 4, N½, and N½S½;
Sec. 34, Lots 1 through 4, N½, and N½S½;
T. 17 N., R. 1 W., Cascade County, Montana
Sec. 6, Lots 5, 10 and 11;
Sec. 7, Lot 4, NW¼NE¼, S½NE¼, and E½NW¼;
Sec. 9, Lot 1;
Sec. 10, Lot 10;
Sec. 17, Lot 11;
Sec. 20, Lot 9;
T. 15 N., R. 2 W., Lewis & Clark County, Montana
Sec. 2, Lots 1, 2, 3, and S½NE¼;
Sec. 12, E½, and E½W½;
Sec. 13, all;
T. 16 N., R. 2 W., Cascade County, Montana
Sec. 6, Lot 6, SE¼SW¼, and SW¼SE¼;
Sec. 10, Lots 1, 2, 4, 6, 9, 11, 12, 13, and 14, S½N½, and unsurveyed island;
Sec. 11, unsurveyed island;
Sec. 20, Lot 1 and 10;
Sec. 22, E½NE¼, NW¼NE¼;
Sec. 24, Lots 1, and 2, W½NE¼, and NW¼;
T. 16 N., R. 2 W., Lewis & Clark County, Montana
Sec. 22, SE¼SW¼, and SE¼;
Sec. 24, Lots 3 and 4, W½SE¼, and SW¼;
Sec. 30, Lots 2 and 3;
T. 17 N., R. 2 W., Cascade County, Montana
Sec. 2, Lot 4, and SW¼NW¼;
Sec. 12, Lot 4, W½W½, SE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 14, W½E½, and E½W½;
Sec. 18, E½E½, and SW¼NE¼;
Sec. 19, Lots 1 through 5, S½NE¼, and SE¼NW¼;
Sec. 24, S½NW¼, and SW¼;
Sec. 26, NE¼SW¼, S½SW¼, and W½SE¼;
Sec. 32, NE¼, NW¼NW¼, NW¼SW¼, and N½SE¼;
T. 16 N., R. 3 W., Cascade County, Montana
Sec. 12, N½NE¼, and NE¼NW¼;
T. 16 N., R. 3 W., Lewis & Clark County, Montana
Sec. 24, Lots 6 and 7;
Sec. 26, Lots 6, 7, and 8, and unsurveyed island;
Sec. 35, unsurveyed island;

PUBLIC PARTICIPATION: Comments and recommendations on this notice to amend the Headwaters RMP should be received on or before November 14, 1996.

ADDRESSES: Comments should be sent to the Great Falls Resource Area, 812 14th. St. N., Great Falls, MT 59401.

FOR FURTHER INFORMATION CONTACT: Richard L. Hopkins, Area Manager, Great Falls Resource Area, 812 14th. St. N., Great Falls, MT 59401, 406/727–0503.

Dated: September 30, 1996.

David L. Mari,

District Manager.

[FR Doc. 96–26331 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–84–P

[OR–050–1020–00: GP7–0002]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District.

ACTION: Meeting of John Day-Snake Resource Advisory Council: Pendleton, Oregon; November 14–15, 1996.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on November 14, 1996 from 9:00 am to 5:00 pm, and on November 15, 1996 from 8:00 am to 12:00 noon at the Red Lion Inn, Pendleton, Oregon. Public comments will be received from 3:00 pm to 4:30 pm on Monday, November 14, 1996. Topics to be discussed include the Interior Columbia Basin Ecosystem Management Project, Standards for Rangeland Health and Guidelines for Livestock Grazing on public lands.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 N.E. Third Street, Prineville, Oregon 97754, or call 541–416–6700.

Dated: October 4, 1996.

Donald L. Smith,

Acting District Manager.

[FR Doc. 96–26248 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–33–M

Bureau of Land Management

[WY–980–1320–01; WYW 84553]

Partial Termination of Oil Shale Classification Order No. 1; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Partial termination.

SUMMARY: This action modifies the November 19, 1982, Oil Shale Classification Order Wyoming No. 1, by removing 85,787.99 acres of public land near Rock Springs, Wyoming. This action is taken in conjunction to a modification of the Executive Order of July 6, 1910, the total result of which will open the below described land to non-metalliferous location under the 1872 Mining Law. The land was determined to be non-productive for oil shale and may have some potential for locations of mining claims for diamonds. The entire 85,787.99 acres will remain open to the mineral leasing laws.

EFFECTIVE DATE: November 14, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6306.

By virtue of the authority delegated to me by BLM Manual 1203, Oil Shale Classification Order Wyoming No. 1, is hereby modified by removing the following described land:

Sixth Principal Meridian

T. 13 N., R. 112 W.
Sections 1–24
T. 14 N., R. 112 W.
Sec. 7, W½
Sec. 18 to 22;
Sec. 23, S½
Sec. 24, S½
Sec. 25 to 36;
T. 15 N., R. 112 W.
Secs. 6 and 7;
Sec. 18, Lots 5–8;
T. 13 N., R. 113 W.
Sec. 24;
T. 14 N., R. 113 W.
All;
T. 15 and 16 N., R. 113 W.
All;
T. 17 N., R. 113 W.
Secs. 1–4;
Secs. 9–16;
Secs. 21–28;
Secs. 33–36.

At 9 a.m., MDST on November 14, 1996 the lands described above will be open to non-metalliferous locations under the 1872 Mining Law, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: August 16, 1996.

Alan R. Pierson,

State Director.

[FR Doc. 96–26245 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–22–P

Bureau of Land Management

[WY–980–1320–01; WYW–84553–04]

Public Land Order No. 7219; Partial Revocation of the Executive Order of July 6, 1910; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 18,846.72 acres of public land withdrawn for the protection of coal reserves near Rock Springs, Wyoming. This action, taken in conjunction with termination of Oil Shale Classification Order No. 1, will result in opening the land to the public land laws and to nonmetalliferous location under the 1872 Mining Law. The withdrawal is no longer needed for the protection of coal reserves and the Environmental Impact Statement completed in March 1996, for the proposed Green River Resource

Management Plan, calls for the revocation of the coal land withdrawal. The revocation is needed to complete the opening of the land in response to a petition from a potential mining claimant. The entire 18,846.72 acres has been and will remain open to the mineral leasing laws.

EFFECTIVE DATE: November 14, 1996.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6306.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Executive Order of July 6, 1910, which withdrew public land for coal reserve protection, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 13 N., R. 112 W.

The area described contains 18,846.72 acres in Sweetwater and Uinta Counties, Wyoming.

2. At 9 a.m. on November 14, 1996, the land described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 14, 1996, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on November 14, 1996, the land described in paragraph 1 will be opened to nonmetalliferous location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: October 2, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96–26228 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–22–P

[NV–942–06–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert H. Thompson, Acting Chief, Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6541.

SUPPLEMENTARY INFORMATION: The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on August 29, 1996:

The plat representing the dependent resurvey of a portion of the north boundary of Township 41 North, Range 62 East; and the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 34, Township 42 North, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 722, was accepted August 27, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada on September 12, 1996:

The plat, in four (4) sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines and a portion of Mineral Survey No. 4743, and the subdivision of sections 26 and 34, and the metes-and-bounds survey of a portion of the northerly right-of-way of Lake Meade Drive, Township 21 South, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 713, was accepted September 10, 1996. This survey was executed to meet certain administrative needs of Lake Las Vegas Resort and the Bureau of Land Management.

3. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: September 30, 1996.

Robert H. Thompson,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 96–26116 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–HC–P

National Park Service

30 Day Notice of Submission to OMB, Opportunity of Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice of submission to OMB and request for comments on information collection related to National Park Service mining regulations.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(a)(1)(D)), the National Park Service (NPS) invites comments on a submitted request to OMB to approve a revision to and extension of the currently approved information budget for the NPS's minerals management regulatory program inside park unit boundaries. Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology; and (5) information on the typical costs that prospective operators incur in preparing complete plans of operation under NPS mining regulations.

Primary Purpose of the Proposed Information Collection Request: To obtain information on prospective mineral development activities associated with mining claims and nonfederal oil and gas rights within National Park System units so as to assure that adverse impacts to park resources and values are minimized.

DATES: Public comments on this notice must be received by November 14, 1996.

ADDRESSES: Please send comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, ATTN: Desk Officer for the Interior Department (1024–0064), Washington, D.C. 20503. Please also forward a copy of your comments to:

Carol McCoy, Chief, Policy and Regulations Branch, Geologic Resources Division, National Park Service, P.O. Box 25287, Lakewood, Colorado 80225.

All comments will become a matter of public record. Copies of the information collection request may be obtained by contacting Carol McCoy at the above noted address or by calling her at (303) 969–2096.

SUPPLEMENTARY INFORMATION:

Title: NPS Minerals Management Program.

Form: None.

OMB Number: 1024–0064.

Expiration Date: October 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Description of Need: Regulations at 36 CFR Part 9 require prospective developers of mining claims under the Mining Law of 1872 and nonfederal oil and gas rights in parks to submit proposed plans of operations to the NPS for review and approval. A plan of operations essentially represents a prospective operator's blueprint for conducting mineral development activities inside park unit boundaries associated with mineral rights. By requiring such a plan upfront, the NPS can assure that only mining operations that minimize adverse impacts to park resources and value are authorized.

Description of respondents: ⅓ medium to large publicly owned companies and ⅔ private entities.

Estimated annual reporting burden: Ranges from 1760 to 2640.

Estimated average burden per respondent: 88 hours.

Estimated average number of respondents: Ranges from 20 to 30.

Estimated frequency of response: One.

Dated: October 4, 1996.

David B. Shaver,

Chief Geologic Resources Division, National Park Service.

[FR Doc. 96–26240 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–70–P

Draft General Management Plan/ Environmental Impact Statement, Nez Perce National Historical Park and Big Hole National Battlefield

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: This notice announces the availability of a Draft Environmental Impact Statement (DEIS) for the General Management Plan for Nez Perce National Historical Park and Big Hole National Battlefield. This notice also announces public meetings for the purpose of receiving public comments on the DEIS. All comments received will become part of the public record and copies of comments, including names, addresses and telephone numbers provided by respondents, may be released for public inspection.

DATES: Comments on the DEIS should be received no later than December 11, 1996. Public meetings regarding the DEIS will be held as indicated below.

ADDRESSES: Written comments on the DEIS shall be submitted to: Frank Walker, Superintendent, Nez Perce National Historical Park and Big Hole National Battlefield, P.O. Box 93, Spalding, ID 83553–0093, (208) 843–2261.

The public meetings will be held at the following locations:

Oct. 28—Mission, Oregon—Yellowhawk Clinic 7–9 p.m.
Oct. 29—Wallowa, Oregon—Senior Citizens Center 7–9 p.m.
Oct. 30—Joseph, Oregon—Community Center 1–3 p.m.
Oct. 30—Enterprise, Oregon—Community Connections 7–9 p.m.
Nov. 4—Wisdom, Montana—Community Center 7–9 p.m.
Nov. 6—Chinook, Montana—Senior Citizens' Center 7–9 p.m.
Nov. 7—Laurel, Montana—City Council Chambers 7–9 p.m.
Nov. 12—Lapwai, Idaho—Pi-nee-waus Community Center 1–3 p.m.
Nov. 12—Spalding, Idaho—Spalding Visitor Center 7–9 p.m.
Nov. 13—White Bird, Idaho—Rebekah's Hall 7–9 p.m.
Nov. 14—Grangeville, Idaho—Grangeville Elementary School 7–9 p.m.
Nov. 18—Nespelem, Washington—Nez Perce Long House 7–9 p.m.
Nov. 19—Lewiston, Idaho—Williams Conference Center, Lewis-Clark State College 7–9 p.m.
Nov. 20—Kooskia, Idaho—Clearwater Valley High School 7–9 p.m.
Nov. 21—Kamiah, Idaho—Kamiah High School 7–9 p.m.

Public reading copies of the DEIS will be available for review at the following locations:

Lewiston Public Library—Lewiston, Idaho
Grangeville Centennial Library—Grangeville, Idaho
Prairie Community Library—Cottonwood, Idaho
Craigmont City Library—Craigmont, Idaho
Asotin County Library—Clarkston, Washington
Clearwater Memorial Library—Orofino, Idaho
Culdesac City Library—Culdesac, Idaho
Kamiah Community Library—Kamiah, Idaho
Nez Perce County Library—Lapwai, Idaho
Nezperce City Library—Nezperce, Idaho
Enterprise City Library—Enterprise, Oregon
Wallowa County Library—Wallowa, Oregon
Joseph Public Library—Joseph, Oregon
Blaine County Library—Chinook, Montana

A limited number of copies of the DEIS are available from: Superintendent, Nez Perce National Historical Park and Big Hole National Battlefield, P.O. Box 93, Spalding, ID 83553–0093; telephone: (208) 843–2261; and Deputy Field Director, Pacific West Area, National Park Service, 909 First Avenue, Seattle, Washington 98104–1060; telephone: (206) 220–4012.

SUPPLEMENTARY INFORMATION: This Draft Environmental Impact Statement for the General Management Plan presents a proposal and two alternative strategies parkwide and site-specific, for guiding future management of the national historical park. The major subject areas are natural and cultural resources, public use, nonfederal lands, and park management and operations. Many overall actions would be designed to unify park sites, upgrade interpretation, and help visitors recognize the connection between the park's individual sites. Nez Perce life ways would be respected. Plans would be developed to manage resources and vegetation, eliminate exotic and noxious plants, and reintroduce native species. The park would continue to work with local governments on issues that could affect park resources. Nez Perce people would be encouraged to participate in decisions about park planning, management, and operation. Alternative 1 is a continuation of current management practices, often referred to as a ''no action'' alternative. Alternative 2 is a minimum requirements alternative in terms of lower cost improvements and minimum protection and safety actions. Alternative 3 goes beyond the minimum requirements alternative, building on the initiatives of alternative 2. The proposed action for overall park management, would retain the general management direction of the park, but appropriate individual management techniques would be applied in certain cases. Incremental steps would be taken to protect land and resources and to improve visitor services and operations. More cooperative agreements and other partnership mechanisms would be developed as needed to protect resources, include Nez Perce people in park management, and improve

interpretation. Some facilities would be rehabilitated or expanded, modest developments would be added at some sites to meet requirements, and some historic structures would be adaptively used. The site-by-site proposed action varies with the site. The DEIS evaluates the potential environmental impacts associated with the strategies comprising the three alternatives. The official responsible for a decision on the proposed action is the Field Director, Pacific West Area, National Park Service.

Dated: October 4, 1996.

William C. Walters,

Deputy Field Director, Pacific West Area, National Park Service.

[FR Doc. 96–26239 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–70–P

Notice of Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1996 Christmas Pageant of Peace, which opens December 5 on the Ellipse (Presidents Park), south of the White House.

A public meeting will be held at 9:30 a.m., October 21, 1996, in Room 234 of the National Park Service's National Capital Area Building at 1100 Ohio Drive, SW., in East Potomac Park.

Persons who would like to comment at the meeting should notify the National Park Service by October 18, 1996, by calling the Office of Public Affairs between 9 a.m. and 4 p.m. weekdays at (202) 619–7176. Persons who cannot attend the meeting may submit written comments to the Public Affairs Office, National Capital Area, 1100 Ohio Drive, SW., Room 107, Washington, D.C. 20242. Written comments will be accepted until October 25, 1996.

Dated: September 26, 1996.

Terry R. Carlstrom,

Acting Field Director, National Capital Area.

[FR Doc. 96–26241 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–70–M

Notice of Inventory Completion of Native American Human Remains from the State of Hawaii in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains from the State of Hawaii in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA.

A detailed inventory and assessment of these human remains has been made by University of Pennsylvania Museum of Archaeology and Anthropology professional staff and representatives of Hui Malama I Na Kupuna 'O Hawai'i Nei.

All the human remains listed in this notice are in the control of the Academy of Natural Sciences, Philadelphia. In 1936, the Academy placed these human remains on indefinite loan to the University of Pennsylvania Museum. The Academy has authorized the University of Pennsylvania Museum to repatriate these human remains, pursuant to NAGPRA. There are no funerary objects associated with these remains. No known individuals were identified.

In 1893, Dr. J. M. Whitney collected the remains of an unknown number of individuals from a lava cave on the island of Hawai'i. Of these, twenty eight were presented to the Academy at an unknown date by Dr. C.N. Peirce. Of these, twenty four individuals (UPMAA catalogue numbers L–606–1749 through 1768, L–606–1770, L–606–1772, L–606–1773, and L–606–1775) have been identified and inventoried by the University of Pennsylvania Museum and are covered by this notice.

In 1893, Professors Benjamin Sharp and William Libbey collected the remains of an unknown number of individuals at Kipukai, Kauai. Of these, nineteen were presented to the Academy by Professors Sharp and Libbey in 1894–1895. All nineteen of these human remains (L–606–2087 through 2096, and L–606–2179 through 2187) have been identified and inventoried by the University of Pennsylvania Museum and are covered by this notice.

Prior to 1849, Dr. William S. Ruschenberger collected the remains of three individuals (L–606–564, L–606–565 and L–606–566) on the island of O'ahu. Accession records indicate that the remains, '' * * *were presented to Dr. Ruschenberger by a chief of the Sandwich Islands, Dr. R. having solicited them for scientific purposes.'' Prior to 1849, Dr. John K. Townsend collected the remains of one individual (L–606–695) on the island of O'ahu. The human remains collected on O'ahu by Drs. Ruschenberger and Townsend were purchased by the Academy from the Estate of Dr. Samuel G. Morton in 1853. In 1873, William H. Jones, M.D., U.S.N., U.S.S. Portsmouth, collected the remains of twelve individuals from ''old burying grounds on the plains of Wimanalo, O'ahu.'' The remains of nine individuals collected by Dr. Jones in the Hawaiian Islands are listed in the Academy ledgers as having been presented to the Academy at an unknown date. Of these, five (L–606–1998 through 2002) have been identified and inventoried by the University of Pennsylvania Museum and are covered by this notice. At an unknown date the remains of one individual (L–606–1567) were collected on O'ahu. In 1900 Professor Benjamin Sharp donated these remains to the Academy. At an unknown date A. M. Owen, M.D., U.S.N., U.S. Sloop St. Mary, collected the remains of three individuals (L–606–1861, L–606–1862, and L–606–2161) on O'ahu. In 1872, Dr. Owen donated these remains to the Academy.

In 1846, Lieutenant I. G. Strain, U.S.N., collected the remains of one individual (L–606–1300) in the Hawaiian Islands. Prior to 1849, Dr. John K. Townsend collected the remains of one individual (L–606–572) in the Hawaiian Islands. These human remains were purchased by the Academy from the Estate of Dr. Samuel G. Morton in 1853. In 1879, Miss E.S. Boyd donated the remains of one individual (L–606–1863) collected in the Hawaiian Islands to the Academy. At an unknown date, W.M. Gabb donated the remains of one individual (L–606–1872) collected in the Hawaiian Islands to the Academy. At an unknown date, the remains of one individual (L–606–1864) collected in the Hawaiian Islands were donated to the Academy by an unknown person. At an unknown date Captain Waterman collected the remains of one individual (L–606–2003) in the Hawaiian Islands. At an unknown date Captain Waterman presented these remains to the Academy.

Based on the above information, officials of University of Pennsylvania Museum have determined, pursuant to 43 CFR 10.2 (d)(1), that the human remains listed above represent the physical remains of sixty two individuals of Native American ancestry. Officials of the University of Pennsylvania Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between the twenty four human remains catalogued as L–606–1749 through 1768, L–606–1770, L–606–1772, L–606–1773, and L–606–1775, and present-day members of Hui Malama I Na Kupuna 'O Hawai'i Nei, the Office of Hawaiian Affairs and the Hawai'i Island Burial Council. Officials of the University of Pennsylvania Museum have determined

pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between the nineteen human remains catalogued as L–606–2087 through 2096, and L–606–2179 through 2187, and present-day members of Hui Malama I Na Kupuna 'O Hawai'i Nei, the Office of Hawaiian Affairs and the Kauai/Nihau Island Burial Council. Officials of the University of Pennsylvania Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between the thirteen human remains catalogued as L–606–564, L–606–565, L–606–566, L–606–695, L–606–1567, L–606–1861 through 1862, L–606–2161, and L–606–1998 through 2002 and present-day members of Hui Malama I Na Kupuna 'O Hawai'i Nei, the Office of Hawaiian Affairs and the O'ahu Burial Committee. Officials of the University of Pennsylvania Museum have determined pursuant to 25 U.S.C. 3001 (2) that there is a relationship of shared group identity which can be reasonably traced between the six human remains catalogued as L–606–1300, L–606–1863, L–606–1864, L–606–1872, L–606–572, and L–606–2003 and present-day members of Hui Malama I Na Kupuna 'O Hawai'i Nei, and the Office of Hawaiian Affairs.

This notice has been sent to Hui Malama I Na Kupuna 'O Hawai'i Nei, the Office of Hawaiian Affairs, the Hawai'i Island Burial Council, the O'ahu Burial Committee, and the Kauai/Nihau Island Burial Council. Representatives of any other Native Hawaiian organization which believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy A. Sabloff, the Charles K. Williams II Director, the University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia PA 19104–6324, telephone: (215) 898–4051, fax: (215) 898–0657, before November 14, 1996. Repatriation of the human remains to Hui Malama I Na Kupuna 'O Hawai'i Nei, the Office of Hawaiian Affairs, the Hawai'i Island Burial Council, the O'ahu Burial Committee, and the Kauai/Nihau Island Burial Council as stated above may begin after that date if no additional claimants come forward.

Dated: October 9, 1996,

Francis P. McManamon,

Departmental Consulting Archeologist,

Manager, Archeology and Ethnography Program.

[FR Doc. 96–26377 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–70–F

Bureau of Reclamation

Option and Lease Agreement Among the Ak-Chin Indian Community, the United States, and Del Webb Corporation, Maricopa County, AZ

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to prepare an environmental assessment and notice of public scoping meeting.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental assessment (EA) for approval of the provision of leased settlement water under an option and lease agreement among the Ak-Chin Indian Community, the United States, and the Del Webb Corporation. Reclamation is initiating early scoping for the proposed EA and will be conducting a scoping meeting. Reclamation intends that this scoping meeting be used to serve as public scoping for preparation of an environmental impact statement (EIS), should it be determined that one is required.

ADDRESSES: Written comments may be sent to Mr. Bruce D. Ellis, Chief, Environmental Resource Management Division, Phoenix Area Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, AZ 85068–0980. The scoping meeting will be held at New River Elementary School, 48827 North Black Canyon Highway, New River, AZ.

DATES: The scoping meeting to solicit comments on the contents of the EA will be November 2, 1996, at 10:00 a.m. To ensure consideration in the environmental analysis, the comments should be received by Mr. Ellis no later than November 9, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Eto, Environmental Resource Management Division, Phoenix Area Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068–0980; telephone (602) 870–6771.

SUPPLEMENTARY INFORMATION: The Ak-Chin Indian Community has agreed to lease between 6,000 and 10,000 acre-feet per year of water to the Del Webb Corporation (Del Webb). Del Webb plans to construct a 9-mile long water delivery pipeline from Waddell Canal to Villages at Desert Hills (Villages) project, a proposed 5,661-acre future master planned community. The location of Villages is approximately 3 miles north of Carefree Highway and 7 miles east of Lake Pleasant on Interstate 17 in Maricopa County, Arizona.

Reclamation approved categorical exclusion No. PXAO–95–9 in December of 1994 for the Option and Lease Agreement Among the Ak-Chin Indian Community, the United States, and Del Webb Corporation according to Exclusion Category 9.4.D.14. The Categorical Exclusion indicated, however, that ''[t]he environmental impacts which will result from the Secretary's approval of the option and lease agreement are not clear at this time since Del Webb has not yet finalized its plans for taking and using the leased settlement water.'' Del Webb has developed its plans for taking and using the leased settlement water. Reclamation has determined an EA should be prepared to determine whether a Finding of No Significant Impact is appropriate or if an EIS needs to be prepared.

The EA will describe the environmental consequences that would result from the delivery of leased settlement water. Reclamation plans to focus on impacts associated with construction of a water delivery pipeline and treatment plant. The EA will evaluate in detail the proposed action and will discuss alternative pipeline alignments that were considered but rejected from detailed consideration. Key issues to be addressed in the EA will include:

- Biological resource effects, including loss of desert habitat, impacts on plant and wildlife species, and special status species effects;
- Historic and prehistoric cultural resource effects;
- Hydrology, water quality and soils effects;
- Air quality and noise effects;
- Traffic and circulation effects; and
- Land use and aesthetic effects.

The EA will also evaluate indirect effects of the proposed action. In addition, the EA will include a No-Action Alternative. The No-Action Alternative represents the conditions that are assumed to exist in the absence of the Federal action, and provides a basis for comparison with the proposed action. Del Webb has identified alternative water supply options that could be used in the absence of the leased settlement water. Based on this information, Reclamation assumes development of the Villages project will occur in the absence of the proposed action.

Reclamation is circulating this notice for preparation of an EA and early scoping because of considerable public interest and the need to ensure that all

relevant issues are evaluated in the EA. Reclamation will consult with other Federal, State, and local agencies with specific expertise regarding environmental impacts related to the project. If you would like to be placed on a mailing list for any subsequent information, please write or telephone Ms. Eto.

If an EIS is later required, Reclamation will submit a Notice of Intent to prepare an EIS and will provide opportunity for the public to submit written comments suggesting impacts and alternatives that should be addressed in the EIS.

Dated: October 8, 1996.

Larry D. Morton,

Assistant Area Manager.

[FR Doc. 96–26297 Filed 10–11–96; 8:45 am]

BILLING CODE 4310–94–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice

Pursuant to Section 207(d) of the Agricultural Trade and Development and Assistance Act of 1954, as amended, (otherwise known as Pub. L. 480), notice is hereby given that the Pub. L. 480 Title II Draft Close-Out Guidance is being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of the draft guidelines should contact: Office of Food for Peace, Room 323, SA–8, Agency for International Development, Washington, D.C. 20523–0809. Contact person: Gwen Johnson, (703) 351–0110. Individuals who have questions or comments on the draft guidelines, should contact Susan Morawetz at (703) 351–0135.

The thirty day comment period will begin on the date that this announcement is published in the Federal Register.

Dated: September 26, 1996.

William T. Oliver,

Director, Office of Food for Peace.

PUBLIC LAW 480, TITLE II CLOSE-OUT PLAN GUIDANCE

Background

This guidance should be used by all Title II projects that are in the process of closing out, and the documents described below should be used as a reference in preparing a close-out plan. Cooperating Sponsors (CSs) should plan to submit close-up plans to the Office of Food for Peace (FFP) six months prior to the expiration of the project/activity authorization, unless there have been discussions with BHR/FFP concerning continuation of the project.

I. Reference Documents

A. USAID Regulation 11, Section 211.11 Suspension, termination and expiration of program.

This section states, in pertinent parts, that:

''(a) *Termination or Suspension by A.I.D.* * * * When a program is terminated or suspended, title to commodities which have been transferred to the cooperating sponsor, or monetized proceeds, program income and real or personal property procured with monetized proceeds or program income shall, at the written request of USAID, the Diplomatic Post or AID/W, be transferred to the U.S. Government by the cooperating sponsor or shall otherwise be transferred by the cooperating sponsor as directed by A.I.D. Any then excess commodities on hand at the time the program is terminated shall be disposed of in accordance with Section 211.5 (o) and (p) or as otherwise instructed by USAID or the Diplomatic Post.''

''(b) *Expiration of Program*. Upon expiration of the approved program under circumstances other than those described in paragraph (a), the cooperating sponsor shall deposit with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20FT401, any remaining monetized proceeds or program income, or the cooperating sponsor shall obtain approval from AID/W for the use of such monetized proceeds or program income, or real or personal property procured with such proceeds or income, for purposes consistent with those authorized for support from A.I.D.''

Based on the above, all remaining property, funds and commodities must be accounted for at the termination of the project and transferred to the USG, unless USAID approves a plan to allow the Cooperating Sponsor (CS) to use or dispose of the assets. Thus, the close-out plan must be negotiated between USAID and the Cooperating Sponsor for the disposition of all remaining assets.

B. OMB Circular A–110 and Handbook 13—Grants:

In preparing the guidance, BHR/FFP has followed the following:

(1) OMB Circular A–110;

(2) AID Handbook (HB) 13 for grants;

(3) AID's codification of OMB Circular A–110, called 22 CFR 226; and

(4) AID's Automated Directives System (ADS) Chapter 591 on Financial Audits of USAID Contractors, Grantees and Host Government Recipients (which will soon be available on the Internet).

Note that Circular A–110 pertains to all U.S. Government-supported grants and agreements, and HB 13 interprets sections of A–110 relevant for AID-funded agreements. Per HB 13, close-out is defined as follows: ''The closeout of a grant or cooperative agreement is the process by which AID determines that all applicable administrative actions and all required work of the grant or cooperative agreement have been completed by the recipient and AID * * *''

Handbook 13 also states that ''AID closeout procedures include the following requirements:

a. Upon request, AID shall make prompt payments to a recipient for allowable reimbursable costs under the grant or cooperative agreement being closed out.

b. The recipient shall immediately refund any balance of unobligated (unencumbered) cash that AID has advanced or paid and that is not authorized to be retained by the recipient for use in other grants or cooperative agreements.

c. AID shall obtain from the recipient within 90 calendar days after the date of completion of the grant or cooperative agreement all financial, performance, and other reports required as the condition of the grant or cooperative agreement. AID may grant extensions when requested by the recipient.

d. When authorized by the grant or cooperative agreements, AID shall make a settlement for any upward or downward adjustments to AID's share of costs after these reports are received.

e. The recipient shall account for any property acquired with AID funds, or received from the Government in accordance with the provisions of paragraph 1T of this chapter.

f. In the event a final audit has not been performed prior to the closeout of the grant or cooperative agreement, AID shall retain the right to recover an appropriate amount after fully considering the recommendations on questioned costs resulting from the final audit.''

C. USAID Regulation 2, Overseas Shipments of Supplies by Voluntary Non-Profit Relief Agencies

Cooperating Sponsors that received PL480 funds for Ocean, Inland, Internal Transportation, Storage and Handling (ITSH) should also report on the status of these funds in their close-out plans. ITSH would only apply to CSs implementing emergency rather than development programs. USAID

Regulation 2 for Shipping should be referenced for this purpose.

II. Regulations and Sources of USAID Funds

Regulation 11 (22 CFR, Part 211) pertains to use and disposition of Title II resources. However, because Reg. 11 does not contain specific grant agreement language, AID's Handbook 13 is typically used as guidance in the management of Section 202(e) grants. Thus, this handbook, any provisions that are part of a CS's grant agreement, as well as the 22 CFR (Part 226.71—Close Out Procedures) should be referenced when closing out Section 202(e) grants and activities. Likewise, if a CS has received Development Assistance (DA) resources (most likely through a Mission-funded grant), the CS should use Handbook 13 and 22. CFR, Sub-Part D for reference.

Note on Relationship of This Guidance to Other AID Regulations and Instructions: Grants and cooperative agreements negotiated with USAID frequently contain standard provisions for closing them out. The close-out provisions in these grant agreements should be consistent with provisions found in the regulations and handbooks cited above. The food-aid related grants most likely to contain close-out language include the following: Section 202(e), Institutional Strengthening Grants (ISGs), and Development Assistance Grants provided by the Mission for Title II program support.

It is also important to note that because most food aid projects receive more than one type of funding (e.g. Title II commodities, 202(e), ISGs, ITSH, etc.), CSs will be expected to follow the close-out regulations associated with each of these resources (as stipulated in the grant agreement or funding document). The guidance contained herewith is not intended to replace any of the regulations associated with specific funding sources, but rather to provide a format in which CSs can report to BHR/FFP and USAID Missions their overall plans for closing out a specific food aid program, regardless of the source of funding.

III. Responsibilities Within USAID

Note that BHR/FFP serves as Grants Officer for Section 202(e) grants and handles Title II-related issues; M/OP serves as Grants Officer for Institutional Strengthening Grants, Matching Grants and other DA-funded support from Washington. If grants were provided directly by Missions to CSs, the Mission grants officer will need to be consulted on termination of the grant during close out. Although coordination with several offices could be required depending upon the source of funds, in all cases, both the Mission and BHR/FFP should be consulted during close out and receive copies of the CS's close-out plans. The CS should also expect to work closely with the Mission in determining the feasibility of various close-out options.

Although Missions and FFP should both be consulted during close-out, note that final approval of close-out plans will be carried out in accordance with the signed agreements between USAID and the Cooperating Sponsors, and approved as follows:

Title II commodities, Section 202(e), monetization proceeds, and ITSH: Final approval will be provided by BHR/FFP with Mission concurrence.

Development Assistance Funds, Including FFP-provided Institutional Strengthening Grants: Final approval will be provided by the cognizant grants officer whose office awarded the grant. This would likely be the Mission (if the funds were Mission provided) or the Office of Procurement in AID/Washington.

Guidelines For Preparing Plan

To assist in preparation of close-out plans for submission to Missions and USAID/W, BHR/FFP is providing the following guidance for submission of closeout plans by all CSs:

I. Summary on Close-Out

(1) Provide a brief summary of why the project is being suspended/terminated and the implications, if any, for the country and Title II beneficiaries, the project, and the CS's in-country operations.

(2) Provide a brief summary of resources provided over the life of the project by USAID, the CS, the host government, other donors and beneficiaries. Also briefly summarize the sectors supported, and the location in the country where investments were made.

(3) Provide a brief summary (by component if relevant) of where the project is at this point in meeting its stated goals and objectives, and where it will be at the date of close out.

(4) State whether there have been any recent audits of the project (or will be) and the status of resolving outstanding audit recommendations. Attach a copy of the audit to the close-out plan or send separately to the USAID Mission and BHR/FFP (if this has not already occurred).

(5) State whether there have been (or will be) a final or impact evaluation of the project. If it has been completed, attach a copy of the evaluation to the close-out plan or send separately to the USAID Mission and BHR/FFP (if this has not already occurred). If an evaluation has not been completed but is planned, discuss briefly plans to carry out the evaluation and if possible, attach the evaluation Scope of Work (SOW).

II. Lessons Learned

Provide a brief summary of lessons learned from the project that might be relevant to design, implementation and evaluation of other Title II projects, either in the present country or others.

III. Close-Out Schedule

Provide a detailed implementation plan and schedule for closing out the project that details the disposition of property and equipment; the termination of staff; the finalization of all audits, evaluations and required reports; the settling of claims; and other critical activities.

IV. Final Reports

Provide any reports (e.g. final report, Annual Results Report, Final Evaluation) required either in the project agreement, or in writing by USAID.

V. Disposition of Commodities, Assets, Equipment, and Funds

(1) *Commodities:* Prior to the project completion date, all commodities should be distributed to the intended recipients. If this is not possible, the CS should propose an alternative solution, and advise the Mission and BHR/FFP of the quantities, location and condition of the food.

(2) *Non-expendable property/equipment procured through Section 202(e), monetization or other USAID-provided funds:* The close-out plan should include an inventory of all non-expendable property/equipment procured with funds provided by USAID, or obtained through a monetization of Title II commodities with a unit acquisition cost exceeding $5000, and with a useful life estimated to exceed two years. The CS should describe how it proposes to dispose of each piece of property and what will be done with the proceeds if the items are sold.

(Note: For additional information on and definitions of non-expendable property/equipment (as defined by the U.S. Government), please check OMB Circular 110, Subpart A and/or USAID's 22 CFR, sections 226.2, 226.34 and 226.71).

(3) Monetization-Generated Local Currency and Program Income

(a) The close-out plan should identify the balance of local currency and program income that will remain at the date of close out. Note that local currency and program income should include all resources applied to implementation of the subject Title II

project, including Title II and Title III monetization proceeds, interest and reflows, container funds and beneficiary contributions. If a balance is anticipated, the close-out plan should describe a proposed use or transfer of the remaining monetization proceeds. Proposed uses must be consistent with those authorized in USAID Regulation 11, Section 211.5.

(b) If USAID authorizes use of remaining local currency and program income by the cooperating sponsor, to ensure that the resources are being used for the agreed-upon purpose, the CS will be expected to report annually on how these funds, as well as any interest and reflows, are being used. USAID and the CS will negotiate the length of time this annual reporting shall continue, based upon what makes sense given the agreed-upon activities. Use of the funds should also be reflected in the CS's annual A–133 audit.

For use of local currencies and program income in revolving accounts or similar mechanisms, in addition to the aforementioned reports and audits, it is likely that the appropriate Food for Peace Officer/USAID Food Aid manager will have to actually monitor the account's first use of the post-program funds (one revolution or one cycle of the revolving account after close-out).

(4) Dollar resources (from Section 202(e), Mission provided Development Assistance (DA) funding, and Title II Transportation Funding)

(a) As stated in the background section, for any dollar resources provided by USAID for support of food aid programs, the Cooperating Sponsor should follow any close-out guidance attached as standard provisions to its grant agreement.

(b) The CS should provide detailed information on all outstanding invoices that will be submitted for ocean and inland transportation charges applicable to the close-out project/activity. Only invoices for reported charges can be honored.

(c) If there are ITSH resources remaining at the end of the project, these funds can be used in other countries approved in the Procurement Authorization and Purchase Request (PA/PR). Otherwise, the ITSH funds will be deobligated and returned to the U.S. Government. In all cases, the CS will need to submit a pipeline analysis and proposal for using or returning remaining ITSH funds to FFP's Emergency Response Division, prior to any movement of funds.

(d) As with remaining monetized funds, the close-out plan should identify the source and balance of all dollar resources (including interest and reflows) that will remain at the date of close out. If a balance is anticipated, the close-out plan should include a proposed use or transfer of the remaining dollar proceeds. Proposed uses must be consistent with those authorized in USAID Regulation 11. Note that because dollar resources require the greatest degree of monitoring by the U.S. Government, USAID Offices and Missions will be encouraged not to approve the reprogramming of remaining U.S. dollar resources after close-out, but rather to have these funds returned to the U.S. Government.

(e) If USAID should authorize the use of remaining dollar resources by the cooperating sponsor, to ensure that the resources are being used for the agreed-upon purposes, the CS will be expected to report annually on how these funds, as well as any interest and reflows, are being used. USAID and the CS will negotiate the length of time this annual reporting shall continue, as well as the likelihood of on-site monitoring by the appropriate regional or other Food For Peace Officer/USAID Food Aid manager, based upon what makes sense given the agreed-upon activities. Use of the funds should also be reflected in the CS's annual A–133 audit.

VI. Outstanding Claims

(a) All outstanding claims resulting from damage, loss or improper distribution of commodities must be completed prior to termination of the Title II agreement. These must be done in accordance with section 211.9 of Regulation 11.

(b) It is recommended that before the close-out plan is submitted, the CS notify USAID (the Mission and BHR/FFP) in writing if there are losses for which it is directly responsible pursuant to Reg. 11, Section 211.9(d). These cases will need to be individually reviewed by USAID and by the U.S. Department of Agriculture's (USDA's) Office of Debt Management, which should be contacted at the following: USDA Office of Debt Management, Kansas City Management Office, P.O. Box 419205, Kansas City, MO 64141–6205, phone: (816) 926–6158.

(c) It is also advisable that before the close-out plan is submitted, the CS notify the Mission and BHR/FFP if there are losses due to the fault of others, pursuant to Reg. 11, Section 211.9(e), and whether the CS has filed a claim, made demands for collection, and pursued legal action. These cases will have to be individually reviewed by USAID and by USDA.

VII. Audit

(a) A U.S.-based non-profit organization is required to submit its OMB Circular A–133 Audits within 13 months after the close of its fiscal year, which shall be accepted as fulfilling the close-out audit requirements. Individual close-out audits (of specific country projects) will only be requested when a specific need is identified by USAID personnel, and coordinated with the Office of Procurement's Contract Audit Management Branch (M/OP/PS/CAM). (Ref. ADS 591.5.8).

(b) For non-U.S.-based organizations, the contract/grant officer shall determine whether a close-out audit shall be conducted based on a review of the organization's audits covering all of the fiscal year periods for the agreements to be closed out. A request for a specific close-out audit shall be made by USAID personnel to the cognizant Regional Inspector General's Office (Ref. ADS 591.5.8).

(c) Should an audit concern arise regarding receipt and disbursement of Title II program and grant funds, such records shall be retained for 3 years from the receipt by USAID of the audit report.

VIII. Personnel

To the extent that the CS must discharge and/or reassign staff as a result of this program termination, the CS must comply with all discharge, reassignment and severance laws of the host country. The close-out plan should describe how this will be accomplished and the associated costs.

IX. Close-Out Budget

The CS should provide a budget detailing all costs associated with close-out (e.g. legal resolution of claims, payment of loans, disposition of property, completion of audits and evaluations, and termination of personnel). The plan should clearly identify whether these expenditures were planned in the original program budget, or whether additional resources will be needed to meet these expenses. If the latter, the plan should describe how the CS plans to cover these unanticipated expenses.

X. Other Relevant Information

If there is other information relevant to the close-out of this Title II project which has not been requested in other parts of this guidance, the CS should provide this information under item X.

[FR Doc. 96–26247 Filed 10–11–96; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–751 (Preliminary)]

Open-End Spun Rayon Singles Yarn From Austria

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Austria of open-end spun rayon singles yarn, provided for in subheading 5510.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, as amended in 61 FR 37818 (July 22, 1996), the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the Federal Register as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On August 20, 1996, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Open-End Spun Rayon Yarn Producers, Gastonia, NC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of open-end spun rayon singles yarn from Austria. Accordingly, effective August 20, 1996, the Commission instituted antidumping investigation No. 731–TA–751 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 28, 1996 (61 FR 44344). The conference was held in Washington, DC, on September 10, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on October 4, 1996. The views of the Commission are contained in USITC Publication 2999 (October 1996), entitled ''Open-End Spun Rayon Singles Yarn from Austria: Investigation No. 731–TA–751 (Preliminary).''

Issued: October 8, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–26251 Filed 10–11–96; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 C.F.R. 50.7 and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Burlington Northern Railroad Co.*, Civil Action No. C–96–5871–FDB, was lodged on September 30, 1996 with the United States District Court for the Western District of Washington. In a complaint filed contemporaneously with the lodging of the proposed consent decree, the United States alleged that Defendants Burlington Northern Railroad Company (''BNRC''), BN Leasing Corporation (''BN''), Amsted Industries Incorporated (''Amsted''), Pioneer Builders Supply, Inc. (''PBS''), South Tacoma L.L.C. (''STLLC''), and the City of Tacoma, Department of Public Utilities (''TPU'') are liable as owners or operators of the South Tacoma Field Operable Unit of the Commencement Bay South Tacoma Channel Superfund Site located in Pierce County, Tacoma, Washington (''Site''). Pursuant to Section 107(a) (1) and (2) of the CERCLA, 42 U.S.C. 9607(a) (1) and (2), the complaint also alleges that Defendant Atlas Foundry & Machine Company (''Atlas''), by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site. The complaint further alleges that the Environmental Protection Agency (''EPA'') and the Department of Justice incurred and continue to incur costs for response actions at and in connection with the Site.

The proposed consent decree provides that the Defendants will pay $2,000,000 to the United States for the past costs incurred and paid by EPA and the Department of Justice through February 28, 1995, pay future response costs to be incurred by the U.S. and perform the Remedial Action as set forth in the September 29, 1994 Record of Decision (''ROD''). The proposed Consent Decree also provides that the United States covenants not to sue the defendants under both Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. The Department will also schedule a public meeting in the affected area, if requested, in accordance with Section 7003(d) of RCRA. Comments and/or a request for a RCRA public meeting should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Burlington Northern Railroad Co.*, DOJ Ref. #90–11–3–1516.

The proposed consent decree may be examined at the Office of the United States Attorney, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104; the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th

Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $27.25 (25 cents per page reproduction costs), for a copy of the consent decree only or $107.25, for a copy of the consent decree with appendices, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 96–26283 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Eveready Battery Company, Inc.*, Civil Action No. 1–96CV–10041, was lodged on September 27, 1996 with the United States District Court for the Southern District of Iowa, Western Division. In a complaint filed contemporaneously with the lodging of the proposed consent decree, the United States alleged that Defendants R. John Swanson and Blanche Kinnison, Co-executors of the Estate of Lowell G. Kinnison, and Blanche I. Kinnison are liable as owners of the Red Oak Landfill Superfund Site located in Montgomery County, Iowa (''Site'') pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1). The complaint alleges that defendant City of Red Oak is liable as a former owner and operator of the Site pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. 9607(a)(2). The complaint also alleges that Defendants Douglas & Lomason Co. and Uniroyal, Inc. by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site and are liable pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3). The complaint also alleges that Defendants Eveready Battery Company, Inc., Ralston Purina Company, Bangor Punta Diversified Holdings Corp., Uniroyal Holdings, Inc., and Universal Cooperatives, Inc., are successors to and assumed liability for persons who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site and are liable pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3). The complaint further alleges that the Environmental Protection Agency (''EPA'') and the Department of Justice incurred and continue to incur costs for response actions at and in connection with the Site.

The proposed consent decree provides that the Defendants will pay $769,385 to the United States for the past costs incurred and paid by EPA and the Department of Justice prior to March 21, 1996, pay $200,000 for future response costs to be incurred by the U.S. and perform the Remedial Action as set forth in the March 31, 1993 Record of Decision, as modified by the January 30, 1996 Explanation of Significant Difference (''ROD''). The proposed Consent Decree also provides that the United States covenants not to sue the defendants under both Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. The Department will also schedule a public meeting in the affected area, if requested, in accordance with Section 7003(d) of RCRA. Comments and/or a request for a RCRA public meeting should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Eveready Battery Company, Inc.*, DOJ Ref. #90–11–2–927.

The proposed consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse Annex, 110 East Court Avenue, Suite 286, Des Moines, Iowa 50309–2053; the Region VI Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $26.00 (25 cents per page reproduction costs), for a copy of the consent decree only or $36.75, for a copy of the consent decree with appendices, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section.

[FR Doc. 96–26282 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 25, 1996, and published in the Federal Register on July 31, 1996, (61 FR 39986), Bridgeway Trading Corporation, 7401 Metro Blvd., Suite 480, Minneapolis, Minnesota 55439, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I, as seed which will be rendered non-viable and used as bird food.

No comment or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Bridgeway Trading Corporation to import marihuana is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 19, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–26319 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 27, 1996, and published in the Federal Register on July 5, 1996, (61 FR 35265), Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Dupont Pharmaceuticals to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 25, 1996.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 96–26320 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 954–15]

Michael J. Septer, D.O., Grant of Request To Modify Continuation of Registration With Restrictions

On November 4, 1993, the then-Director, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael James Septer, D.O. (Respondent) at two locations in Tucson, Arizona and one location in Sierra Vista, Arizona, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration (BS0321454, BS0321430 and BS0321442) under 21 U.S.C. 824(a)(4), and deny any request to modify such registrations by changing the registered address, and deny any pending applications for renewal of such registrations as a practitioner under 21 U.S.C. 823(f), as being inconsistent with the public interest.

By letter dated December 2, 1993, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in Grand Rapids, Michigan on February 28, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, the parties agreed that two of the DEA registrations that were the subject of the proceedings (BS0321454 and BS0321442) had terminated as a matter of law pursuant to 21 CFR 1301.62. Consequently, the scope of the proceedings was narrowed to determine whether the Respondent's DEA Certificate of Registration (BS0321430) should be modified or transferred from Arizona to Michigan, or whether such action should be denied for reasons that the Respondent's continued registration with DEA as a practitioner is inconsistent with the public interest as determined pursuant to 21 U.S.C. 823(f) and 825(a)(4). Both parties called witnesses to testify and introduced documentary evidence. After the hearing, both sides submitted proposed findings of fact, conclusions of law and argument. On May 30, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Deputy Administrator grant the Respondent's request to modify his DEA Certificate of Registration (BS0321430) so that it may be transferred from Arizona to Michigan, and to impose certain conditions on the registration. Judge Tenney's recommended conditions for the registration contemplated that the Respondent would continue to be employed at Hackley Occupational Health Clinic (HOHC), his place of employment at the time of the hearing, or at another facility approved by DEA that would provide a structured environment similar to HOHC. Neither party filed exceptions to the Administrative Law Judge's decision, and on June 29, 1995, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator.

By letter dated October 23, 1995, an attorney representing HOHC notified the Deputy Administrator that the HOHC Vice President, who testified at the hearing on behalf of the Respondent and who was in charge of monitoring the Respondent at HOHC, was no longer employed by HOHC. In addition, the letter indicated that Respondent and HOHC have voluntarily terminated their employment agreement. On November 1, 1995, the Deputy Administrator returned the record to the Administrative Law Judge, along with a copy of the October 23, 1995 letter from the HOHC attorney, and requested that Judge Tenney reopen the record to add this letter and to take whatever other actions he deemed necessary to consider the information contained in the letter. By order dated November 1, 1995, Judge Tenney included the letter in the record and allowed the parties to notify him of their recommendations on how to proceed in light of the HOHC's letter. Respondent was the only party to file a response and submitted a letter requesting that he be allowed to continue his DEA registration until the necessary monitors are available at his new employment. On December 6, 1995, the Administrative Law Judge issued an Addendum to his Recommended Ruling dated May 30, 1995, recommending that Respondent be allowed to continue his DEA registration provided that the nearest DEA office approve the monitoring conditions at any new place of employment. No exceptions were filed to the Addendum and the record was again transmitted to the Deputy Administrator on May 16, 1996.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with noted exceptions, the opinion and recommended ruling of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that on November 25, 1980, a ten-count indictment was filed against the Respondent in the United States District Court for the District of Arizona. Six of the ten counts alleged mail fraud in violation of 18 U.S.C. 1341 with respect to certain Medicare claims filed by the Respondent. The remaining counts alleged insurance fraud in violation of 42 U.S.C. § 1395nn, in that Respondent attempted to secure payment for ''medical services never performed and medical supplies never placed, rented or purchased . . . .'' On May 4, 1981, following a jury trial, the Respondent was convicted of the six mail fraud counts. The court suspended imposition of sentence for a period of three years, placed the Respondent on probation during that time, and ordered that he spend one day per week for one year furnishing community service without compensation. There is little evidence in the record as to the underlying facts that led to Respondent's convictions. The Respondent however, testified at the hearing that the convictions were the result of his making up permanent placement dates for transcutaneous electrical nerve stimulators (TENS) to assure prospectively that he was reimbursed when the TENS were actually placed on his patients.

As a result of his mail fraud convictions, on October 21, 1981, the Board of Osteopathic Examiners of the State of Arizona placed the Respondent's license to practice osteopathic medicine on probation for three years to run concurrently with the criminal probation. Also as a result of

his convictions, on December 9, 1981, the Respondent was suspended from participation in the Medicare program by the United States Department of Health and Human Services (HHS). Recognizing that the offenses were not of long duration and there were no adverse impacts on program patients, Respondent's Medicare privileges were restored.

On July 1, 1981, the United States of America filed a civil complaint against the Respondent in the United States District Court for the District of Arizona seeking a judgment in excess of $44,000 based upon Respondent's filing of fourteen false, fictitious, and fraudulent Medicare claims. On January 11, 1982, the court approved a consent judgment whereby the Respondent agreed to pay a civil fine of $8,265.60.

In 1987, based upon reports that Respondent was excessively purchasing anorectic controlled substances, DEA and the Board of Osteopathic Examiners of the State of Arizona (BOE) initiated an investigation of Respondent. On September 28, 1988, pursuant to an administrative inspection warrant, DEA and BOE investigators conducted an accountability audit at Respondent's office located at 344 West Ajo, Tucson, Arizona, covering the period February 1, 1987 through September 28, 1988. The audit revealed a shortage of approximately 190,000 to 203,000 dosage units of Schedule III and IV controlled substances, recordkeeping deficiencies and security violations. As a result of the audit, on April 11, 1989, a civil complaint was filed against Respondent, doing business as Tucson Family Practice Clinic, in the United States District Court for the District of Arizona, seeking civil penalties in excess of $375,000 for violations of the Controlled Substances Act. A consent judgment was approved on December 18, 1989, in which the Respondent admitted various allegations in the complaint and the United States agreed to dismiss the other counts with prejudice. Subsequently, on March 13, 1990, the court ordered that Respondent pay a civil penalty of $40,000.

After completion of the civil proceedings, on May 4, 1990, DEA issued an Order to Show Cause proposing to revoke Respondent's DEA Certificate of Registration. A hearing was held before an Administrative Law Judge in September 1991. No decision was rendered by the Administrative Law Judge, since the parties entered into a Memorandum of Agreement in early 1992. The agreement permitted the Respondent to retain his DEA registration subject to certain terms and conditions for a period of two years. For instance, the Respondent was prohibited from prescribing, administering, dispensing, or possessing any Schedule II controlled substances for purposes of weight reduction or control of obesity. The Respondent further agreed that when prescribing, administering and/or dispensing Schedule III, IV and V controlled substances for purposes of weight reduction or control of obesity, he would be limited to periods of time as recommended in the current Physicians' Desk Reference (PDR), and that the phrase ''short term'' as used in the PDR will mean up to eight weeks. In addition, Respondent agreed to conduct accountability audits on a daily basis, and to notify the DEA investigator of any change in his business addresses.

Following execution of the Memorandum of Agreement, in September 1992, Respondent moved to Mississippi and commuted to his practice in Arizona. On October 8, 1992, Respondent sought medical licensure in the State of Mississippi. On the licensure questionnaire, Respondent denied ever having his DEA Certificate of Registration revoked or restricted even though his DEA registration was restricted approximately eight months earlier when the Memorandum of Agreement was executed. As a result of his responses, the Mississippi State Board of Medical Licensure (Mississippi Board) issued a letter to Respondent dated December 18, 1992, advising him that if he wished to pursue his application for licensure in Mississippi an ''Order to Show Cause'' would be issued. Respondent testified at the hearing that he attempted to honestly complete the Mississippi licensure questionnaire, however, in light of the Mississippi Board's letter, he decided to move to Michigan rather than pursue medical licensure in Mississippi.

On October 20, 1992, Respondent contacted DEA and expressed concern that one of his employees at his Arizona office may have diverted controlled substances. Consequently, DEA investigators went to Respondent's Arizona clinic on October 26, 1992, to conduct an accountability audit. The employee present during the audit indicated that she had been instructed by Respondent to cooperate fully in the investigation. The audit covered an approximate 10 month period in 1992 and revealed a shortage of 56 dosage units. At the hearing in this matter, the DEA investigator described the shortage as ''very good for that length of time with the quantity that he was dispensing; very good.'' The investigator also indicated that he was ''very satisfied'', and felt no further action was necessary.

By November of 1992, the Respondent decided not to return to Arizona, since a bench warrant had been issued for spousal maintenance and child support arrearages. Respondent testified at the hearing before Judge Tenney that all attempts to obtain physician coverage for his Arizona practice were unsuccessful. He then contacted the Arizona Nursing Board (Nursing Board) and based upon information from the Nursing Board, Respondent believed that it was permissible for a nurse practitioner to dispense controlled substances without a physician present. According to the Respondent the Nursing Board stated that: (1) a nurse practitioner, duly licensed in the State of Arizona, is permitted to prescribe and dispense controlled substances; (2) the presence of a physician on site would not be required; and (3) nurse practitioners are able to conduct their own practices without the supervision of a physician. Respondent then hired a nurse practitioner, who was left in charge of his Arizona office, and controlled substances were dispensed without the direct supervision of the Respondent.

On December 7, 1992, investigators of DEA and BOE went to Respondent's Arizona office to investigate whether controlled substances were being dispensed without a physician on the premises. An individual, identified as Respondent's advisor, was present and the investigators provided him with a copy of Arizona Revised Statutes § 32–1871(D) which states that a physician ''shall provide direct supervision of a nurse or attendant involved in the dispensing process.'' The section further provides that the term ''direct supervision' means that a physician is present and makes the determination as to the legitimacy or the advisability of the drugs . . . to be dispensed.'' The investigators advised the individual that Respondent's office should be shut down since controlled substances were being dispensed without a physician present. The individual stated that he and Respondent had done extensive research and did not believe that there was any violation of the law.

Based upon conversations with Respondent's advisor, members of Respondent's staff, and a review of the records maintained at Respondent's office, the investigators discovered that controlled substances had in fact been dispensed from Respondent's Arizona office without a physician present; that anorectics had been dispensed for periods longer than eight weeks in violation of the Memorandum of

Agreement; and that audits were not consistently taken on a daily basis also in violation of the Memorandum of Agreement. In addition, the investigators discovered that in Respondent's absence, employees were dispensing controlled substances to each other and to family members.

During the course of the investigation, it was also revealed that between March 1, 1993, and August 26, 1993, while in Michigan, the Respondent wrote or authorized 96 prescriptions for controlled substances using DEA Certificate of Registration BS0321430 issued to him in Arizona. Respondent failed to notify DEA of his change of address to Michigan in violation of the Memorandum of Agreement and failed to obtain a modification of his registration to change the address to Michigan before writing or authorizing these prescriptions. Respondent testified at the hearing in this matter that he thought ''that all of his credentials were in place for practicing medicine and prescribing'' in Michigan, and that he ''would never have written any of those prescriptions at Sparta Health Center [in Michigan] had I known my control [sic] substance number was not yet valid.''

Subsequently, in August 1993, the DEA investigators contacted the Respondent and advised him of the violations of the Memorandum of Agreement. During the conversation, Respondent denied responsibility for what had occurred at the Arizona clinic when he was not present. At the hearing before Judge Tenney however, Respondent partly blamed incorrect advice of counsel for his actions, but also admitted failing to focus on his responsibilities, and that he ''should have kept a closer look over . . . the control logs.'' Almost immediately after being contacted by DEA, the Respondent requested modification of his DEA registrations to Michigan.

During the hearing, the DEA investigator acknowledged that he and the Respondent have always had a good working relationship, and have exhibited a spirit of cooperation and forthrightness in their dealings with one another. He further indicated that they have ''always tried to accommodate each other.''

On the day of the hearing, the Arizona Board of Osteopathic Examiners served a complaint upon the Respondent. The complaint was based, in part, on the Respondent's failure to directly supervise his employees in late 1992. However, there is nothing in the record to indicate the disposition of this complaint.

At the time of the hearing before Judge Tenney, Respondent was working at HOHC. The Vice President of Operations for HOHC (Vice President) testified on behalf of Respondent at the hearing, and candidly stated that ''[the Respondent] has made a lot of glaring mistakes * * *. I would even go so far as to say they've been real dumb.'' Nonetheless, the Vice President testified that he was impressed with Respondent's abilities; that Respondent ''does occupational medicine very well''; that Respondent is a ''quality physician''; that Respondent ''relates to people [and h]e knows what he's doing''; and that his diagnoses are ''fine''.

The Vice President testified that Respondent's lack of a DEA registration is ''somewhat limiting'', and if Respondent's request for modification were granted, HOHC would be willing to comply with any type of auditing or monitoring systems that would enable Respondent to handle controlled substances at HOHC. Respondent, when testifying about his past and current employment, stated that he was not interested in dispensing controlled substances anymore and he will ''never again'' take on that degree of responsibility that was associated with his former position as medical director of a multi-location facility. However, subsequent to the hearing, an attorney representing HOHC informed DEA in a letter dated October 23, 1995, that the Respondent and the Vice President were no longer employed by HOHC.

Documentary evidence is in the record that indicates that Respondent falsified two of his applications filed with DEA. On his December 18, 1990 application for registration, and his February 13, 1992 renewal application, Respondent answered ''No'' to the question which asks whether his State professional license was ever ''revoked, suspended, denied, restricted or placed on probation,'' when in fact his license to practice osteopathic medicine had been placed on probation for three years in 1981. In addition, on his February 13, 1992 renewal application, Respondent answered ''No'' to the question which asks whether his Federal controlled substance registration was ''revoked, suspended, restricted or denied''. Technically, there was no falsification regarding this answer since the Memorandum of Agreement which imposed restrictions on Respondent's DEA registration, while signed by Respondent on January 7, 1992, was not actually fully executed until February 24, 1992, after the renewal application was submitted.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

In this case, factors one, two, four and five are relevant in determining whether the Respondent's continued registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate licensing board * * *,'' in 1981, the Arizona Board of Osteopathic Examiners placed Respondent's license on probation for three years, based upon his mail fraud convictions. However, the Acting Deputy Administrator attaches very little significance to this action since it occurred approximately 15 years ago and did not involve his handling of controlled substances. The State of Arizona did file a complaint against the Respondent in 1995, however, there is no evidence in the record as to the disposition. In addition, there is no evidence in the record that the State of Michigan has taken any action against Respondent's license to practice osteopathic medicine in that state. Thus the Acting Deputy Administrator concludes that factor one is of little relevance in determining the public interest in this case.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' the Acting Deputy Administrator agrees with Judge Tenney's conclusion that ''[i]t is readily apparent from the evidence that the Respondent has demonstrated an

inability to dispense controlled substances as part of his medical practice.'' The 1988 audit revealed significant overages and shortages of various Schedule III and IV substances, as well as other recordkeeping and security violations, resulting in Respondent's payment of a $40,000 civil penalty. Although, a subsequent audit in 1992 revealed a shortage of 56 dosage units over a 10 month period, which according to the DEA investigator, who testified at the hearing, was ''very good for that length of time with the quantity [Respondent] was dispensing,'' Respondent continued to have other problems with his dispensing of controlled substances. He violated the Memorandum of Agreement by failing to conduct daily audits of the dispensing of controlled substances from his Arizona office, and by dispensing controlled substances to individuals for weight reduction or control of obesity for longer than eight weeks. Additionally, he allowed the employees at his Arizona office to dispense controlled substances without adequate supervision. Respondent testified at the hearing that based upon advice he received from the Arizona Nursing Board he did not think that he needed to be present when controlled substances were dispensed and thought that it was permissible to leave a nurse practitioner in charge of his Arizona practice. This however does not justify his cavalier behavior. In fact, the Respondent himself readily concedes that he ''should have kept a closer look over * * * the control logs.'' Thus, factor three is significant in evaluating the public interest in this case.

As to factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances'', the Respondent violated Arizona Revised Statutes § 32–1871, by failing to provide direct supervision to his employees that dispensed controlled substances. In addition, the Acting Deputy Administrator finds that Respondent violated 21 CFR 1301.71 by failing to ''provide effective controls and procedures to guard against theft and diversion of controlled substances.'' In evaluating a registrant's practice, a consideration is ''[t]he adequacy of supervision over employees having access to * * * storage areas.'' 21 CFR 1301.71(b)(11). Consequently, factor four is relevant in determining whether Respondent's continued registration is inconsistent with the public interest.

As to factor five, the Government argues that Respondent has ''not demonstrated an ability to accept the responsibilities of a DEA registration,'' and that he ''has attempted to shift the blame to [others] for his predicament.'' However, as Judge Tenney noted in his opinion, ''[a]lthough the Respondent partly blamed improper advice of counsel for his decisions, he also admitted failing to focus on his responsibilities, and that he 'should have kept a closer look over * * * the control logs.' '' In addition, the Respondent's testimony at the hearing indicated that he recognizes that he had problems with dispensing controlled substances, and consequently is not interested in dispensing controlled substances in the future. The Acting Deputy Administrator concludes that the evidence does not support the Government's contentions regarding factor five.

The Acting Deputy Administrator agrees with Judge Tenney's conclusion that factors one and five are of little significance, but that the Government has established a prima facie case regarding the relevance of factors two and four in determining the public interest. Therefore, grounds exist to revoke or suspend the Respondent's registration as inconsistent with the public interest. In addition, based upon Respondent's material falsification of his December 18, 1990 and February 13, 1992 applications for DEA registration, grounds exist to revoke his registration pursuant to 21 U.S.C. 824(a)(1).

The Acting Deputy Administrator concludes that neither complete revocation nor any unrestricted registration is in the public interest at this time. Respondent has clearly had problems with the handling of controlled substances in the past, however, most, if not all of those problems stemmed from his significant responsibilities at his prior private practice or from his dispensing of controlled substances. Judge Tenney recommended that Respondent's registration not be revoked, but instead be restricted, *inter alia*, to the closely monitored prescribing of Schedule III, IV and V controlled substances at HOHC, or at another DEA approved facility. As the letter HOHC attorney indicated, the Respondent is no longer employed at HOHC. The Acting Deputy Administrator agrees that strict controls must be imposed upon the Respondent's registration. This ''will allow the Respondent to demonstrate that he can responsibly handle controlled substances in his medical practice, yet simultaneously protect the public by providing a mechanism for rapid detection of any improper activity related to controlled substances.'' *Steven M. Gardner, M.D.*, Docket No. 85–26, 51 Fed. Reg. 12,576 (1986). However, the Acting Deputy Administrator concludes that with these restrictions in place, it is unnecessary for the Respondent to obtain DEA's prior approval regarding the specific setting in which he handles controlled substances as was recommended by Judge Tenney.

The Acting Deputy Administrator concludes that the modification of Respondent's DEA Certificate of Registration (BS0321430) from Arizona to Michigan is in the public interest with the following limitations placed upon the registration:

(1) The Respondent's controlled substance handling authority shall be limited to the writing of prescriptions for Schedule III, IV and V controlled substances only. He shall not dispense, administer, possess, or store any controlled substances. The only exception to this limitation is that the Respondent may possess controlled substances which are medically necessary for his own use and which he has obtained lawfully from another duly authorized physician.

(2) The Respondent shall maintain a log of all prescriptions that he issues. At a minimum, the log shall indicate the date that the prescription was written, the name of the patient for whom it was written, and the name and dosage of the controlled substance(s) prescribed. The Respondent shall maintain this log for a period of three years from the effective date of this final order. Upon request by the Special Agent in Charge of the DEA Detroit Field Division, or his designee, the Respondent shall submit or otherwise make available his prescription log for inspection.

(3) By the effective date of this final order, the Respondent shall notify the Special Agent in Charge of the DEA Detroit Field Division, or his designee, of his place of employment at that time. Thereafter, the Respondent shall immediately notify the Special Agent in Charge of the DEA Detroit Field Division, or his designee, of any changes in his employment.

(4) These restrictions shall remain in effect for three years from the effective date of this final order.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BS0321430, issued to Michael J. Septer, D.O., be modified by transferring it to Michigan, and any pending applications be granted, with the above restrictions. This order is effective November 14, 1996.

Dated: October 8, 1996.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 96–26321 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection: Comments Requested

ACTION: Notice of information collection under emergency review.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by October 10, 1996. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Deborah Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC, 20503.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until December 16, 1996. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Title of the Form/Collection:* Application—Alternative Inspection Services.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–823. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The collected data will be used to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 respondents at 70 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 583,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, 202–514–4319, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 9, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–26326 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention

Agency Information Collection Activities: Proposed collection; Comment Request

ACTION: Notice of Information Collection Under Emergency Review; State Juvenile Corrections Organization Survey.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by November 1, 1996. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Ms. Victoria Wassmer, 202–395–5871, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20503.

During the first 60 days of this same period a regular review of this collection is also being undertaken. Comments are encouraged and will be accepted until December 16, 1996. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: State Juvenile Corrections Organization Survey.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: none Office of Juvenile

Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State juvenile corrections agencies. Other: None. This collection will gather specific information on the various State statutes and policies that affect the juvenile custody rates and juvenile custody populations of each state. This information will aid in the analysis of juvenile corrections data.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 51 respondents at an average 6 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 306 burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Joseph Moone, 202–307–5929, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, Room 782, 633 Indiana Avenue, NW, Washington, DC 20531.

If additional information is required contact: Mr. Robert B. Briggs, 202–514–4319, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC, 20530.

Dated: October 9, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–26350 Filed 10–11–96; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological, Geographic Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following six meetings.

Name: Advisory Panel for Anthropological and Geographic Sciences (#1757).

Date and Time: October 25, 1996 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 920, Arlington, VA 22230.

Contact Person: Dr. John E. Yellen, Program Director for Archaeology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate Archaeology proposals as part of the selection process for awards.

Date and Time: November 18–19, 1996; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

Contact Person: Dr. Dennis O'Rourke, Program Director for Physical Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Physical Anthropology proposals as part of the selection process for awards.

Date and Time: November 24–25, 1996; 9:00 a.m.–5:00 p.m.

Place: The Hilton Hotel, San Francisco, CA.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Cultural Anthropology proposals as part of the selection process for awards.

Date and Time: November 15, 1996; 9:00 a.m–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

Contact Person: Dr. Stuart Plattner, Program Director for Cultural Anthropology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1758.

Agenda: To review and evaluate Cultural Anthropology Dissertation proposals as part of the selection process for awards.

Date and Time: November 24–26, 1996; 9:00 a.m.–5:00 p.m.

Place: University of Southern California, Los Angeles, California.

Contact Person: Dr. James W. Harrington, or Thomas Leinbach, Program Directors for Geography, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate Geography proposals as part of the selection process for awards.

Date and Time: December 9–10, 1996; 9:00 a.m.-5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 365.

Contact Person: Dr. James W. Harrington, or Thomas Leinbach, Program Directors for Geography, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1754.

Agenda: To review and evaluate Geography Dissertation proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26287 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel A).

Date and Time: Wednesday, Thursday, and Friday, November 6, 7, 8, 1996 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Drs. Marcia Steinberg, and P.C. Huang, Program Directors for Molecular Biochemistry, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703/306–1443)

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26294 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759).

Date and Time: December 4–5, 1996.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 970, Arlington, VA 22230.

Contact Person: Dr. Jonathan Leland, Program Director for DRMS, Division for Social, Behavioral and Economic Research, National Science Foundation, Room 995, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1757.

Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.

Date and Time: November 1–2, 1996.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 380 and 390, Arlington, VA 22230.

Contact Person: Dr. Daniel H. Newlon, Program Director for Economics, Division of Social, Behavioral and Economic Research, National Science Foundation, Room 380–390, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1753.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information individuals associated with the proposals. These matters are exempt under U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26288 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Meeting.

Name: Committee of Visitors for EHR (#1119).

Date and Time: November 8, 1996 from 8:00 AM to 5:00 PM.

Place: Room 950, NSF, 4210 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Paul W. Jennings, Division of Graduate Education, Rm. 907N, NSF, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1696.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, review comments, and other privileged materials.

Agenda: To provide oversight review of the Graduate Research Traineeship Program in the Division of Graduate Education.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that include privileged individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26290 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources.

Date and Time: November 6, 1996, 10:15 am; November 7, 1996, 8:30 am.

Place: Arlington Hilton Hotel, 950 N. Stafford Street, Arlington, VA 22230.

Type of Meeting: Open.

Contract Person: Peter E. Yankwich, Executive Secretary, Directorate for Education and Human Resources, Room 830, Arlington, VA 22230, 703–306–1670.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Committee: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 1996 Programs and Initiative Strategic Planning for FY 1997 and Beyond.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26296 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering, DMII COV (1170).

Date and Time: November 6–7, 8:30 a.m.-5:00 p.m.

Place: Rm. 580, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Joseph Hennessey, Program Director, MOTI, DMII; Dr. Donald Senich, Senior Staff Advisor, GOALI, and Mr. Paul Herrer, Senior Advisor for Planning, Technology Evaluation, Engineering, Division of Design, Manufacture, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1300.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Management of Technological Innovation (MOTI); Grant Opportunity for Academic Liaison with Industry (GOALI); and Special Studies and Assessments programs.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26295 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (#173).

Date/Time: November 4, 1996, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 530, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Sue Kemnitzer, Deputy Division Director, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Research Experience for Undergraduate Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26291 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics (1149) (Panel A).

Date and Time: Monday, November 4, 1996 through Wednesday, November 6, 1996, 8:30 a.m. to 5:00 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Philip Harriman (Program Director) for Microbial Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Mircrobial Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26292 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics (1149) Panel B.

Date and Time: November 4–6, 1996, 8:30 a.m. to 5 p.m.

Place: Room 310, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting. Closed.

Contact Person: Dr. DeLill Nasser, Program Director for Eukaryotic Genetics, Division of Molecular and Cellular Biosciences, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1439.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Eukaryotic Genetics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26293 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Infrastructure, Methods, and Science Studies; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Infrastructure, Methods, and Science Studies #1760.

Date and Time: November 7–8, 1996; 8:30 a.m.–5:00 p.m..

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 920, Arlington, VA 22230.

Contact Person: Dr. Rachelle D. Hollander, Program Director for Ethics and Values Studies, National Science Foundation, 4201 Wilson Boulevard, Arlington, Va 22230. Telephone: (703) 306–1743.

Agenda: to review and evaluate Ethics and Values Studies proposals as part of the selection process for awards.

Date and Time: November 15–16, 1996; 8:30 a.m.–5:00 p.m.

Place: Holiday Inn, 915 E. Apache Boulevard, California Room, Tempe, AZ 85281.

Contact Person: Dr. Edward J. Hackett, Program Director Science and Technology Studies, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1760.

Agenda: To review and evaluate Science and Technology Studies proposals as part of the selection process for awards.

Date and Time: November 22–23, 1996; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Contact Person: Dr. Cheryl L. Eavey, Program Director for Methodology, Measurement and Statistics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1729.

Agenda: To review and evaluate Methodology, Measurement and Statistics proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: October 8, 1996.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 96–26289 Filed 10–11–96; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Administrator v. Willette, et al.

AGENCY: National Transportation Safety Board.

ACTION: Notice of Oral Argument.

SUMMARY: The National Transportation Safety Board gives notice that it has scheduled oral argument in a consolidated case pending before the Board. The cases, SE–13961–3, *Administrator* v. *Willette, et al.,* involve the applicability of the Federal Aviation Administration's Advisory Circular 120–56, ''Air Carrier Voluntary Disclosure Reporting Procedures,'' to individual airmen and crew.

DATE: Oral argument will be held at 3:00 P.M., October 28, 1996, at the NTSB headquarters, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20594.

FOR FURTHER INFORMATION CONTACT: Althea Walker, (202) 314–6080.

SUPPLEMENTARY INFORMATION: The public is invited to attend and observe the oral argument. Audience participation will not be permitted, however.

Dated: October 7, 1996.

Daniel D. Campbell,

General Counsel.

[FR Doc. 96–26107 Filed 10–11–96; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Wisconsin Public Service Company, Wisconsin Power and Light Company, Madison Gas and Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–305]

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License Nos. DPR–43 issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee), for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would change Technical Specification (TS) requirements related to steam generator tubes to allow a laser-welded repair of Westinghouse hybrid expansion joint (HEJ) sleeved steam generator tubes.

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 Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the KNPP in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The laser weld repair of HEJ sleeved tubes will not affect the tube, sleeve or weld stress conditions or fatigue usage factors such that the limits of the ASME Boiler and Pressure Vessel Code are exceeded. Strain gauge testing of the laser-weld repaired HEJ sleeved tubes indicates tube far field stresses above and below the upper HEJ are similar. The magnitude of these stresses are slightly less than those associated with far field residual stresses for the two most recent domestic LWS programs. Accelerated corrosion testing of the prototypic repair welds in special fixtures designed to simulated locked tube configuration show that the expected lifetime of the repair welds exceeds the current license. Therefore, use of the laser-welded repair process will not result in an increased probability of an accident previously evaluated.

A post weld UT inspection will be required to verify minimum acceptable weld thickness to ensure that weld stresses do not exceed ASME Code limits for both stress intensity and fatigue usage. Leakage testing of LWS joints at pressure conditions far exceeding any plant normal or faulted conditions indicate the weld is leaktight at all plant conditions. Mechanical testing of 7/8 inch laser welded tubesheet sleeves installed in roll expanded tubes has shown that the individual joint structural strength of Alloy 690 laser welded sleeves under normal, upset and faulted conditions provides margin to acceptable limits. These acceptance limits bound the most limiting (3 times normal operating pressure deferential) recommended by RG 1.121.

The HEJ sleeve plugging limit as currently defined in the KNPP TSs is reduced from 31% to 24% throughwall due to the use of ASME code minimum material property values for the sleeve material. A parent tube plugging limit of 50% continues to apply to the tube length adjacent to and above the weld. Minimum wall thickness requirements (used for developing the depth based plugging limit for the sleeve) are determined using the guidance of RG 1.121 and the pressure stress equation of Section III of the ASME Code.

The hypothetical consequences of failure of the laser-welded repaired HEJ would be bounded by the current SG tube rupture analysis covered in the KNPP Updated Safety Analysis Report. Due to the slight reduction in diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the SGTR, and therefore would result in lower primary fluid mass release to the secondary system. For a postulated break location immediately above the repair weld the metal-to-metal interference fit provided by the original roll expansion would greatly reduce leak rates. Tube fixity conditions in the Kewaunee SGs at the support plate intersections are such that sufficient resistance to end cap loads are believed to be provided, therefore, axial motion of the postulated separated tube is not expected to occur, and leak rates would be expected to be well below make-up capacity.

The laser weld repair process does not change existing reactor coolant system flow conditions, therefore, existing LOCA analysis results will be unaffected. Plant response to design basis accidents for the current tube plugging and flow conditions are not affected by the repair process; no new tube diameter restrictions are introduced. Therefore, the application of the repair weld will not increase the consequences of a previously evaluated accident.

2. The proposed license amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Application of laser-welded repair of HEJ sleeved tubes will not introduce significant or adverse changes to the plant design basis. The general configuration of the HEJ sleeve is unaffected by the repair weld process. The repair process also does not represent a potential to affect any other plant component. Stress and fatigue analysis of the repair has shown that the ASME Code and Regulatory Guide 1.121 criteria are not exceeded. Application of the laser weld repair of HEJ sleeved tubes maintains overall tube bundle structural and leakage integrity at a level consistent to that of the originally supplied tubing during all plant conditions. The laser weld repair process does not provide a mechanism resulting in an accident outside of the area affected by the repair. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the joint is bounded by the existing tube rupture accident analysis. Therefore, use of the laser-welded repair process will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in the margin of safety.

The laser weld repair of the HEJ sleeved tubes has been shown to restore integrity of the tube bundle consistent with its original design basis conditions, i.e., tube/sleeve operational and faulted load stresses and cumulative fatigue usage are bounded by the ASME Code requirements and the repaired tubes are leaktight under all plant conditions. Application of the laser-welded repair will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in preventing startup 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.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 14, 1996, 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, and at the local public document room located at the University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin. 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 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248–5100 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Gail H. Marcus: 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 Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037, 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 presiding 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 September 6, 1996, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin.

Dated at Rockville, Maryland, this 9th day of October 1996.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Project Directorate III–3 Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–26304 Filed 10–11–96; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in October 1996. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occuring in November 1996. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the fourth quarter (October through December) of 1996.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Variable-rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is a specified percentage (currently 80 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in October 1996 (*i.e.*, 80 percent of the yield figure for September 1996) is 5.62 percent. The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between November 1995 and October 1996.

For premium payment years beginning in:	The required interest rate is:
November 1995	5.10
December 1995	5.01
January 1996	4.85
February 1996	4.84
March 1996	4.99
April 1996	5.28
May 1996	5.43
June 1996	5.54
July 1996	5.65
August 1996	5.62
September 1996	5.47
October 1996	5.62

Late Premium Payments; Underpayments and Overpayments of Single-employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the fourth quarter (October through December) of 1996, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
10/1/89	3/31/91	11
4/1/91	12/31/91	10
1/1/92	3/31/92	9
4/1/92	9/30/92	8
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	12/31/96	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the fourth quarter (October through December) of 1996 (*i.e.*, the rate reported for September 16, 1996) is 8.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Interest rate (percent)
4/1/90	3/31/91	10.00
4/1/91	6/30/91	9.00
7/1/91	9/30/91	8.50
10/1/91	12/31/91	8.00
1/1/92	3/31/92	7.50
4/1/92	9/30/92	6.50
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	12/31/96	8.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in November 1996 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's Federal Register. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of October 1996.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 96–26344 Filed 10–11–96; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of October 7, 1996.

A closed meeting will be held on Wednesday, October 9, 1996, at 9:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, October 9, 1996, at 9:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 10, 1996.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–26553 Filed 10–10–96; 3:52 pm]

BILLING CODE 8010–01–M

[Release No. 34–37794; File Nos. SR–BSECC–96–02; SR–BSE–96–06]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Changes To Modify Specialists' Clearing Fund Requirements

October 7, 1996.

On June 14, 1996, the Boston Stock Exchange Clearing Corporation (''BSECC'') and the Boston Stock Exchange, Inc. (''BSE'') each filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File Nos. SR–BSECC–96–02) and SR–BSE–96–06, respectively) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] to modify specialists' clearing fund requirements. On July 23, 1996, BSECC and BSE each filed an amendment to its proposed rule change.[2] Notices of the proposed rule changes were published in the Federal Register on August 16, 1996.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

BSECC's rule change amends BSECC Rule II, Section 1 relating to the maintenance and purpose of BSECC's clearing fund and BSE's rule change amends Chapter XXII, Section 2(f) of BSE's rules regarding specialists' liquidating equity deposits.[4] Specifically, Section 2(f) of Chapter XXII of BSE's rules requires specialists to maintain a liquidating equity deposit of $200,000 per specialist account with BSECC (''minimum equity requirement''). Section 2 of BSECC Rule II requires that all members contribute $6,000 to the clearing fund.[5] Under the rule change, BSECC Rule II, Section 1 has been amended to provide that specialists are deemed to have met their clearing fund requirement through the minimum equity requirement and that the amount of the minimum equity requirement equal to the required clearing fund deposit is deemed to be the clearing fund deposit. Additionally, Section 2(f) of Chapter XXII of BSE's rules has been amended to provide that the minimum equity requirement can be utilized by BSECC and is deemed to be clearing fund up to the amount required to be deposited as clearing fund pursuant to BSECC's rules. This provision only applies to specialists that are members of BSECC.

II. Discussion

The Commission believes that the proposed rule changes are consistent with the obligations of BSECC under Section 17A of the Act and the obligations of BSE under Section 6 of the Act. Among other things, Section 6(b)(5)[6] of the Act requires that the rules of a national securities exchange be designed to protect investors and the public interest and Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. Permitting

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Letters from Karen A. Aluise, Assistant Vice President, BSECC, to Mark Steffensen, Division of Market Regulation (''Division''), Commission (July 19, 1996) and Karen A. Aluise, Assistant Vice President, BSE, to Mark Stefensen, Division, Commission (July 19, 1996).

[3] Securities Exchange Act Release Nos. 37552 (August 9, 1996), 61 FR 42669 (BSECC) and 37553 (August 9, 1996), 61 FR 42670 (BSE).

[4] Pursuant to BSECC's rules, a specialist is a BSECC member that acts as a specialist on the floor of BSE and on whose behalf BSECC guarantees settlement of all trades executed by such member on the floor of BSE. Pursuant to Chapter XV, Section 1 of BSE's rules, a BSE member may be registered as a specialist upon application to and with the consent of BSE.

[5] BSECC Rule II, Section 5 specifies the use and application of clearing fund. Paragraph (d) of that section provides that clearing fund may be used to discharge a member's liability to BSECC, BSE, or Boston Stock Exchange Service Corporation.

[6] 15 U.S.C. § 78f(b)(5) (1988).

[7] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

specialists to satisfy their clearing fund requirements through the minimum equity requirements should not impair BSECC's obligations to safeguard securities and funds in its custody or control. Moreover, the rule changes clarify that a portion of the minimum equity requirement will be deemed clearing fund for purposes of BSECC's rules and can be utilized by BSECC according to BSECC Rule II, Section 5 which governs the use and application of clearing fund deposits. This should help to protect BSECC from the risks associated with specialists' default and thereby should allow BSE to protect investors and the public interest.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Sections 6 and 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File No. SR–BSECC–96–2 and SR–BSE–96–06) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26341 Filed 10–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37790; File No. SR–CBOE–96–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of Options on the Morgan Stanley Multinational Index

October 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 1, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade cash-settled, European-style stock index options on the Morgan Stanley Multinational Index (''Morgan Stanley Multinational'' or ''Index''), a broad-based, capitalization-weighted index comprised of 50 large domestic companies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on the Morgan Stanley Multinational. The Morgan Stanley Multinational is a broad-based, capitalization-weighted index composed of 50 high-capitalization domestic stocks.

Index Design. The Morgan Stanley Multinational has been designed to measure the performance of certain high capitalization stocks. The Morgan Stanley Multinational is a capitalization-weighted index with each stock affecting the Index in proportion to its market capitalization. Each stock in the Index is eligible for options trading.[2]

On July 17, 1996, the to stocks ranged in capitalization from $4.7 billion to $138.2 billion. The median capitalization of the firms in the Index was $29.33 billion while the average capitalization of the Index components was $37.1 billion. The largest stock accounted for 7.33% of the total weighting of the Index, while the smallest accounted for 0.25%. The five highest weighted stocks accounted for 28.8%. The average daily trading volume for Index components during the six-month period ending July 16, 1996 was 1.93 million shares.

Calculation. The methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other well-known broad-based indices. The level of the Index reflects the total market value of the component stocks relative to a particular base period. The Morgan Stanley Multinational Index base date is December 31, 1991, when the index value was set to 200. The Index had a closing value of 330.63 on July 17, 1996. The daily calculation of the Morgan Stanley Multinational Index is computed by dividing the total market value of the companies in the Index by the Index Divisor. The Divisor keeps the Index comparable over time and is adjusted periodically to maintain the Index. The values of the Index will be calculated by the CBOE and disseminated at 15-second intervals during regular CBOE trading hours to market information vendors via Options Price Reporting Authority (''OPRA'').

Maintenance. Index maintenance includes monitoring and completing the adjustments for company additions and deletions, share changes, stock splits, stock dividends (other than an ordinary cash dividend), stock price adjustments due to company restructuring or spinoffs. Some corporate actions, such as stock splits and stock dividends, require simple changes in the common shares outstanding and the stock prices of the companies in the Index. Other corporate actions, such as share issuances, change the market value of the Index and require an index divisor adjustment as well. The CBOE will refer all such non-routine matters and other material changes to the Index to Morgan Stanley. Over time the number of component securities in the Index may change. At no time will the number of securities drop to less than 30. In the event of a stock replacement, the divisor will be adjusted as may be necessary to provide continuity in values of the Index.

Index Option Trading. In addition to regular Index options, the Exchange may provide for the listing of long-term index option series (''LEAPS'') and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth.

Strike prices will be set to bracket the index in 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series

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[8] 17 CFR 200.30–3(a)(12) (1996).

[1] 15 U.S.C. § 78s(b)(1).

[2] A list of Index components is available at the Commission and at the CBOE.

trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:15 p.m. (Chicago time).

Exercise and Settlement. The proposed options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:15 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by the Exchange based on the opening prices of the component securities on the business day prior to expiration. If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the index, as is done for currently listed indexes. When the last trading day is moved because of Exchange holidays (such as when the CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

Surveillance. The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the Morgan Stanley Multinational. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the underlying securities.

Position Limits. The Exchange proposes to establish position limits for options on the Morgan Stanley Multinational at 50,000 contracts on either side of the market, and no more than 30,000 of such contracts may be in the series in the nearest expiration month. These limits are roughly equivalent, in dollar terms, to the limits applicable to options on other indices.

Exchange Rules Applicable. As modified herein, the Rules in Chapter XXIV will be applicable to Morgan Stanley Multinational options. Broad-based margin rules will apply to the Index.

Disclaimer Language. The CBOE is proposing to amend Rule 24.14 in order to include specified reference to Morgan Stanley as entitled to the benefit of the disclaimer of liability in respect of the Index.

The CBOE believes that it has the necessary systems capacity to support new series that would result from the introduction of Morgan Stanley Multinational options. The CBOE has also been informed that OPRA recently added an additional outgoing high speed line from the OPRA processor and thus also has the capacity to support the new series.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it will permit trading in options based on the Morgan Stanley Multinational pursuant to rules designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–59 and should be submitted by November 5, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–26340 Filed 10–11–96; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2894; Amendment #1]

North Carolina; Declaration of Disaster Loan Area

In accordance with notices from the Federal Emergency Management Agency dated September 16 and 17, 1996, the above-numbered Declaration is hereby amended to include Buncombe, Caswell, Hertford, Hyde, Martin, Pitt, Randolph, and Scotland Counties in the State of North Carolina as a disaster area due to damages caused by Hurricane Fran beginning on September 5, 1996 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chowan, Dare, Gates, Madison, Tyrrell, and Yancey in the State of North Carolina may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 4, 1996, and for loans for economic injury the deadline is June 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 27, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–26244 Filed 10–11–96; 8:45 am]

BILLING CODE 8025–01–P

[Declaration of Disaster Loan Area #2899; Amendment #1]

Pennsylvania; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, effective September 25, 1996, the above-numbered Declaration is hereby amended to include Cumberland County, Pennsylvania as a disaster area due to damages caused by flooding associated with Tropical Depression Fran which occurred September 6–8, 1996.

In addition, applications for economic injury loans from small businesses located in the contiguous Pennsylvania Counties of Adams and York may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 12, 1996, and for loans for economic injury the deadline is June 13, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 27, 1996.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 96–26243 Filed 10–11–96; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1489).

TIME AND DATE: 10 a.m. (CDT), October 16, 1996.

PLACE: University Plaza Hotel and Conference Center, Hartland D, 1021 Wilkinson Trace, Bowling Green, Kentucky.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 18, 1996.

New Business

A—Budget and Financing

A1. Fiscal Year 1996 Tax-Equivalent Payments.

C—Energy

C1. Supplement to Contract No. TV–95282V with Marathon Consulting Group, Incorporated, to provide procurement engineering services for all TVA Nuclear sites.

C2. Board approval for TVA Nuclear to award a contract to Senior Engineering Company for upgrades to the moisture separator reheaters at Watts Bar Nuclear Plant Unit 1 for a total contract amount of $10.1 million, including installation.

E—Real Property Transactions

E1. Sale of permanent easement affecting 0.3 acre of land on Norris Lake in Union County, Tennessee, to Haskel Ayers (Tract No. XNR–903H).

E2. Amendment to the Kentucky Reservoir Land Management Plan to change the allocated use from wildlife management to public recreation for a 6.5-acre portion of Tract No. XGIR–229PT and grant a 25-year public recreation easement for the same area, designated as Tract No. XTGIR–145RE.

F—Unclassified

F1. Filing of condemnation cases.

Information Items

1. Revision of arrangements for distributor margin on interruptible load.
2. Sale of Tennessee Valley Authority Power Bonds and delegation of authority to the Chief Financial Officer and the Vice President and Treasurer to enter into current swap arrangements with the European Investment Bank.
3. Resignation option for employees assigned to TVA Services for fiscal year 1997.
4. Sale of permanent easements and temporary construction easements at Allen Fossil Plant to the City of Memphis (Tract Nos. XALSP–2H and XALSP–3RR).
5. Extension of teaming agreement No. TV–94218V with Team Associates, Inc., from September 30, 1996, through November 30, 1996, and to increase the maximum gross TVA expenditure limit to $2.6 million.
6. Transmission Service Guidelines and other open access measures related to transmission service over the TVA transmission system.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: October 9, 1996.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 96–26512 Filed 10–10–96; 2:38 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–108]

Initiation of Section 302 Investigation and Request for Public Comment: Argentine Specific Duties and Non-Tariff Barriers Affecting Apparel, Textiles, Footwear

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The Acting United States Trade Representative (USTR) has initiated an investigation under section 302(b)(1) of the Trade Act of 1974, as amended (the Trade Act), with respect to certain acts, policies and practices of the Government of Argentina concerning the imposition of (1) specific duties on apparel, textiles, footwear and other items above the 35 percent *ad valorem* rate to which Argentina is bound under the General Agreement on Tariffs and Trade 1994 (''GATT 1994''); (2) a statistical tax of 3 percent *ad valorem* on imports from sources other than MERCOSUR countries; and (3) a burdensome labeling requirement on apparel, textiles and footwear. The United States alleges that these acts, policies and practices are inconsistent with certain provisions of the GATT 1994, the Agreement on Technical Barriers to Trade, the Agreement on the Implementation of Article VII of the GATT 1994, and the Agreement on Textiles and Clothing. USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on October 4, 1996. Written comments from the public are due on or before noon on Wednesday, November 6, 1996.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Karen James Chopra, Deputy Assistant United States Trade Representative for the Western Hemisphere, (202) 395–5190, or Hal S. Shapiro, Assistant General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 302(b)(1) of the Trade Act, 19 U.S.C. 2412(b)(1), authorizes the USTR to initiate an investigation under chapter 1 of Title III of the Trade Act (commonly referred to as ''section 301'') with respect to any matter in order to determine whether the matter is actionable under section 301. Matters actionable under section 301 include, *inter alia*, the denial of rights of the

United States under a trade agreement, or acts, policies, and practices of a foreign country that violate or are inconsistent with the provisions of, or otherwise deny benefits to the United States under, any trade agreement.

On October 4, 1996, having consulted with members of the relevant industries, the USTR determined that an investigation should be initiated to assess whether certain acts, policies and practices of Argentina regarding specific duties and non-tariff barriers affecting apparel, textiles and footwear are actionable under section 301(a). In 1995 and 1996, Argentina adopted specific duties on apparel, textiles, footwear and other items that are greater than Argentina's GATT 1994 tariff rate of 35 percent *ad valorem*.

In addition, Argentina imposes a statistical tax of 3 percent *ad valorem* on imports, which is not tied to the value of any services performed. Finally, Argentina imposes a labeling requirement on apparel, textiles, footwear and certain other items that may be an unnecessary obstacle to trade. Exporters of these products are required to complete an affidavit identifying product components, and each affidavit must receive an assigned identification number from the Undersecretariat of Foreign Trade that, in turn, must appear in the labels of covered merchandise.

The USTR believes that these acts, policies and practices are inconsistent with Articles II, VII, VIII and X of the GATT 1994; Article 2 of the Agreement on Technical Barriers to Trade; Articles 1 through 8 of the Agreement on the Implementation of Article VII of the GATT 1994; and Article 7 of the Agreement on Textiles and Clothing.

Investigation and Consultations

As required in section 303(a) of the Trade Act, the USTR has requested consultations with the Government of Argentina regarding the issues under investigation. The request was made pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the GATT 1994, Article 14 of the Agreement on Technical Barriers to Trade, Article 19 of the Agreement on the Implementation of Article VII of the GATT 1994, and Article 7 of the Agreement on Textiles and Clothing. If the consultations do not result in a satisfactory resolution of the matter, the USTR will request the establishment of a panel pursuant to Article 6 of the DSU.

Under section 304 of the Trade Act, the USTR must determine within 18 months after the date on which this investigation was initiated, or within 30 days after the conclusion of World Trade Organization dispute settlement procedures, whichever is earlier, whether any act, policy, or practice or denial of trade agreement rights described in section 301 of the Trade Act exists and, if that determination is affirmative, the USTR must determine what action, if any, to take under section 301 of the Trade Act.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Argentina which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be filed on or before noon on Wednesday, November 6, 1996. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 223, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

Comments will be placed in a file (Docket 301–108) open to public inspection pursuant to 15 CFR 2006.13, except 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 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket (Docket No. 301–108) may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

Irving A. Williamson,

Chairman, Section 301 Committee.

[FR Doc. 96–26317 Filed 10–11–96; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 10/4/96

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–96–1832.
Date filed: October 1, 1996.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 828, Suspend Currency Restriction in Brazil, Intended effective date: October 25, 1996.

Docket Number: OST–96–1833.
Date filed: October 1, 1996.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS/ME 0004 dated September 13, 1996 r–11, PTC12 NMS/ME 0005 dated September 13, 1996 r12–24, North Atlantic-Middle East/Israel Resos, Correction—PTC12 NMS–ME 0006 dated Sept. 20, 1996, Tables—PTC12 NMS–ME Fares 0002 dated Sept. 20, 1996, Intended effective date: April 1, 1997.

Docket Number: OST–96–1834.
Date filed: October 1, 1996.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS/ME 0002 dated September 13, 1996 r1–18, PTC12 NMS/ME 0003 dated September 13, 1996 r19–37, North Atlantic-Middle East/Israel Resos, Intended effective date: April 1, 1997.

Docket Number: OST–96–1838.
Date filed: October 3, 1996.
Parties: Members of the International Air Transport Association.
Subject: TC31 Telex Mail Vote 829, Reso 012p-Glossary of Terms, Intended effective date: April 1, 1997.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–26369 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending October 4, 1996

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth

below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–96–1830.

Date filed: October 1, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 29, 1996.

Description: Application of Pacific International Airlines, Inc., pursuant to 49 U.S.C. 14 CFR 215.4, and Subpart Q of the Regulations, requests that the Department reissue the certificates of public convenience and necessity for both interstate and overseas and foreign charter authority which are presently in the name of Pacific International Airlines, Inc. in the name of Silverair, Inc.

Docket Number: OST–96–1578.

Date filed: September 30, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 28, 1996.

Description: Application of Skyjet, S.A. for Amendment of its foreign air carrier permit by expanding the scope of its request to include the following rights afforded by the new Belgium-U.S. bilateral agreement: Skyjet, S.A. requests a foreign air carrier permit authorizing passengers (and their accompanying baggage) between any point or points in Belgium via intermediate points to any point or points in the United States and beyond, provided the service serves a point in Belgium. In the performance of this service, Skyjet, S.A. is authorized to (1) make stopovers at any points whether within or outside the Belgium or the United States; (2) to carry traffic through the United States; (3) to combine on the same aircraft traffic originating in Belgium or the United States with traffic originating in the other country; (4) to combine on the same aircraft traffic originating at or destined for a point or points behind a point in Belgium with U.S.-Belgium traffic; and (5) to combine on the same aircraft traffic originating or destined for an intermediate point or points or traffic originating at or destined for a point or points beyond the territory of Belgium or the United States with U.S.-Belgium traffic.

Docket Number: OST–96–1190.

Date filed: October 4, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 1996.

Description: Application of Challengair, S.A. d/b/a Belgium Challengair, hereby amends its application such that it now seeks, in addition to the basic U.S.-Belgium charter authority, authority to conduct the following additional services based on the new U.S. Belgium ''Open Skies'' Agreement: (a) ''to make stopovers at any points whether within or outside the territory of either Party'' (''Annex ll of the Air Transport Agreement, Oct. 23, 1980, U.S.-Belgium, as amended Sept. 5, 1995, Section 1(1)''); (b) ''to carry traffic through the other Party's territory'' (''ld.Section 1(2)''); (c) ''to combine on the same aircraft traffic originating in one Party's territory'' (ld. Section 1((3)''); (d) ''to combine on the same aircraft traffic originating at or destined for a point or points behind a point in its territory with U.S.-Belgium traffic'' (''ld. Section 1(4)''); and(e) ''to combine on the same aircraft traffic originating at or destined for an intermediate point or points or traffic originating at or destined for a point or points beyond the territory of either Part with U.S.-Belgium traffic'' (''ld. Section 1(5)'').

Docket Number: OST–95–659.

Date filed: October 4, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 1996.

Description: Application of Air 21, Inc. pursuant to 49 U.S.C. 41102(a)(1), and Subpart Q of the Regulations, requests renewal of its Certificate of Public Convenience and Necessity to engage in Interstate and Overseas Scheduled and Charter Air Transportation.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–26370 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

Fitness Determination of Golden West Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 96–10–10).

SUMMARY: The Department of Transportation is proposing to find that Golden West Airlines, Inc., is fit, willing, and able, to provide commuter air service under 49 U.S.C. 41738.

DATES: Persons wishing to file objections should do so no later than October 22, 1996.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with James A. Lawyer, Air Carrier Fitness Division, X–56, Room 6401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses should be filed no later than November 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, (202) 366–1064.

Dated: October 7, 1996.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96–26366 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: This meeting is scheduled for October 22 and 23, 1996 beginning at 8:30 a.m. on October 22. Arrange for oral presentations by October 15, 1996.

ADDRESS: The meeting will be held in Conference Rooms B and C of the Air Transport Association of America (ATA), 1301 Pennsylvania Avenue, NW, Suite 1100, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is given of an ARAC meeting to be held October 22 and 23, 1996 at the ATA, 1301 Pennsylvania Avenue, NW, Washington, DC 20004.

The agenda will include:

- Opening remarks.
- Review of action items.
- Reports of working groups.
- Briefing on status of Alternative Methods of Compliance recommendations.
- Report on September 19 Hoofddorp meeting.
- Briefing on Repair Assessment notice of proposed rulemaking.

• High Intensity Radiated Fields Report.

• Briefing from All Weather Operations Working Group (25.1329)

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by October 15, 1996 to present oral statements at the meeting. Written statements may be presented to the Committee at any time by providing 25 copies to the Assistant Executive Director for TAE issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC on October 7, 1996.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–26325 Filed 10–11–96; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

[STB Finance Docket No. 33137]

Canadian American Railroad Company—Trackage Rights Exemption—The Northern Vermont Railroad Company Incorporated

The Northern Vermont Railroad Company Incorporated (NV) will agree to grant local and overhead trackage rights to Canadian American Railroad Company (CDAC) over four rail segments that total approximately 86.41 miles of rail lines located in Franklin, Orleans, Caledonia and Orange Counties, VT, as follows: (1) A portion of the Newport Subdivision between the U.S.-Canadian border crossings at mileposts 26.25 and 32.63 (running through Richford); (2) a portion of the Newport Subdivision between the border crossing at milepost 43.32 and the end of the subdivision at Newport at milepost 58.4; (3) the Lyndonville Subdivision, which runs between Newport at milepost 0.0 and Wells River at milepost 63.78; and (4) the unabandoned portion of the former Beebe Subdivision between mileposts 39.04 and 40.21 in or near Newport. These rail lines were expected to be acquired by NV from Canadian Pacific Limited on September 27, 1996, pursuant to an exemption that was the subject of a notice of exemption in STB Finance Docket No. 32981 that was served and published in the Federal Register (61 FR 38798) on July 25, 1996. The trackage rights are to become effective as soon as a final trackage rights agreement is reached between CDAC and NV, but not sooner than October 2, 1996 (the effective date of the trackage rights exemption).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33137, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: David A. Hirsh, Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 7, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–26332 Filed 10–11–96; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96–74]

Retraction of Revocation Notice

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

ACTION: General notice.

SUMMARY: The following Customs broker license number was erroneously included in a list of revoked Customs brokers licenses in the Friday, April 28, 1995, Federal Register, Vol. 60, No 58.

Steven Goldstein—12782

License 12782, issued through the Port of Los Angeles, remains a valid license.

Dated: October 9, 1996.

Philip Metzger,

Director, Trade Compliance.

[FR Doc. 96–26339 Filed 10–11–96; 8:45 am]

BILLING CODE 4820–02–P

[T.D. 96–73]

Revocation of Customs Broker License

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

ACTION: Broker License Revocation.

SUMMARY: Notice is hereby given that on September 6, 1996, the Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and Parts 111.51 and 111.74 of the Customs Regulations, as amended (19 CFR 111.51 and 111.74), cancelled the following Customs broker license with prejudice.

Port	Individual	License #
Houston	Kim K. Gabehart	11116

Dated: October 9, 1996.

Anne K. Lombardi,

Acting Director, Trade Compliance.

[FR Doc. 96–26335 Filed 10–11–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

[FI–81–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–81–86 (TD 8513), Bad Debt Reserves of Banks (§ 1.585–8).

DATES: Written comments should be received on or before December 16, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Bad Debt Reserves of Bank.

OMB Number: 1545–1290.

Regulation Project Number: FI–81–86 (Final).

Abstract: Section 585(c) of the Internal Revenue Code requires large banks to change from the reserve method of accounting to the specific charge off method of accounting for bad debts. Section 1.585–8 of the regulation establishes a reporting requirement in cases in which large banks elect (1) to include in income an amount greater than that prescribed by the Code; (2) to use the elective cut-off method of accounting; or (3) to revoke any elections previously made.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 625.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 8, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–26353 Filed 10–11–96; 8:45 am]

BILLING CODE 4830–01–P

[EE–63–84; EE–96–85]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary regulation, EE–63–84 (TD 8073), and notice of proposed rulemaking, EE–96–85, Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984 (§§ 1.505(c)-1T, 1.1042–1T and 1.463–1T).

DATES: Written comments should be received on or before December 16, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.

OMB Number: 1545–0916.

Regulation Project Number: EE–63–84 (temporary regulations), and EE–96–85 (notice of proposed rulemaking).

Abstract: These regulations provide rules relating to effective dates and certain other issues arising under sections 91, 223 and 511–561 of the Tax Reform Act of 1984. The regulations affect qualified employee benefit plans, welfare benefit funds, and employees receiving benefits through such plans.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and individuals.

Estimated Number of Respondents: 12,800.

Estimated Time Per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 6,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 9, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–26354 Filed 10–11–96; 8:45 am]

BILLING CODE 4830–01–P

federal register

Tuesday
October 15, 1996

Part II

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Final grant guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1997 State Justice Institute grants, cooperative agreements, and contracts.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Liz Vines, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100. To discuss concept paper ideas, contact David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at the same address and phone number. Inquiries can also be made by fax ((703) 684–7618), e-mail (sji@clark.net) or through the Institute's web site at http://www.clark.net/pub/sji/.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, et seq., as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

FY 1997 Appropriations

The Institute received a $6 million appropriation from Congress for FY 1997. Adding money expected to be available from prior year carryover funds, deobligations of funds from completed grants, refunds, and agreements with Federal agencies, SJI contemplates the availability of approximately $7-8 million for grants in FY 1997.

Changes in the Final Guideline

Only technical clarifications and additions have been made in the Final Guideline.

Types of Grants Available and Funding Schedules

The SJI grant program is designed to be responsive to the most important needs of the State courts. To meet the full range of the courts' diverse needs, the Institute offers five different categories of grants. The types of grants available in FY 1997 and the funding cycles for each program are provided below:

Project Grants. These grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Except for ''Single Jurisdiction'' project grants awarded under section II.C. (see below), project grants are intended to support innovative projects of national significance. As provided in section V. of the Guideline, project grants may ordinarily not exceed $200,000 a year; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant. As indicated in Section VI.C., the Board may make an ''accelerated'' grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information about the operation of the project would be provided in an application.

The FY 1997 mailing deadline for project grant concept papers is November 27, 1996. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet in late February, 1997 to invite formal applications based on the most promising concept papers. Applications will be due in May and awards will be approved by the Board in July.

Single Jurisdiction Project Grants. Section II.C. of the Guideline allocates funds for two types of ''Single Jurisdiction'' grants.

Section II.C.1. reserves up to $300,000 for Projects Addressing a Critical Need of a Single State or Local Jurisdiction. To receive a grant under this program, a State or local court must demonstrate that (1) the proposed project is essential to meeting a critical need of the jurisdiction and (2) the need cannot be met solely with State and local resources within the foreseeable future. Applicants are particularly encouraged to submit proposals for grants to replicate approaches or programs that have been evaluated as effective under an SJI grant. These ''replication'' grants are limited to no more than $30,000 each. Examples of projects that could be replicated are listed in Appendix IV.

Section II.C.2. reserves up to $400,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance grant may be submitted at any time. Applicants submitting letters between October 1, 1996 and January 10, 1997 will be notified by March 28, 1997; those submitting letters between January 11, 1997 and March 14, 1997 will be notified by May 27, 1997; and those submitting letters between March 15, 1997 and June 13, 1997 will be notified by August 31, 1997. Subject to the availability of appropriations in FY 1998, applicants submitting letters between June 14 and September 30, 1997 will be notified of the Board's decision by December 19, 1997.

Curriculum Adaptation Grants. A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $175,000 for these grants in FY 1997. See section II.B.2.b.ii.

Letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section II.B.2.b.ii.(c).

Scholarships. The Guideline allocates up to $200,000 of FY 1997 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs. See section II.B.2.b.iii.

The Guideline establishes the following deadlines for scholarship requests: January 7, 1997 for programs beginning between April 1 and July 1, 1997; April 1, 1997 for programs beginning between July 1 and September 30, 1997; and July 1, 1997 for programs beginning between October 1 and December 31, 1997.

Renewal Grants. There are two types of renewal grants available from SJI: Continuation grants (see sections III.G., V.C. and D., and IX.A.) and On-going support grants (see sections III.H., V.C. and D., and IX.B.). Continuation grants are intended to enhance the specific program or service begun during the initial grant period. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a target for renewal grants of no more than $2 million, approximately 25% of the total amount projected to be available for grants in FY 1997. See section IX. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its renewal grant application. See section IX.

Special Interest Categories

The Guideline includes 10 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts this year. The selection of these categories was based on the Board and staff's experience and observations over the past year; the recommendations received from judges, court managers, lawyers, members of the public, and other groups interested in the administration of justice; and the issues identified in recent years' concept papers and applications.

Section II.B. of the Guideline includes the following Special Interest categories:

Improving Public Confidence in the Courts;
Education and Training for Judges and Other Key Court Personnel (this category includes Curriculum Adaptation grants and Scholarships for Judges and Key Court Personnel);
Dispute Resolution and the Courts;
Application of Technology;
Court Management, Financing, and Planning;
Resolution of Current Evidentiary Issues;
Substance Abuse and the Courts;
Children and Families in Court;
Improving the Court's Response to Domestic Violence and Other Gender-Related Crimes of Violence; and
The Relationship Between State and Federal Courts.

Availability of Information on the Internet

The Guideline, all required forms, lists of SJI grants awarded since FY 1987, and other information pertaining to the grant program are available on the SJI web site at http://www.clark.net/pub/sji/. If you do not find the information you are looking for, please contact the Institute by phone ((703) 684–6100), fax ((703) 684–7618), or e-mail (SJI@clark.net).

Recommendations to Grant Writers

Over the past 10 years, Institute staff have reviewed approximately 3,000 concept papers and 1,500 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. What is the subject or problem you wish to address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What do you want to do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. How will you do it?

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How will you know it works?

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should present the criteria that will be used to evaluate the project's effectiveness, identify program elements which will require further modification, and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How will others find out about it?

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings ''will be made available to'' the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What are the specific costs involved?

The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of ''Other'' or ''Miscellaneous'' items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, if any, match is being offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute

a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the two budget forms should be used?

Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How much detail should be included in the budget narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000=$25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page=$375.00). Supply and expense estimates offered simply as ''based on experience'' are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What travel regulations apply to the budget estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site or the average of airfares from each coast to the meeting site may be used. Applicants should arrange travel so as to be able to take advantage of advance-purchase price discounts whenever possible.

11. May grant funds be used to purchase equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. Written prior approval of the Institute is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To what extent may indirect costs be included in the budget estimates?

It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with Section XI.H.4. of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.) If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet on computer diskette is available from the Institute upon request.

13. What meeting costs may be covered with grant funds?

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals. However, they cannot be used to reimburse the cost of coffee or other

types of refreshment breaks, or for alcoholic beverages.

14. Does the budget truly reflect all costs required to complete the project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations to Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,100 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the grant has been awarded, when are the first quarterly reports due?

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—i.e. no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first Quarterly Progress Report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, Quarterly Progress Reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. The Quarterly Project Report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a Quarterly Progress Report and attachments should be submitted to the Institute.

Additional Quarterly Progress Report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do reporting requirements differ for renewal grants?

Recipients of a continuation or on-going support grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation grant and each yearly grant under an on-going support award should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant or a yearly increment of an on-going support award should be designated as number one, the second as number two, and so on, through the final progress and financial status reports due within 90 days after the end of the grant period.

3. What information about project activities should be communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting, or payment requests, should be addressed to the Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. Why is it important to address the special conditions that are attached to the award document?

In some instances, a list of special conditions is attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI., and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

5. What is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

6. What schedule should be followed in submitting requests for reimbursements or advance payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. Do procedures for submitting requests for reimbursement or advance payment differ for renewal grants?

The basic procedures are the same for any grant. A continuation grant or the yearly grant under an on-going support award should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant or a yearly increment under an on-going support award should be designated as number one, the second as

number two, and so on through the final payment request for that grant.

8. If things change during the grant period, can funds be reallocated from one budget category to another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period.

9. What is the 90-day close-out period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day ''close-out-period.'' Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. Are funds granted by SJI ''Federal'' funds?

The State Justice Institute Act provides that, except for purposes unrelated to this question, ''the Institute shall not be considered a department, agency, or instrumentality of the Federal Government.'' 42 U.S.C. § 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grants funds as ''Other Federal Assistance.'' This classification is acceptable to SJI but is not required.

11. If SJI is not a Federal Agency, do OMB circulars apply with respect to audits?

Except to the extent that they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128 and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to ''conduct, or require each recipient to provide for, an annual fiscal audit'' [see 42 U.S.C. § 10711(c)(1)], the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section XI.J.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128, or A–133, in satisfaction of the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline Section XI.J.) A copy of the above-noted circulars may be obtained by calling OMB at (202) 395–7250.

12. Does SJI have a CFDA number?

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1996 grantee ''X'' received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees that are required to satisfy either the Single Audit Act, OMB Circulars A–128, or A–133 and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in Section XI.J. of the Grant Guideline.

The following Grant Guideline is adopted by the State Justice Institute for FY 1997:

State Justice Institute Grant Guideline Table of Contents

I. Background
II. Scope of the Program
III. Definitions
IV. Eligibility for Award
V. Types of Projects and Grants; Size of Awards
VI. Concept Paper Submission Requirements for New Projects
VII. Application Requirements for New Projects
VIII. Application Review Procedures
IX. Renewal Funding Procedures and Requirements
X. Compliance Requirements
XI. Financial Requirements
XII. Grant Adjustments
Appendix I List of State Contacts Regarding Administration of Institute Grants to State and Local Courts
Appendix II SJI Libraries: Designated Sites and Contacts
Appendix III Illustrative List of Model Curricula
Appendix IV Judicial Education Scholarship Application Forms (Forms S1 & S2)
Appendix V Concept Paper, Curriculum Adaptation, & Technical Assistance Grant Budget Form (Form E)
Appendix VI Certificate of State Approval Form (Form B)

I. Background

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is governed by an 11-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1997, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated ten program categories as being of ''special interest.'' See section II.B.

A. Authorized Program Areas

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act, the Judicial Training and Research for Child Custody Litigation Act, and the International Parental Kidnapping Crime Act.

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards, and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens;

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the

experiences of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14–17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction;

20. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for the ordinary, routine operation of court systems or programs in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1997, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services, and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a ''Special Interest'' project if it meets the four criteria set forth above and (1) it falls within the scope of the ''special interest'' program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a ''Special Interest'' category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., ''Concept Paper Submission Requirements for New Projects,'' and VIII.B., ''Application Review Procedures.'')

2. Specific Categories

The Board has designated the areas set forth below as ''Special Interest'' program categories. The order of listing does not imply any ordering of priorities among the categories.

a. Improving Public Confidence in the Courts

This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, accessibility, timeliness, and comprehensibility of the court process, and test innovative methods for increasing the public's confidence in the State courts.

The Institute is particularly interested in supporting innovative projects that examine, develop, and test methods that trial or appellate courts may use to:

Improve service to individual litigants and trial participants, including innovative methods for handling cases involving unrepresented litigants fairly and effectively and for dealing with litigants unwilling to follow administrative and legal procedures;

Test methods for more clearly and effectively communicating information about judicial decisions, the trial and appellate court process, and court operations to litigants and the public;

Develop policies, protocols, and procedures designed to prevent harassment, threats, and incidents endangering the lives and property of judges, court employees, jurors, litigants, witnesses, and members of the public in court facilities;

Eliminate race, ethnic, and gender bias in the courts;

Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to define the impact of immigration on State courts; design and assess procedures for use in custody, visitation, and other domestic relations cases when key family members or property are outside the United States; and develop protocols to facilitate service of process, the enforcement of orders of judgment, and the disposition of criminal and juvenile cases when a non-U.S. citizen or corporation is involved;

Demonstrate and evaluate methods for involving the community in the sentencing process, such as community impact statements, community oversight of compliance with community service and probation conditions, or other innovative court-community links focused on the sentencing process;

Foster positive attitudes toward jury service and enhance the attractiveness of juror service through, e.g., incentives to participate, modifications of terms of service, and/or juror orientation and education programs.

Demonstrate and evaluate the impact of methods for improving juror comprehension in criminal and civil cases, such as access to technology in the jury room to permit review of computerized exhibits of evidence presented in the case, use of specially qualified juries in complex cases, delivery of instructions throughout the trial, and testimony by court-appointed neutral experts;

Examine the impact of the grand jury process on due process requirements, caseflow management, court operations, and the public's perception of the fairness of court proceedings, and develop appropriate recommendations for improving the management of the process; and

Assess the impact of live television coverage of trials on court proceedings, public understanding, and fairness to litigants.

Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases

Previous SJI-supported projects that address these issues include: a National Town Hall Meeting Videoconference, a National Conference on Eliminating Race and Ethnic Bias in the Courts, and projects to implement the action plans developed at these conferences; a guidebook for developing effective court-based programs for assisting pro se litigants, as well as development of a self-service center and touchscreen computer kiosks, videotapes, and written materials to assist unrepresented litigants; educational materials for court employees on serving the public; a manual and other materials for managing and coordinating court interpretation services, and materials for

training and certifying court interpreters; a colloquium on the adversary system; a demonstration of the use of community volunteers to monitor adult probationers and to monitor guardianships; evaluation of community-based court programs in New York City; studies of effective and efficient methods for providing legal representation to indigent parties in criminal and family cases and the applicability of various dispute resolution procedures to different cultural groups; guidelines for court-annexed day care systems; a manual for implementing innovations in jury selection, use, and management; a guide for making juries accessible to persons with disabilities; and an assessment of the effect of allowing jurors to discuss the evidence prior to the deliberations on the verdict.

b. Education and Training for Judges and Other Key Court Personnel

The Institute continues to be interested in supporting an array of projects to strengthen and broaden the availability of court education programs at the State, regional, and national levels. Accordingly, this category is divided into subsections: (i) Development of Innovative Educational Programs; (ii) Curriculum Adaptation Projects; and (iii) Scholarships.

i. *Development of Innovative Educational Programs.* This category includes support for the development and testing of educational programs for judges or court personnel that address key substantive and administrative issues of concern to the nation's courts, or assist local courts or State court systems to develop or enhance their capacity to deliver quality continuing education. Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on some form of assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills that participants will acquire; incorporate adult education principles and varying teaching/learning methods; and result in the development of a curriculum as defined in section III.J.

(a) The Institute is particularly interested in the development of education programs that:

Assist local courts, State court systems, and court systems in a geographic region to develop or enhance a systematic program of continuing education, training, and career development for judges and court personnel as an integral part of court operations;

Include self-directed learning packages such as those using interactive computer-programs, videos, audio and visual media supported by written materials or manuals, or other distance-learning approaches to assist those who do not have ready access to classroom-centered programs;

Test the use of the Internet as a means of delivering educational programs for judges and court personnel, or for facilitating and organizing the exchange of information on trends, problems, and issues affecting the courts;

Familiarize faculty with the effective use of instructional technology including methods for effectively presenting information through videos and satellite teleconferences;

Involve collaboration between the judicial, executive, and legislative branches of government such as programs to explore what are ethically proper and improper interactions between judges and legislators;

Enhance communication and cooperation among courts within a metropolitan area or multi-State region;

(b) The Institute also is interested in supporting the development and testing of curricula on critical issues such as:

The development of judicial leadership abilities;

The need for effective approaches to screening and sentencing adult and juvenile sexual offenders;

The appropriate use and management of specialized calendars or court divisions (e.g., for substance abuse, domestic violence, or commercial cases) as well as the necessary substantive expertise to preside over such cases;

The appropriate and effective methods for preventing harassment, threats or incidents endangering the lives and property of judges, court personnel, jurors, litigants, witnesses and the public in court facilities, and managing cases involving groups or individuals unwilling to cooperate with legal or administrative procedures;

The application of the standards set forth in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.* governing the admissibility of scientific and technical evidence, and the application of the recently released National Academy of Sciences report on forensic DNA evidence;

The methods for fairly, effectively, and expeditiously resolving so-called Strategic Lawsuits Against Public Participation (SLAPP) suits; and

Other topics addressed by SJI-supported demonstration, evaluation, or research projects.

ii. *Curriculum Adaptation Projects.*

(a) *Description of the Program.* The Board is reserving up to $175,000 to provide support for projects that adapt and implement model curricula previously developed with SJI support.

The goal of the Curriculum Adaptation program is to provide State and local courts with sufficient support to prepare and test a model curriculum, course module, national or regional conference program, or other model education program developed with SJI funds and modified to meet a State's or local jurisdiction's educational needs. Generally, it is anticipated that the adapted curriculum would become part of the grantee's ongoing educational offerings, and that local instructors would receive the training needed to enable them to make future presentations of the curriculum. An illustrative list of the curricula that may be appropriate for the adaptation is contained in Appendix III.

Curriculum Adaptation grants are limited to no more than $20,000 each. Only State or local courts may apply for Curriculum Adaptation funding. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

(b) *Review Criteria.* Curriculum Adaptation grants will be awarded on the basis of criteria including: the goals and objectives of the proposed project; the need for outside funding to support the program; the likelihood of effective implementation; the appropriateness of the educational approach in achieving the project's educational objectives; the likelihood of effective implementation and integration into the State's or local jurisdiction's ongoing educational programming; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. In making Curriculum Adaptation awards, the Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

(c) *Application Procedures.* In lieu of concept papers and formal applications, applicants for grants may submit a detailed letter and three photocopies. Although there is no prescribed form for the letter, nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria for evaluating applications is addressed:

Project Description. What are the project's goals and learning objectives? What is the title of the model

curriculum to be tried and who developed it? What program components would be implemented, and what benefits would be derived from this test? Why is this education program needed at the present time? Who will be responsible for adapting the model curriculum, and what types of modifications, if any, in length, format, and content are anticipated? Who will the participants be, how will they be recruited, and from where will they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)? How many participants are anticipated?

Need for Funding. Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?

Likelihood of Implementation. What is the proposed timeline for modifying and presenting the program? Who would serve as faculty and how were they selected? Will the presentation of the program be evaluated and, if so, by whom? (Ordinarily, an independent evaluation is not necessary; however, the results of any evaluation should be included in the final report.) What measures will be taken to facilitate subsequent presentations of the adapted program?

Expressions of Interest By Judges and/or Court Personnel. Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

Budget and Matching State Contribution. Applicants should attach a copy of budget Form E (see Appendix VI) and a budget narrative (see Section VII.B.) that describes the basis for the computation of all project-related costs and the source of the match offered.

Local courts should attach a concurrence signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix VII.)

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning.

The Board of Directors has delegated its authority to approve Curriculum Adaptation grants to its Judicial Education Committee. The committee anticipates acting upon applications within 45 days after receipt. Grant funds will be available only after committee approval and negotiation of the final terms of the grant.

(d) *Grantee Responsibilities.* A recipient of a Curriculum Adaptation grant must:

Comply with the same quarterly reporting requirements as other Institute grantees (see Section X.L., infra);

Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the ''SJI'' logo and a disclaimer paragraph (See section X.Q. of the Guideline); and

Submit two copies of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to replicate the program in the future.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in Sections VI and VII or the requirements for renewal applications set forth in Section IX.

iii. *Scholarships for Judges and Court Personnel.* The Institute is reserving up to $200,000 to support a scholarship program for State court judges and court managers.

(a) *Program Description/Scholarship Amounts.* The purposes of the Institute scholarship program are to: enhance the knowledge, skills, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local, and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. The annual or midyear meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

A scholarship may cover the cost of tuition and transportation up to a maximum total of $1,500 per scholarship. (Transportation expenses include round-trip coach airfare or train fare. Recipients who drive to the site of the program may receive $.31/mile up to the amount of the advanced purchase round-trip airfare between their home and the program site.) Funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible. Scholarship recipients are also encouraged to check with their tax advisor to determine whether the scholarship constitutes taxable income under Federal and State law.

(b) *Eligibility Requirements.* Because of the limited amount of funds available, scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

(c) *Application Procedures.* Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix V). An applicant may apply for a scholarship for only one educational program during any one application cycle. Applications must be submitted by:

October 1, 1996, for programs beginning between January 1, and March 31, 1997;

January 7, 1997, for programs beginning between April 1 and June 30, 1997;

April 1, 1997, for programs beginning between July 1 and September 30, 1997; and

July 1, 1997, for programs beginning between October 1, and December 31, 1997.

No exceptions or extensions will be granted. Applicants are encouraged not to wait for the decision on the scholarship to register for the educational program they wish to attend.

(d) *Concurrence Requirement.* All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education

Scholarship Concurrence form (Form S2, see Appendix V). Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor. The Concurrence form (Form S2) may accompany the application or be sent separately. However, the original signed Concurrence form must be received by the Institute within two weeks after the appropriate application mailing deadline (i.e., by October 15, 1996, or January 21, April 15, or July 15, 1997). No application will be reviewed if a signed Concurrence form has not been received by the required date.

(e) *Review Procedures/Selection Criteria.* The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 60 days after the relevant application deadline. The Committee will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

The factors that the Institute will consider in selecting scholarship recipients are:

The applicant's need for education in the particular course subject and how the applicant would apply the information/skills gained;

The benefits to the applicant's court or the State's court system that would be derived from the applicant's participation in the specific educational program, including a description of current legal, procedural, administrative, or other problems affecting the State's courts, related to topics to be addressed at the educational program (in addition to submission of a signed Form S2);

The absence of educational programs in the applicant's State addressing the particular topic;

How the applicant will disseminate the knowledge gained (e.g., by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level);

The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;

The likelihood that the applicant would be able to attend the program without a scholarship;

The unavailability of State or local funds to cover the costs of attending the program;

The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;

Geographic balance;

The balance of scholarships among types of applicants and courts;

The balance of scholarships among educational programs; and

The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

(f) *Non-transferability.* Scholarships are not transferable to another individual. They may be used only for the course specified in the application unless the recipient submits a letter requesting to attend a different course. The letter must explain the reasons for the change; the need for the information or skills to be provided by the new course; how the information or skills will be used to benefit the individual, his or her court, and/or the courts of the State; and how the knowledge or skills gained will be disseminated. Requests to use a scholarship for a different course must be approved by the Judicial Education Committee of the Institute's Board of Directors. Ordinarily, decisions on such requests will be made within 30 days after the receipt of the request letter.

(g) *Responsibilities of Scholarship Recipients.* In order to receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. Dispute Resolution and the Courts

This category includes education, research, evaluation, and demonstration projects to evaluate or enhance the effectiveness of court-connected dispute resolution programs. The Institute is interested in projects that facilitate comparison among research studies by using similar measures and definitions; address the nature and operation of ADR programs within the context of the court system as a whole; and compare dispute resolution processes to attorney settlement as well as trial. Specific topics of interest include:

The appropriate timing for referrals to dispute resolution services and the effects of implementing such referrals at various stages during litigation;

The effect of different referral methods including any differences in outcome between voluntary and mandatory referrals;

The special procedures or approaches incorporated into court-connected dispute resolution programs to take into account the differences in various cultural communities' attitudes toward conflict and authority;

The assessment of innovative approaches that provide rural courts and other under-served areas with adequate court-connected dispute resolution services; and

The development and evaluation of innovative court-connected dispute resolution programs for resolving complex and multi-party cases.

Applicants should be aware that the Institute will not provide operational support for on-going ADR programs or start-up costs of non-innovative ADR programs. Courts also should be advised that it is preferable for the applicant to use its funds to support the operational costs of an innovative program and request Institute funds to support related technical assistance, training, and evaluation elements of the program.

In previous funding cycles, grants have been awarded to support evaluation of the use of mediation in civil, domestic relations, juvenile, probate, medical malpractice, appellate, and minor criminal cases. SJI grants also have supported assessments of the impact of private judging on State courts; multi-door courthouse programs; arbitration of civil cases; screening and intake procedures for mediation; the relationship between mediator training and qualifications, and case outcome and party satisfaction; and trial and appellate level civil settlement programs. In addition, SJI has supported the creation of a national ADR resource center and a national database of court-connected dispute resolution programs; the development of training programs for judges; the testing of Statewide and trial court-based ADR monitoring/evaluation systems and implementation manuals; the promulgation of principles and policies regarding the qualifications, selection, and training of court-connected neutrals; development

of standards for court-annexed mediation programs; and an examination of the applicability of various dispute resolution procedures to different cultural groups.

d. Application of Technology

This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that the staff is appropriately educated about the purpose and use of the new technology. In this context, ''untested'' refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to: evaluate the use of the Internet for case and document filing; establish standards for judicial electronic data interchange (EDI); and test local, Statewide, and/or interstate demonstrations of the courts' use of EDI; evaluate innovative applications of technology to prevent courthouse incidents that endanger the lives and property of judges, court personnel, and courtroom participants; demonstrate and evaluate innovative information system links between courts and criminal justice, social service, and treatment agencies.

Ordinarily, the Institute will not provide support for the purchase of equipment or software in order to implement a technology that has been thoroughly tested in the courts, such as the establishment of videolinks between courts and jails, the use of optical imaging for recordkeeping, and the creation of an automated management information system. (But see section II.C.1. on projects to meet a critical need of a single jurisdiction.) See section XI.H.2.b. regarding other limits on the use of grant funds to purchase equipment and software.

In previous funding cycles, grants have been awarded to support: demonstration and evaluation of communications technology including the availability of electronic forms and information on the Internet to assist pro se litigants; access to case data via the Internet; guidelines for electronic transfer of court documents; interactive kiosks to assist pro se litigants; a multi-user ''system for judicial interchange'' designed to link disparate automated judicial and criminal justice information systems throughout a State; a computerized voice information system permitting parties telephone access to case information; an automated public information directory of courthouse facilities and services; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges.

The Institute has also supported projects demonstrating and evaluating records technology, including: an electronic document management system; a court management information display system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; an automated judicial education management system; a document management system for small courts using imaging technology; and the use of automated teller machines for paying jurors.

SJI grants have also supported court technology assistance services, e.g., a court technology bulletin to inform judges and court managers about the latest developments in court-related technologies; a court technology laboratory to provide judges and court managers an opportunity to test automated court-related hardware and software; a technical information service to respond to specific inquiries concerning court-related technologies; programs that allow public access to electronically stored court information; and a planning guide for undertaking large-scale automation projects.

Grants also provided support for national court technology conferences; model rules on the use of computer-generated demonstrative evidence and electronic documentary evidence; guidelines on privacy and public access to electronic court information and on court access to the information superhighway; a computerized citizen intake and referral service; an ''analytic judicial desktop system'' to assist judges in making sentencing decisions; a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; and computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow.

e. Court Planning, Management, and Financing

The Institute is interested in supporting projects that explore emerging issues that will affect the State courts as they enter the 21st Century, as well as projects that develop and test innovative approaches for managing the courts, securing and managing the resources required to fully meet the responsibilities of the judicial branch, and institutionalizing long-range planning processes. In particular the Institute is interested in:

i. Demonstration, evaluation, education, research, and technical assistance projects to:

Develop, implement, and assess innovative case management techniques for cases involving juveniles;

Facilitate communication, information sharing, and coordination between the juvenile and criminal courts;

Assess the effects of innovative management approaches designed to assure quality services to court users;

Institutionalize long-range planning approaches in individual States and local jurisdictions, including development of an ongoing internal capacity to conduct environmental scanning, trends analysis, and benchmarking; and

Develop and test mechanisms for linking assessments of effectiveness such as the Trial Court Performance Standards to fiscal planning and budgeting, including service efforts and accomplishments approaches (SEA), performance audits, and performance budgeting; and the testing of innovative programs and procedures for providing clear and open communications between the judicial and legislative branches of government.

ii. The preparation of essays exploring possible changes in the court process or judicial administration and their implications for judges, court managers, policymakers, and the public. Grants supporting such ''think pieces'' are limited to no more than $10,000. The resulting essay should be of publishable quality and directed to the court community.

Possible topics include, but are not limited to: the ramifications of ''virtual trials'' (i.e., proceedings in which several of the trial participants including the parties, counsel, witnesses, the judge, and the jury may not be physically in the courtroom); the implications of the greater use of technology-enhanced courtroom presentations, especially when there is an imbalance of resources among the parties; the appropriateness of modifying methods of selecting, qualifying, and using juries; and the uses of technology to better inform and prepare jurors.

In previous grant cycles, the Institute has funded planning, futures, and

innovative management projects including: national and Statewide ''future and the courts'' conferences and training; curricula, guidebooks and a video on visioning, and a long-range planning guide for trial courts; technical assistance to courts conducting futures and long-range planning activities; a National Interbranch Conference on Funding the State Courts; a test of the feasibility of implementing the Trial Court Performance Standards in four States; Appellate Court Performance Standards and Measures; total quality management principles to court operations, as well as a TQM guidebook and training materials for trial courts; a revision of the Standards on Judicial Administration; projects identifying the causes of delay in trial and appellate courts; and a national agenda for reducing litigation cost and delay.

f. Resolution of Current Evidentiary Issues

This category includes educational programs and other projects to assist judges in deciding questions regarding:

The admissibility of new forms of demonstrative evidence, including computer simulations, and providing appropriate jury instructions regarding such evidence;

The appropriate use of expert testimony in criminal cases concerning the possible mitigating impact of the prior victimization of the defendant;

The admissibility and weight of complex scientific or technical evidence and applying the standards set forth in *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.* governing the admissibility of scientific and technical evidence;

The admissibility of genetic evidence generally, and the findings of the recently released National Academy of Sciences report evaluating forensic DNA evidence, in particular;

The admissibility of testimony based on recovered memory, and the admissibility of expert testimony about memory recovery; and

The application of rape shield laws and other limits on the introduction of evidence or the cross-examination of witnesses.

In previous funding cycles, the Institute has supported the analysis of issues related to the use of expert testimony in criminal cases involving domestic violence; a computer-assisted training program on evidentiary problems for juvenile and family court judges; training on medical/legal and scientific evidence issues; a national conference on mass tort litigation; regional seminars on evidentiary questions; a videotape and other materials on scientific evidence; a workshop on the use of DNA evidence in criminal proceedings; and a benchbook for judges on the credibility, competence, and courtroom treatment of child witnesses as well as protocols for questioning child victims of crime.

g. Substance Abuse

This category includes projects to develop and evaluate innovative techniques that courts may use to handle substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously. In particular, the Institute is interested in projects to:

Prepare and test measures, forms, and other tools for self-evaluation of a ''drug court'' (i.e., a specialized calendar for substance abuse cases combined with a court-enforced substance abuse treatment program);

Develop and test innovative management information systems to facilitate the sharing of information among courts, and the agencies and service providers involved in the operation of a drug court;

Assess the effect of managed health-care plans on the availability and cost of drug treatment services for drug courts and other court-enforced treatment programs, and assist courts in shaping managed care plans to enhance the availability of necessary services at a reasonable cost;

Develop and test educational programs for judges and court personnel concerning the management of drug courts developing collaborative efforts with community service agencies to support the work of drug courts, or the ethical issues that may be involved in operating a drug court; and

Test the applicability of the drug court model to substance abuse-related cases involving juveniles and cases requiring other treatment or services in addition to substance abuse treatment (e.g., child abuse, or mental health cases).

The Institute has supported the presentation of the 1995 National Symposium on the Implementation and Operation of Court-Enforced Drug Treatment Programs as well as the 1991 National Conference on Substance Abuse and the Courts, and efforts to implement the State and local plans developed at these Conferences.

It has also supported projects to evaluate court-enforced treatment programs; special court-ordered programs for women offenders, and other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; involve community groups and families in drug court programs; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook and other educational materials to assist judges in child abuse and neglect cases involving parental substance abuse and in developing appropriate sentences for pregnant substance abusers; test the use of a dual diagnostic treatment model for domestic violence cases in which substance abuse was a factor; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

h. Children and Families in Court

This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, appropriate, and effective approaches for handling cases involving children and families. The Institute is particularly interested in projects that :

i. Assist courts in addressing the special needs of children in cases involving family violence, including the development and testing of innovative protocols, procedures, educational programs, and other measures for improving the capacity of courts to:

Adjudicate child custody cases in which family violence may be involved;

Determine and address the service needs of children exposed to family violence and the methods for mitigating those effects when issuing protection, custody, visitation, or other orders;

Adjudicate and monitor child abuse and neglect litigation and reconcile the need to protect the child with the requirement to make reasonable efforts to maintain or reunite the family.

ii. Enhance the fairness and effectiveness of juvenile delinquency proceedings, including projects that:

Prepare curricula and materials on how to manage cases involving gang members fairly, safely, and effectively, including the use of appropriate procedures for determining pre-adjudication release, protecting witnesses, and developing effective dispositions;

Prepare curricula and materials for judges and court staff on accurately identifying those juvenile offenders who are likely to pursue criminal careers and intervening more effectively when such a youth is identified;

Develop and test effective approaches for the detention, adjudication, and disposition of juveniles under age 13 who are accused of involvement in a violent offense;

iii. Improve the fairness and effectiveness of proceedings to determine custody, visitation, and support issues, including projects that:

Develop and test guidelines, curricula, and other materials to assist trial judges in determining the best interest of a child, particularly when an adoption is contested, or when a parent who has been awarded custody seeks to relocate;

Develop and test guidelines, curricula, and other materials to assist trial judges in establishing and enforcing custody, visitation, and support orders in cases in which a child's parents were never married to each other.

iv. Improve the effectiveness and operating efficiency of juvenile and family courts, including projects to:

Improve the capacity of courts, regardless of structure, to expeditiously coordinate and share appropriate information for multiple cases involving members of the same family;

Develop and test innovative techniques for improving communication, sharing information, and coordination between juvenile and criminal courts and divisions; and

Improve the handling of the criminal and civil aspects of interstate and international parental child abductions.

In previous funding cycles, the Institute supported a national and State conferences on courts, children, and the family; a review of juvenile courts in light of the upcoming 100th anniversary of the founding of the first juvenile court; a symposium on the resolution of interstate child welfare issues; the preparation of educational materials on the questioning of child witnesses, making reasonable efforts to preserve families, adjudicating allegations of child sexual abuse when custody is in dispute, child victimization, handling child abuse and neglect cases when parental substance abuse is involved, and on children as the silent victims of spousal abuse. Other Institute grants have supported the examination of supervised visitation programs, effective court responses when domestic violence and custody disputes coincide, and foster care review procedures.

In addition, the Institute has supported projects to enhance coordination of cases involving the same family that are being heard in different courts; assistance to States considering establishment of a family court; development of national and State-based training materials for guardians ad litem; examinations of the authority of the juvenile court to enforce treatment orders and the role of juvenile court judges; and development of innovative approaches for coordinating services for children and youth.

i. Improving the Courts' Response to Domestic Violence and Gender-Related Crimes of Violence

This category includes education, demonstration, technical assistance, evaluation, and research projects to improve the fair and effective processing, consideration, and disposition of cases concerning domestic violence and gender-related violent crimes, including projects on:

The effective use and enforcement of intra- and inter-State protective orders and the implications for the courts of the full faith and credit provisions of the Violence Against Women Act;

The effective use of electronic databases of protection orders;

The effectiveness of specialized calendars or divisions for considering domestic violence cases and related matters, including their impact on victims, offenders, and court operations;

The most effective procedures for conducting ''fatality reviews,'' and the impact of such reviews on the courts, criminal justice agencies, and the public;

Appropriate consideration of cultural issues in adjudicating and developing effective dispositions in cases involving domestic violence;

Effective methods that courts can use to monitor and respond to stalking;

Determining when it may be appropriate to refer a case involving family violence for mediation and what procedures and safeguards should be employed;

Effective programs, procedures, and strategies to coordinate the response to domestic violence and gender-related crimes of violence among courts, criminal justice agencies, and social services programs, and to assure that courts are fully accessible to victims of domestic violence and other gender-related violent crimes; and

Effective sentencing approaches in cases involving domestic violence and other gender-related crimes, including methods for accurately identifying potentially lethal batterers.

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes.

In previous funding cycles, the Institute supported national and State conferences on family violence and the courts as well as projects to implement the action plans developed at these conferences; curricula for judges on handling family violence, rape, and sexual assault cases; descriptions of innovative court practices in family violence cases; evaluation of the effectiveness of court-ordered treatment for family violence offenders and of the use of alternatives to adjudication in child abuse cases; development of ways to improve the effectiveness of civil protection orders for family violence victims; an examination of state-of-the-art court practices for handling family violence cases; recommendations on how to improve access to rural courts for victims of family violence; exploration of the policy issues related to and the development of curricula on the use of mediation in domestic relations cases involving allegations of violence; videotapes and other educational programs for the parties in divorce actions and their children; and an analysis of the issues related to the use of expert testimony in criminal cases involving domestic violence.

j. The Relationship Between State and Federal Courts

This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative projects that:

i. Develop and test curricula and other educational materials to illustrate effective methods being used at the trial court, State, and Circuit levels to coordinate cases and administrative activities, and share facilities; and

ii. Develop and test new approaches to:

Implement the habeas corpus provisions of the Anti-Terrorism Act of 1996;

Handle capital habeas corpus cases fairly and efficiently;

Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;

Coordinate the adjudication of related State and Federal criminal cases;

Coordinate related State and Federal cases that may be brought under the Violence Against Women Act;

Exchange information and coordinate calendars among State and Federal courts; and

Share jury pools, alternative dispute resolution programs, and court services.

In previous funding cycles, the Institute has supported national and regional conferences on State-Federal judicial relationships, a national conference on mass tort litigation, and the Chief Justices' Special Committee on Mass Tort Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation

affecting State courts, and projects examining methods of State and Federal trial and appellate court cooperation; procedures for facilitating certification of questions of law; the impact on the State courts of diversity cases and cases brought under section 1983; the procedures used in Federal habeas corpus review of State court criminal cases; the factors that motivate litigants to select Federal or State courts; and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a test of assigning specialized law clerks to trial courts hearing capital cases in order to improve the fairness and efficiency of death penalty litigation at the trial level, a clearinghouse of information on State constitutional law decisions, educational programs for State judges on coordination of Federal bankruptcy cases with State litigation, and a seminar examining the implications of the ''Federalization'' of crime.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Projects Addressing a Critical Need of a Single State or Local Jurisdiction

a. *Description of the Program.* The Board will set aside up to $300,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas. In particular, the Institute is interested in proposals to replicate programs, procedures, or strategies that have been developed, demonstrated, or evaluated by SJI-supported projects. (A list of examples of such projects is contained in Appendix IV.) Replication grants are limited to no more than $30,000 each. Ordinarily, the Institute will not provide support solely for the purchase of equipment or software.

Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. *Application Procedures.* Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. (''Concept Paper Submission Requirements for New Projects'') and VII. (''Application Requirements''), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. *Description of the Program.* The Board will set aside up to $400,000 of Fiscal Year 1997 funds to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $100,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants, travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating, or both. Technical assistance grant funds ordinarily may not be used to support production of a videotape. Normally, the technical assistance must be completed within 12 months after the start-date of the grant.

b. *Eligibility for Technical Assistance Grants.* Only a State or local court may apply for a Technical Assistance grant. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount.

c. *Review Criteria.* Technical Assistance grants will be awarded on the basis of criteria including: whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

d. *Application Procedures.*

i. In lieu of formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project and addressing the issues listed below. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

ii. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

Need for Funding. What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

Project Description. What tasks would the consultant be expected to perform and how would they be accomplished? Who (what organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

Likelihood of Implementation. What steps have been/will be taken to facilitate implementation of the

consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant will be needed to adopt the changes recommended by the consultant and approved by the court, how will they be involved in the review of the recommendations and development of the implementation plan?

Budget and Matching State Contribution. A completed Form E, ''Preliminary Budget'' (see Appendix VI to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs (e.g., number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no grant funds may be used to pay a consultant at a rate in excess of $900 per day. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of technical assistance grants do not have to submit an audit, but must maintain appropriate documentation to support expenditures. (See section X.M.)

Support for the Project from the State Supreme Court or its Designated Agency or Council. Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix VII) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

iii. Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between June 18 and September 30, 1996 will be notified of the Board's decision by December 9, 1996. Those submitting letters between October 1, 1996 and January 10, 1997 will be notified by March 28, 1997. Notification of the Board's decisions concerning letters mailed between January 11 and March 14, 1997, will be made by May 27, 1997. Notice of decisions regarding letters submitted between March 15 and June 13, 1997 will be made by August 31, 1997. Subject to the availability of sufficient appropriations for fiscal year 1998, applicants submitting letters between June 14 and September 30, 1997, will be notified by December 19, 1997.

iv. If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation must accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than two weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by November 1, 1996, and February 13, April 17, and July 11, 1997).

e. Grantee Responsibilities. Technical Assistance grant recipients are subject to the same quarterly reporting requirements as other Institute grantees. At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute two copies of a final report that explains how it intends to act on the consultant's recommendations as well as two copies of the consultant's written report.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

E. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

F. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Match does not include project-related income such as tuition or revenue from the sale of grant products. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. In-kind match does not include the time of participants attending an education program. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Amounts contributed as cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

G. Continuation Grant

A grant to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period.

H. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need.

I. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique.

J. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and other instructors' notes; copies of overhead transparencies or other visual aids; exercises; case studies; hypotheticals, quizzes and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

K. Products

Tangible materials resulting from funded projects including, but not limited to: curricula; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD-ROM disks.

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705 (b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a national education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

In addition, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix I.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in sections II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are: Education and training; Research and evaluation; Demonstration; and Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. Project grants (See sections II.B., and C.1., VI., and VII.).

2. Continuation grants (See sections III.G. and IX.A).

3. On-going Support grants (See sections III.H. and IX.B.).

4. Technical Assistance grants (See section II.C.2.).

5. Curriculum Adaptation grants (See section II.B.2.b.ii.).

6. Scholarships (See section II.B.2.b.iii).

C. Maximum Size of Award

1. Except as specified below, applications for new project grants and applications for continuation grants may request funding in amounts up to $200,000, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds for on-going support grants may be awarded either entirely from the Institute's appropriations for the fiscal year of the award or from the Institute's appropriations for successive fiscal years beginning with the fiscal year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the fiscal year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the Quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that fiscal year.

3. Applications for technical assistance grants may request funding in amounts up to $30,000.

4. Applications for curriculum adaptation grants may request funding in amounts up to $20,000.

5. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 15 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. This requirement and the submission deadlines for concept papers and applications may be waived

by the Executive Director for good cause (e.g., the proposed project could provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization, or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.A.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

The program narrative of a concept paper should be no longer than necessary, but in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The narrative should describe:

a. *Why is this project needed and how will it benefit State courts?* If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources, and the benefits that would be realized by the proposed site(s).

If the project is not site-specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services, or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

b. *What will be done if a grant is awarded?* Applicants should include a summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows, and include a detailed task schedule as an attachment to the concept paper.

c. *How will the effects and quality of the project be determined?* Applicants should include a summary description of how the project will be evaluated, including the evaluation criteria.

d. *How will others find out about the project and be able to use the results?* Applicants should describe the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

3. The Budget

a. *Preliminary Budget.* A preliminary budget must be attached to the narrative that includes the information specified on Form E included in Appendix VI of this Guideline. Applicants should be aware that prior written Institute approval is required for any consultant rate in excess of $300 per day, and that Institute funds may not be used to pay a consultant in excess of $900 per day.

b. *Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000.* Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C. must attach to Form E (see Appendix VI) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources.

4. Letters of Cooperation or Support

The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project. Letters of support also may be sent under separate cover. However, in order to ensure that there is sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than January 13, 1997.

5. Page Limits

a. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.b., the task schedule if required under section VI.A.2.b., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

b. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

6. Sample Concept Papers

Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated on the basis of the following criteria:

The demonstration of need for the project;

The soundness and innovativeness of the approach described;

The benefits to be derived from the project;

The reasonableness of the proposed budget;

The proposed project's relationship to one of the ''Special Interest'' categories set forth in section II.B; and

The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

''Single jurisdiction'' concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the ''Special Interest'' categories set forth in section II.B., and on the special requirements listed in section II.C.1.b.

2. In determining which concept papers will be approved for award or selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b) (as amended) and section IV above); the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements, and the

level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for its review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation. Because the Institute's experience has been that projects to conduct empirical research or program evaluation ordinarily require a more thorough explanation of the methodology to be used than can be provided within the space limitations of a concept paper, the Board is unlikely to waive the application requirement for such projects.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1997 must be sent by first class or overnight mail or by courier no later than November 27, 1996. A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and should be sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances.

A. Forms

1. Application Form (Form A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (Form B)

An application from a State or local court must include a copy of Form B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (Form C or C1)

Applicants may submit the proposed project budget either in the tabular format of Form C or in the spreadsheet format of Form C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to Form C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application should not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a

specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas To Be Covered

The applicant should list the Special Interest Category or Categories that are addressed by the proposed project (see section II.B.). If the proposed project does not fall within one of the Institute's Special Interest Categories, the applicant should list the Statutory Program Area or Areas that are addressed by the proposed project. (See section II.A.)

3. Need for the Project

If the project is to be conducted in a specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing materials, programs, procedures, services, or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. Tasks, Methods and Evaluation

a. *Tasks and Methods.* The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

For research and evaluation projects, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

For education and training projects, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who will attend them; the materials to be provided and how they will be developed; and the cost to participants.

For demonstration projects, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; and how the program or procedures will be implemented and monitored.

For technical assistance projects, the applicant should explain the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

b. *Evaluation.* Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide on-going or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed. For example:

An evaluation approach suited to many *research* projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

The most valuable approaches to evaluating *educational or training* programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

The evaluation plan for a *demonstration* project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

For *technical assistance* projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving *human subjects* should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and

freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

5. Project Management

The applicant should present a detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Status Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

6. Products

The application should contain a description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute.

a. *Dissemination Plan.* The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts, including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e., whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). (See section X.V.) Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix II.) To facilitate their use, all videotaped products should be distributed in VHS format.

Twenty copies of all project products, must be submitted to the Institute. A master copy of each videotape, in addition to 20 copies of each videotape product, must also be provided to the Institute.

b. *Types of Products.* The type of products to be prepared depend on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they will make their data available for secondary analysis after the grant period. (See section X.W.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

At the conclusion of a project, grantees also must submit a diskette containing a one-page abstract summarizing the products resulting from a project in Word, WordPerfect or ASCII. The abstract should include the grant number and the name of a contact person together with that individual's address, telephone number, and e-mail address (if applicable).

c. *Institute Review.* Applicants must provide for submitting a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for incremental Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

d. *Acknowledgment, Disclaimer, and Logo.* Applicants must also provide for including in all project products, a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

8. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not administered a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has administered a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined

by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, ''current'' means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. In order to ensure that there is sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received at least four weeks before the meeting of the Board of Directors at which the application will be considered (i.e., no later than January 24, 1997, April 3, 1997, or June 27, 1997, respectively).

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to pay for coffee breaks during seminars or meetings, or to purchase alcoholic beverages.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706 (d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant will perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., number of days x the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section XI.H.2.c. Honorarium payments must be justified in the same manner as other consultant payments. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant at a rate in excess of $900 per day.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds many be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should

provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented sufficiently clearly to permit them to be included in an audit of the grant. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.F., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court, or on the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 7, 1997. A postmark or courier receipt will constitute evidence of the submission date. All envelopes or boxes containing applications should be marked APPLICATION and sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted. See section VII.C.11. for receipt deadlines for letters of support.

2. Applicants submitting more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

The soundness of the methodology;

The demonstration of need for the project;

The appropriateness of the proposed evaluation design;

The applicant's management plan and organizational capabilities;

The qualifications of the project's staff;

The products and benefits resulting from the project including the extent to which the project will have long-term benefits for State courts across the nation;

The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

The reasonableness of the proposed budget;

The demonstration of cooperation and support of other agencies that may be affected by the project; and

The proposed project's relationship to one of the ''Special Interest'' categories set forth in section II.B.

2. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

C. Review and Approval Process

Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a proposal based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been provided to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

Two types of renewal funding are described below—''continuation grants'' and ''on-going support grants.'' The award of an initial grant to support a project does not constitute a commitment by the Institute to renew funding. The Board of Directors anticipates allocating no more than $2 million of available FY 1997 grant funds for renewal grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus or audience of the project.

b. Within 30 days of receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form (from applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should include:

a. *Project Objectives.* The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. *Need for Continuation.* The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the original goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

c. *Report of Current Project Activities.* The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

d. *Evaluation Findings.* The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if they are available, and how they will be addressed during the proposed continuation. If the findings are not yet available, applicants should provide the date by which they will be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. *Tasks, Methods, Staff and Grantee Capability.* The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products will be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

A continuation application for a package grant must address these issues separately for each project included in the proposed package, using the same alphabetic identifiers and project titles as in the original application.

f. *Task Schedule.* The applicant should present a detailed task schedule and timeline for the next project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered.

5. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for

new projects set forth in sections VIII.C.—VIII.E.

B. On-going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2. and V.D.2. The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the 3-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Letters of Intent

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of Need for and Benefits of the Project.* The applicant should provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of Court Support.* The applicant should demonstrate support for the continuation of the project from the courts community.

c. *Report on Current Project Activities.* The applicant should discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation Findings.* The applicant should attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period. Ordinarily, the Board will not consider an application for on-going support until the Institute has received the evaluator's report.

e. *Objectives, Tasks, Methods, Staff and Grantee Capability.* The applicant should describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

f. *Task Schedule.* The applicant should present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other Sources of Support.* The applicant should indicate why other sources of support are inadequate, inappropriate or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

5. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the

proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix I to this Guideline lists the person to contact in each State regarding the administration of Institute grants to State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants that provide a cash match to the Institute's award. (For a further definition of match, see section III.F.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and the Board of Directors. 42 U.S.C. 10705(d).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. above and XI.D.).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in any proceeding, application, request for a ruling, or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge, he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b.iii., shall submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The Quarterly Financial Status Report shall be submitted in accordance with section XI.G.2. of this guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section XI.K.2. of this Guideline.

M. Audit

Recipients, other than those noted below, must provide for an annual fiscal audit which shall include an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. (See section XI.J. of the Guideline for the requirements of such audits.) Recipients of a scholarship, curriculum adaptation, or technical assistance grant are not required to submit an audit, but must maintain appropriate documentation to support all expenditures.

N. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The ''SJI'' logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

Recipients also shall display the following disclaimer on all grant products:

''This [document, film, videotape, etc.] was developed under [grant/cooperative agreement, number SJI-(insert number)] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute.''

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. These drafts shall be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute. Grantees shall provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents, prior to initiating the next stage of product development. 'I83S. Distribution of Grant Products

In addition to the distribution specified in the grant application, grantees shall send:

1. Twenty copies of each final product developed with grant funds to the Institute, unless the product was developed under either a curriculum adaptation or a technical assistance grant, in which case submission of 2 copies is required.

2. A mastercopy of each videotape produced with grant funds to the Institute.

3. A one-page abstract to the Institute summarizing the products produced during the project for posting on the Internet together with a diskette containing the abstract in Word, WordPerfect, or ASCII. The abstract should include the grant number, a contact name, address, telephone numbers, and e-mail address (if applicable).

4. One copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II. Labels for these libraries are available from the Institute upon request.) Recipients of curriculum adaptation and technical assistance grants are not required to send final products to State libraries.

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with ''Government Patent Policy'' (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

V. Charges for Grant-Related Products/ Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

Applicants should disclose their intent to sell grant-related products in both the concept paper and the application. Subsequent written requests to recover costs ordinarily should be submitted in writing during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25.00, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions. If the price of the product is increased after the expiration of the grant period, the grantee must notify the Institute of the new sales price.

In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.F. and XI.F. for requirements regarding project-related income realized during the project period.

W. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

X. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors, and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–7250.)

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.

h. *Office of Management and Budget (OMB) Circular A–133,* Audits of Institutions of Higher Education and Other Non-profit Institutions.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; shall be responsible for assuring proper administration of Institute funds; and shall be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of the Guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.M. and XI.J).

f. *Reporting Irregularities.* The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a ''total project cost'' basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated during the award period, except that with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall order their affairs so as to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income from the Sale of Grant Products

When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense only at a price intended to recover actual reproduction and distribution costs that were not covered by Institute grant funds or grantee matching contributions to the project. When grant funds only partially cover the costs of developing, producing, and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions. If the grantee recovers its costs in this manner, then amounts expended by the grantee to develop, produce, and disseminate the material may not be considered match.

If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a ''Check-Issued'' basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. *Continuation and On-Going Support Awards.* For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should treat each grant as a new project and number their requests accordingly (i.e. on a grant rather than a project basis). For example, the first request for payment from a continuation grant or each year of an on-going support would be number 1, the second number 2, etc. (See Recommendations to Grantees in the Introduction for further guidance.)

c. *Termination of Advance and Reimbursement Funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing

between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. *Principle of Minimum Cash on Hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

a. *General Requirements.* In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Three copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.iii., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

b. *Additional Requirements for Renewal Grants.* Grantees receiving a continuation or on-going support grant should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant or each year of an on-going support award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance with Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension or termination of grant payments.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in *OMB Circulars A–87,* Cost Principles for State and Local Governments; *A–21,* Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122,* Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period. Copies of these circulars may be obtained from OMB by calling (202) 395–7250.

2. Costs Requiring Prior Approval

a. *Pre-agreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant at a rate in excess of $900 per day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. Approved Plan Available

i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiated agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular. Copies of OMB Circulars may be obtained directly from OMB by calling (202) 395–7250.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute adopts the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110*.

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Implementation

Each recipient of a grant from the Institute, other than a scholarship, curriculum adaptation, or technical assistance grant (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and OMB Circular A–128, or OMB Circular A–133 will satisfy the requirement for an annual fiscal audit. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (See section XI.K.3), the following documents must be submitted to the Institute by the grantee other than a recipient of a scholarship under section II.B.2.b.v. These reporting requirements apply at the conclusion of any non-scholarship grant, even when the project will receive renewal funding through a continuation or on-going support grant.

a. *Financial Status Report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final Progress Report.* This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment thereto have been met and, if any of the objectives have not been met, explain the reasons therefor; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

3. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved original budget or the most recently approved revised budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.X.).

8. A change in the name of the grantee organization.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify their SJI program manager, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

State Justice Institute Board of Directors

David A. Brock, Co-Chairman, Chief Justice, Supreme Court of New Hampshire, Concord, NH
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Mr. Robert N. Baldwin, State Court Administrator, Virginia Supreme Court, Richmond, VA
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Tommy Jewell, Judge, 2nd Judicial District Court, Albuquerque, NM
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David I. Tevelin, Executive Director (ex officio)

David I. Tevelin,
Executive Director.

Appendix I—List of Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Frank Gregory, Administrative Director, Administrative Office of the Courts, 300 Dexter Avenue, Montgomery, AL 36130, (205) 834–7990
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, AK 99501, (907) 264–0547
Mr. David K. Byers, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9301
Mr. James D. Gingerich, Director, Administrative Office of the Courts, 625 Marshall, Little Rock, AR 72201, (501) 682–9400
Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, (415) 396–9115
Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, CO 80203–2416, (303) 861–1111, ext. 585

Honorable Aaron Ment, Chief Court Administrator, Supreme Court of Connecticut, 231 Capitol Avenue, Drawer N, Station A, Hartford, CT 06106, (203) 566–4461

Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801, (302) 577–2480

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700

Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, FL 32399–1900, (904) 922–5081

Mr. Robert L. Doss, Jr., Director, Administrative Office of the Georgia Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, GA 30334–5900, (404) 656–5171

Mr. Anthony P. Sanchez, Administrative Director, Superior Court of Guam, Judiciary Building, 120 West O'Brien Drive, Agana, Guam 96910, 011 (671) 475–3544

Mr. Michael F. Broderick, Administrative Director of the Courts, 417 S. King Street, Room 206, Honolulu, HI 96813, (808) 539–4900

Ms. Patricia Tobias, Administrative Director of the Courts, Idaho Supreme Court, 451 West State Street, Boise, ID 83720–0101, (208) 334–2246

Honorable Daniel R. Pascale, Administrative Director of the Courts, 160 N. LaSalle Street, 20th Floor, Chicago, IL 60601, (312) 793–8191

Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, 115 W. Washington, Suite 1080, Indianapolis, IN 46204–3417, (317) 232–2542

Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, IA 50319, (515) 281–5241

Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, KS 66612, (913) 296–4873

Mr. Paul F. Isaacs, Administrative Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, KY 40601–9230, (502) 573–2350

Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, LA 70112, (504) 568–5747

Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, ME 04112–4820, (207) 822–0792

Mr. George B. Riggin, Jr., State Court Administrator, Administrative Office of the Courts, Courts of Appeal Bldg., 361 Rowe Boulevard, Annapolis, MD 21401, (410) 974–2141

Honorable John J. Irwin, Jr., Chief Justice for Administration and Management, The Trial Court, Administrative Office of the Trial Court, Two Center Plaza, Suite 540, Boston, MA 02108, (617) 742–8575

Ms. Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, 309 N. Washington Square, P.O. Box 30048, Lansing, MI 48909, (517) 373–0130

Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (617) 296–2474

Mr. Martin Smith, Director, Administrative Office of the Courts, Supreme Court of Mississippi, P.O. Box 117, Jackson, MS 39205 (601) 354–7408

Mr. Ron Larkin, State Court Administrator, Supreme Court of Missouri, P.O. Box 104480, Jefferson City, MO 65110, (314) 751–3585

Mr. Patrick A. Chenovick, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, MT 59620–3001, (406) 444–2621

Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, NE 68509, (404) 471–3730

Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, NV 89710, (702) 687–5076

Mr. Donald Goodnow, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, NH 03301, (603) 271–2521

Mr. James J. Ciancia, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, NJ 08625, (609) 984–0275

Honorable Jonathan Lippman, Chief Administrative Judge, Office of Court Administration, 270 Broadway, New York, NY 10007, (212) 417–2007

Mr. John M. Greacen, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, NM 87503, (505) 827–4800

Hon. Jack Cozort, Acting Administrative Director, Administrative Office of the Courts, P.O. Box 2448, Raleigh, NC 27602, (919) 733–7107

Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, ND 58505, (701) 328–4216

Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2653

Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450

Ms. Kingsley Click, State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, OR 97310, (503) 986–5900

Ms. Nancy M. Sobolevitch, Court Administrator, Supreme Court of Pennsylvania, 1515 Market Street, Suite 1414, Philadelphia, PA 19102, (215) 560–6337

Dr. Robert C. Harrall, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, RI 02903, (401) 277–3263

Mr. George A. Markert, Director, South Carolina Court Administration, P.O. Box 50447, Columbia, SC 29250, (803) 734–1800

Mr. Michael L. Buenger, State Court Administrator, Unified Judicial System, 500 East Capitol Avenue, Pierre, SD 57501, (605) 773–3474

Mr. Charles E. Ferrell, Administrative Director of the Courts, Nashville City Center, Suite 600, 511 Union Street, Nashville, TN 37243–0607, (615) 741–2687

Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration of the Texas Judicial System, 205 West 14th Street, Suite 600, Austin, TX 78701, (512) 463–1625

Mr. Daniel Becker, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, UT 84102, (801) 578–3800

Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, Montpelier, VT 05602, (802) 828–3278

Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, P.O. Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248

Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455

Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, P.O. Box 41174, Olympia, WA 98504, (360) 357–2121

Mr. Ted J. Philyaw, Administrative Director of the Courts, E–400, State Capitol Bldg., 1900 Kanawha Blvd., East, Charleston, WV 25305, (304) 558–0145

Mr. J. Denis Moran, Director of State Courts, P.O. Box 1688, Madison, WI 53701–1688, (608) 266–6828

Mr. Allen C. Johnson, Court Administrator, Supreme Court of Wyoming, Supreme Court Building, Cheyenne, WY 82002, (307) 777–7480

Appendix II—SJI Libraries Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. William C. Younger, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, AL 36130, (205) 242–4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, AK 99501, (907) 264–0583

Arizona

State Law Library

Ms. Arlene Bansal, Collection Development, Research Division, Arizona Dept. of Library, Archives and Public Records, State Law Library, 1501 W. Washington, Phoenix, AZ 85007, (602) 542–4035

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of

the Courts, Justice Building, 625 Marshall, Little Rock, AR 72201–1078, (501) 376–6655

California

Administrative Office of the Courts

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, CA 94107, (415) 396–9100

Colorado

Supreme Court Library

Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 837–3720

Connecticut

State Library

Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, CT 06106, (203) 566–4301

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 571–2480

District of Columbia

Executive Office, District of Columbia Courts

Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700

Florida

Administrative Office of the Courts

Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, FL 32399–1900, (904) 488–8621

Georgia

Administrative Office of the Courts

Mr. Robert Doss, Jr., Administrative Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington St., S.W., Suite 550, Atlanta, GA 30334–5900, (404) 656–5171

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, Judiciary Building, P.O. Box 2560, Honolulu, HI 96804, (808) 548–4605

Idaho

AOC Judicial Education Library / State Law Library

Ms. Laura Pershing, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court Library, Supreme Court Building, Springfield, IL 62701–1791, (217) 782–2424

Indiana

Supreme Court Library

Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, IN 46204, (317) 232–2557

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director, Judicial, Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, IA 50319, (515) 281–8279

Kansas

Supreme Court Library

Mr. Fred Knecht,
Law Librarian,
Kansas Supreme Court Library,
301 West 10th Street,
Topeka, KS 66614,
(913) 296–3257

Kentucky

State Law Library

Ms. Sallie Howard,
State Law Librarian,
State Law Library,
State Capital, Room 200–A,
Frankfort, KY 40601,
(502) 564–4848

Louisiana

State Law Library

Ms. Carol Billings,
Director,
Louisiana Law Library,
301 Loyola Avenue,
New Orleans, LA 70112,
(504) 568–5705

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall,
State Law Librarian,
State House Station 43,
Augusta, ME 04333,
(207) 289–1600

Maryland

State Law Library

Mr. Michael S. Miller,
Director,
Maryland State Law Library,
Court of Appeal Building,
361 Rowe Boulevard,
Annapolis, MD 21401,
(301) 974–3395

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer,
Librarian,
Middlesex Law Library,
Superior Court House,
40 Thorndike Street,
Cambridge, MA 02141,
(617) 494–4148

Michigan

Michigan Judicial Institute

Mr. Dennis W. Catlin,
Executive Director,
Michigan Judicial Institute,
222 Washington Square North,
P.O. Box 30205,
Lansing, MI 48909,
(517) 334–7804

Minnesota

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson,
State Law Librarian,
Supreme Court of Minnesota,
25 Constitution Avenue,
St. Paul, MN 55155,
(612) 297–2084

Mississippi

Mississippi Judicial College

Mr. Rick D. Patt,
Staff Attorney,
University of Mississippi,
P.O. Box 8850,
University, MS 38677,
(601) 982–6590

Montana

State Law Library

Ms. Judith Meadows,
State Law Librarian,
State Law Library of Montana,
215 North Sanders,
Helena, MT 59620,
(406) 444–3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele,
State Court Administrator,
Supreme Court of Nebraska,
Administrative Office of the Courts,
P.O. Box 98910,
Lincoln, NE 68509–8910,
(402) 471–3730

Nevada

National Judicial College

Mr. V. Robert Payant,
President,
National Judicial College,
Judicial College Building,
University of Nevada,
Reno, NV 89550,
(702) 784–6747

New Jersey

New Jersey State Library

Mr. Robert L. Bland,
Law Coordinator,
State of New Jersey,
Department of Education, State Library,
185 West State Street, CN520,
Trenton, NJ 08625,
(609) 292–6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar,
Librarian,
Supreme Court Library,
Post Office Drawer L,
Santa Fe, NM 87504,
(505) 827–4850

New York

Supreme Court Library

Susan M. Wood, Esq.,
Principal Law Librarian,
New York State Supreme Court Law Library,
Onondaga County Court House,
Syracuse, NY 13202,
(315) 435–2063

North Carolina

Supreme Court Library

Ms. Louise Stafford,
Librarian,
North Carolina Supreme Court Library,
P.O. Box 28006,
2 East Morgan Street,
Raleigh, NC 27601,
(919) 733–3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer,
Assistant Law Librarian,
Supreme Court Law Library,
600 East Boulevard Avenue,
2nd Floor, Judicial Wing,
Bismarck, ND 58505–0530,
(701) 224–2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Honorable Jose S. Dela Cruz,
Chief Justice,
Supreme Court of the
Northern Mariana Islands,
P.O. Box 2165,
Saipan, MP 96950,
(670) 234–5275

Ohio

Supreme Court Library

Mr. Paul S. Fu,
Law Librarian,
Supreme Court Law Library,
Supreme Court of Ohio,
30 East Broad Street,
Columbus, OH 43266–0419,
(614) 466–2044

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers,
Director,
Administrative Office of the Courts,
1915 North Stiles, Suite 305,
Oklahoma City, OK 73105,
(405) 521–2450

Oregon

Administrative Office of the Courts

Ms. Kingsley Click,
State Court Administrator,
Supreme Court of Oregon,
Supreme Court Building,
1163 State Street,
Salem, OR 97310,
(503) 378–6046

Pennsylvania

State Library of Pennsylvania

Ms. Betty Lutz,
Head, Acquisitions Section,
State Library of Pennsylvania,
Technical Services, G46 Forum Building,
Harrisburg, PA 17105,
(717) 787–4440

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq.,
Director, Area of Planning and Management,
Office of Court Administration,
P.O. Box 917,
Hato Rey, R 00919

Rhode Island

Roger Williams Law School Library

Mr. Kendall Svengalis,
Law Librarian,
Licht Judicial Complex,
250 Benefit Street,
Providence, RI,
(401) 254–4546

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Bruce S. Johnson,
Law Librarian,
Associate Professor of Law,
Coleman Karesh Law Library,
U.S.C. Law Center,
University of South Carolina,
Columbia, SC 29208,
(803) 777–5944

Tennessee

Tennessee State Law Library

Ms. Donna C. Wair,
Librarian,
Tennessee State Law Library,
Supreme Court Building,
401 Seventh Avenue N,
Nashville, TN 37243–0609,
(615) 741–2016

Texas

State Law Library

Ms. Kay Schleuter,
Director, State Law Library,
P.O. Box 12367,
Austin, TX 78711,
(512) 463–1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian,
The Library, Territorial Court of the Virgin Islands,
Post Office Box 70,
Charlotte Amalie, St. Thomas,
U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen,
Utah State Judicial Administration Library,
230 South 500 East, Suite 300,
Salt Lake City, UT 84102,
(801) 533–6371

Vermont

Supreme Court of Vermont

Mr. Lee Suskin,
Court Administrator,
Supreme Court of Vermont,
109 State Street,
c/o Pavilion Office Building,
Montpelier, VT 05609,
(802) 828–3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin,
Executive Secretary,
Supreme Court of Virginia,
Administrative Offices,
100 North Ninth Street,
3rd Floor,
Richmond, VA 23219,
(804) 786–6455

Washington

Washington State Law Library

Ms. Deborah Norwood,
State Law Librarian,
Washington State Law Library,
Temple of Justice,
P.O. Box 40751,
Olympia, WA 98504–0751,
(206) 357–2146

West Virginia

Administrative Office of the Courts

Mr. Richard H. Rosswurm,
Chief Deputy,
West Virginia Supreme Court of Appeals,
State Capitol, 1900 Kanawha,
Charleston, WV 25305,
(304) 348–0145

Wisconsin

State Law Library

Ms. Marcia Koslov,
State Law Librarian,
State Law Library,
310E State Capitol,
P.O. Box 7881,
Madison, WI 53707,
(608) 266–1424

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson,
Law Librarian,
Wyoming State Law Library,
Supreme Court Building,
Cheyenne, WY 82002,
(307) 777–7509

NATIONAL

American Judicature Society

Ms. Clara Wells,
Assistant for Information and Library Services,

25 East Washington Street, Suite 1600,
Chicago, IL 60602,
(312) 558–6900

National Center for State Courts

Ms. Peggy Rogers,
Acquisitions/Serials Librarian,
300 Newport Avenue,
Williamsburg, VA 23187–8798,
(804) 253–2000

JERITT

Dr. John K. Hudzik,
Project Director,
Judicial Education Reference, Information and Technical Transfer Project (JERITT),
Michigan State University,
560 Baker Hall,
East Lansing, MI 48824,
(517) 353–8603

Appendix III—Illustrative List of Model Curricula

The following list includes examples of curricula that have been developed with support from SJI, that might be—or in some cases have been—successfully adapted for State-based education programs for judges and other court personnel. Please refer to Section II.B.2.(ii) for information on submitting a letter application for a Curriculum Adapatation Grant. A list of all SJI-supported education projects is available from the Institute. Please also check with the JERITT project (517/353–8603) and with your State SJI-designated library (see Appendix II) for information on other curricula that may be appropriate for your State's needs.

Alternative Dispute Resolution

''Judicial Settlement Manual'' from ''Judicial Settlement: Development of a New Course Module, Film, and Instructional Manual'' (National Judicial College: SJI–89–089).

''Improving the Quality of Dispute Resolution'' (Ohio State University College of Law: SJI–93–277).

''Comprehensive ADR Curriculum for Judges'' (American Bar Association: SJI–95–002).

Court Coordination

''Adjudication of Farm Credit Issues'' (Rural Justice Center: 87–059).

Bankruptcy Issues for State Trial Court Judges'' (American Bankruptcy Institute: SJI–91–027).

''Intermediate Sanctions Handbook: Experiences and Tools for Policymakers'' (Center for Effective Public Policy: IAA–88–NIC–001).

''Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships'' (U.S. Court of Appeals for the 9th Circuit: SJI–92–087).

Court Management

''Managing Trials Effectively: A Program for State Trial Judges'' (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026).

''Caseflow Management Principles and Practices'' (Institute for Court Management/National Center for State Courts: SJI–87–056).

''Judicial Education Curriculum: Teaching Guides on Court Security, and Jury Management and Impanelment'' (Institute for Court Management/National Center for State Courts: SJI–88–053).

''Managerial Budgeting in the Courts''; ''Performance Appraisal in the Courts''; ''Managing Change in the Courts''; all three from ''Broadening Educational Opportunities for Judges and Other Key Court Personnel'' (Institute for Court Management/National Center for State Courts: SJI–91–043).

''Implementing the Court-Related Needs of Older Persons and Persons with Disabilities'' (National Judicial College: SJI 91–054).

''Strengthening Rural Courts of Limited Jurisdiction'' and ''Team Training for Judges and Clerks'' from Rural Limited Jurisdiction Court Curriculum Project (Rural Justice Center: SJI–90–014, SJI–91–082).

''Interbranch Relations Workshop'' (Ohio Judicial Conference: SJI–92–079).

''Integrating Trial Management and Caseflow Management'' (Justice Management Institute: SJI–93–214).

''Leading Organizational Change'' (California Administrative Office of the Courts: SJI–94–068).

''Managing the Complex Case'' (National Judicial College: SJI–94–142).

''Employment Responsibilities of State Court Judges'' (National Judicial College: SJI–95–025)

Courts and Communities

''A National Program for Reporting on the Courts and the Law'' (American Judicature Society: SJI–88–014).

''Victim Rights and the Judiciary: A Training and Implementation Project'' (National ''Organization for Victim Assistance: SJI–89–083).

''National Guardianship Monitoring Project: Trainer and Trainee's Manual'' (American Association of Retired Persons: SJI–91–013).

''Access to Justice: The Impartial Jury and the Justice System'' and ''When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide'' (National Judicial College: SJI–91–054)

Diversity, Values, and Attitudes

''Troubled Families, Troubled Judges'' (Brandeis University: SJI–89–071).

''The Crucial Nature of Attitudes and Values in Judicial Education'' (National Council of Juvenile and Family Court Judges: SJI–90–058).

''Cultural Diversity Awareness in Nebraska Courts'' from ''Native American Alternatives to Incarceration Project'' (Nebraska Urban Indian Health Coalition: SJI–93–028).

''A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel'' and ''The Ethics Fieldbook: Tool For Trainers'' (American Judicature Society: SJI–93–068).

''Court Interpreter Training Course for Spanish Interpreters'' (International Institute of Buffalo: SJI–93–075).

''Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel'' (Brandeis University: SJI–94–019).

''Race Fairness and Cultural Awareness Faculty Development Workshop'' (National Judicial College: SJI–93–063).

''Multi-Cultural Training for Judges and Court Personnel'' (St. Petersburg Junior College: SJI–95–006).

''Ethical Standards for Judicial Settlement: Developing a Judicial Education Module'' (American Judicature Society: SJI–95–082)

Family Violence and Gender-Related Violence Crime

''National Judicial Response to Domestic Violence: Civil and Criminal Curricula'' (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

''Domestic Violence: A Curriculum for Rural Courts'' from ''A Project to Improve Access to Rural Courts for Victims of Domestic Violence'' (Rural Justice Center: SJI–88–081).

''Judicial Training Materials on Spousal Support''; ''Family Violence: Effective Judicial Intervention''; ''Judicial Training Materials on Child Custody and Visitation'' from ''Enhancing Gender Fairness in the State Courts'' (Women Judges' Fund for Justice: SJI–89–062).

''Judicial Response to Stranger and Nonstranger Rape and Sexual Assault'' (National Judicial Education Program to Promote Equality for Women and Men: SJI–92–003).

''Domestic Violence & Children: Resolving Custody and Visitation Disputes'' (Family Violence Prevention Fund: SJI–93–255).

''Adjudicating Allegations of Child Sexual Abuse When Custody Is In

Dispute'' (National Judicial Education Program: SJI 95–019).

Health and Science

''Medicine, Ethics, and the Law: Preconception to Birth'' (Women Judges Fund for Justice: SJI–89–062, SJI–91–019).

''Judicial Educator's Workshop Curriculum Guide: Implementing Medical Legal Training'' from Medical Legal Issues in Juvenile and Family Courts (National Council for Juvenile and Family Court Judges: SJI–91–091).

''Environmental Law Resource Handbook'' (University of New Mexico Institute for Public Law: SJI–92–162).

Judicial Education For Appellate Court Judges

''Career Writing Program for Appellate Judges'' (American Academy of Judicial Education: SJI–88–086–P92–1).

''Civil and Criminal Procedural Innovations for Appellate Courts'' (National Center for State Courts: SJI–94–002).

Judicial Orientation, Mentoring, and Continuing Education

''Manual for Judicial Writing Workshop for Trial Judges'' (University of Georgia/Colorado Judicial Department: SJI–87–018/019).

''Legal Institute for Special and Limited Jurisdiction Judges'' (National Judicial College: SJI–89–043, SJI–91–040).

''Pre-Bench Training for New Judges'' (American Judicature Society: SJI–90–028).

''A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts'' (National Center for State Courts: SJI–90–052).

''A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts'' (Arizona Supreme Court: SJI–90–078).

''The Leadership Institute in Judicial Education'' and ''The Advanced Leadership Institute in Judicial Education'' (Appalachian State University: SJI–91–021).

''Faculty Development Instructional Program'' from ''Curriculum Review'' (National Judicial College: SJI–91–039).

''Judicial Review of Administrative Agency Decisions'' (National Judicial College: SJI–91–080).

''New Employee Orientation Facilitators Guide'' from ''The Minnesota Comprehensive Curriculum Design and Training Program for Court Personnel'' (Minnesota Supreme Court: SJI–92–155).

''Magistrates Correspondence Course'' (Alaska Court System: SJI–92–156).

''Bench Trial Skills and Demeanor: An Interactive Manual'' (National Judicial College: SJI 94–058).

''Indian Welfare Act''; ''Defendants, Victims, and Witnesses with Mental Retardation''; ''Ethical Issues in the Election of Judges''; ''Privacy Issues in Computerized Record Keeping'' (National Judicial College: SJI–94–142).

Juveniles and Families in Court

''Innovative Juvenile and Family Court Training'' (Youth Law Center: SJI–87–060, SJI–89–039).

''Fundamental Skills Training Curriculum for Juvenile Probation Officers'' (National Council of Juvenile and Family Court Judges: SJI–90–017).

''Child Support Across State Lines: The Uniform Interstate Family Support Act'' from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum.'' (ABA Center on Children and the Law: SJI 94–321).

Strategic and Futures Planning

''Minding the Courts into the Twentieth Century'' (Michigan Judicial Institute: SJI–89–029).

''An Approach to Long-Range Strategic Planning in the Courts'' (Center for Public Policy Studies: SJI–91–045).

Substance Abuse

''Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel'' (Education Development Center, Inc.: SJI–90–051).

''Good Times, Bad Times: Drugs, Youth, and the Judiciary'' (Professional Development and Training Center, Inc.: SJI–91–095).

''Gaining Momentum: A Model Curriculum for Drug Courts'' (Florida Office of the State Courts Administrators: SJI–94–291).

''Judicial Response to Substance Abuse: Children, Adolescents, and Families'' (National Council of Juvenile and Family Court Judges: (SJI–95–030).

Appendix IV—Illustrative List of Replicable Projects

The following list includes examples of projects undertaken with support from SJI that might be—or in some cases have been—successfully adapted and replicated in other in other jurisdictions. *Please see Section II.C.1. for information on submitting a concept paper requesting a grant to replicate one of these or another SJI-supported project.* A list of all SJI-supported projects is available from the Institute.

AARP Volunteers: A Resource for Strengthening Guardianship Services

Grantee: American Association of Retired Persons, Contact: Wayne Moore, 601 E Street, N.W., Washington, DC 20049, (202) 434–2165, Grant Nos: SJI–88–033 /SJI–91–013

Alabama Alcohol and Drug Abuse Court Referral Officer Program

Grantee: Alabama Administrative Office of the Courts, Contact: Angelo Trimble, 817 South Court Street, Montgomery, AL 36130–0101, (334) 834–7990, Grant Nos: SJI–88–030/SJI–89–080/SJI–90–005

Substance Abuse Assessment and Intervention to Reduce Driving Under the Influence of Alcohol Recidivism

Grantee: California Administrative Office of the Courts c/o El Cajon Municipal Court, Contact: Fred Lear, 250 E. Main Street, El Cajon, CA 92020, (619) 441–4336, Grant No: SJI–88–029/SJI–90–008

Decision-Making in Authorizing and Withholding Life-Sustaining Medical Treatment: Guidelines for State Courts

Grantee: National Center for State Courts, Contact: Victor E. Flango, 300 Newport Avenue, Williamsburg, VA 23187–8798, (804) 253–2000, Grant Nos: SJI–88–051/SJI–91–048

Establishing a Consumer Research and Service Development Process Within the Judicial System

Grantee: Supreme Court of Virginia, Contact: Beatrice Monahan, Administrative Offices, Third Floor, 100 North Ninth Street, Richmond, VA 23219, (804) 786–6455, Grant No: SJI–89–068

Housing Court Video Project

Grantee: Association of the Bar of the City of New York, Contact: Marilyn Kneeland, 42 West 44th Street, New York, NY 10036–6690, (212) 382–6620, Grant No: SJI–90–041

Tele-Court: A Michigan Judicial System Public Information Program

Grantee: Michigan Supreme Court, Contact: Judy Bartell, State Court Administrative Office, 611 West Ottawa Street, P.O. Box 30048, Lansing, MI 48909, (517) 373–0130, Grant No: SJI–91–015

Measurement of Trial Court Performance

Grantee: Washington Administrative Office for the Courts, Contact: Yvonne Pettus, 1206 S. Quince Street,

Olympia, WA 98504, Grant No: SJI–91–017; SJI–91–017–P92–1

Measurement of Trial Court Performance

Grantee: New Jersey Administrative Office of the Courts, Contact: Theodore J. Fetter, CN–037, RJH Justice Complex, Trenton, NJ 08625, Grant No: SJI–91–023; SJI–91–023–P93–1

Measurement of Trial Court Performance

Grantee: Ohio Supreme Court, Contact: Stephan W. Stover, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419, Grant No: SJI–91–024; SJI–91–024–P93–1

Measurement of Trial Court Performance

Grantee: Supreme Court of Virginia, Contact: Beatrice Monahan, 100 North Ninth Street, Third Floor, Richmond, VA 23219, (804) 786–6455, Grant No: SJI–91–042; SJI–91–042–P93–1

Court Probation Enhancement Through Community Involvement

Grantee: Volunteers in Prevention, Probation and Prisons, Inc., Contact: Gerald Dash, 163 Madison, Suite 120, Detroit, MI 48226, (313) 964–1110, Grant No: SJI–91–073

Day in Court: A Child's Perspective

Grantee: Massachusetts Trial Court, Contact: Hon. John Irwin, 2 Center Plaza, Boston, MA 02108, (617) 742–8575, Grant No: SJI–91–079

Arizona Pro Per Information System (QuickCourt)

Grantee: Arizona Supreme Court, Contact: Jeannie Lynch, Administrative Office of the Court, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9554, Grant No: SJI–91–084

File Transfer Technology Application in Use of Court Information

Grantee: South Carolina Bar, Contact: Yvonne Visser, 950 Taylor Street, P.O. Box 608, Columbia, SC 29202–0608, (803) 799–6653, Grant Nos: SJI–91–088; SJI–91–088–P93–1; SJI–91–088–P94–1

Automated Public Information System

Grantee: California Administrative Office of the Courts, Contact: Mark Greenia, Sacramento Superior and Municipal Court, 303 Second Street, South Tower, San Francisco, CA 94107, (916) 440–7590, Grant No: SJI–91–093

The Development of a Prototype Computerized Benchbook Using Hypertext Technology

Grantee: Michigan Supreme Court, Contact: Dennis Catlin, Michigan Judicial Institute, P.O. Box 30205, Lansing, MI 48909, (517) 334–7805, Grant Nos: SJI–92–034; SJI–92–034–P93–1; SJI–92–034–P93–2; SJI–92–034–P93–3

Probate Caseflow Management Project

Grantee: Ohio Supreme Court/Trumball County Probate Court, Contact: Susan Lightbody, 160 High Street, N.W., Warren, OH 44481, (216) 675–2566, Grant No: SJI–92–081; SJI–92–081–P94–1; SJI–92–081–P95–1

Managing Documents with Imaging Technology

Grantee: Alaska Judicial Council, Contact: William T. Cotton, 1029 W. Third Avenue, Suite 201, Anchorage, AK 99501–1917, (907) 279–2526, Grant No: SJI–92–083

Automated Teller Machines for Juror Payment

Grantee: District of Columbia Courts, Contact: Philip Braxton, 500 Indiana Avenue, N.W., Washington, DC 20001, (202) 879–1700, Grant No: SJI–92–139

Court Referral Officer Program

Grantee: New Hampshire Supreme Court, Contact: Jim Kelley, Supreme Court Building, Concord, NH 03301, (603) 271–2521, Grant No: SJI–92–142

Using Judges and Court Personnel to Facilitate Access to Courts by Limited English Speakers

Grantee: Washington Office of the Administrator for the Courts, Contact: Joanne Moore, 1206 South Quince Street, P.O. Box 41170, Olympia, WA 98504–1170, (206) 753–3365, Grant No: SJI–92–147

Becoming Receptive to Challenge and Change: Applying TQM Concepts to Systemwide Problems of the Maine Judicial Branch

Grantee: Maine Supreme Judicial Court, Contact: Marcy Kamin-Crane, 95 State Street, Augusta, ME 04330, (207) 822–4285, Grant No: SJI–93–072

Family Court Networking and Imaging Project

Grantee: Colorado Judicial Department, Contact: Marcy McNeill, 1301 Pennsylvania Street, Suite 300, Denver, CO 80203–2416, (719) 630–2846, Grant No: SJI–93–124

Arizona/Sonora Judicial Relations Project

Grantee: Arizona Supreme Court, Contact: Dennis Metrick, 1501 West Washington Street, Phoenix, AZ 85007–3327, (602) 542–4532, Grant Nos: SJI–93–202; SJI–93–202–P95–1

Enhancing Citizen Understanding of and Access to the Probate Process at D.C. Superior Court

Grantee: District of Columbia Courts, Contact: Constance G. Evans, 500 Indiana Avenue, N.W., Washington, DC 20001, (202) 879–4800, Grant No: SJI–93–258

The Family Violence Needs Assessment and Planning Project

Grantee: Nevada Network Against Domestic Violence, Contact: Susan Meuschke 2100 Capurro Way, Suite E, Sparks, NV 89481, (702) 358–1171, Grant No: SJI–94–154

Domestic Relations Organizational Development Implementation Project (Self-Service Center)

Grantee: Maricopa County, (Phoenix), Arizona, Superior Court, Contact: Noreen Sharp, 201 W. Jefferson, 4th floor CCB, Phoenix, AZ 85003, (602) 506–2913, Grant No: SJI–94–325

Appendix IV—State Justice Institute Scholarship Application

(Form S1)

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M)
2. Position: _____
3. Name of Court: _____
4. Address: _____
Street/P.O. Box
_____
City State Zip Code
5. Telephone No. _____
6. Congressional District: _____

PROGRAM INFORMATION:

7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

ESTIMATED EXPENSES:

(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition: $ _____

Transportation: $ _____

(Airfare, trainfare, or if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Amount Requested: $ _____

ADDITIONAL INFORMATION:

Please attach a current resume or professional summary, and answer the

following questions. (You may attach additional pages if necessary.)

1. How will taking this course benefit you, your court, and the State's courts generally?
2. Is there any education or training currently available through your State on this topic?
3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course on this topic in your jurisdiction/State, provide in-service training, or otherwise disseminate what you have learned to colleagues.
4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?
5. How long have you served as a judge or court manager?
6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

STATEMENT OF APPLICANT'S COMMITMENT

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature _____

Date _____

Please return this form and Form S–2 to: State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314

State Justice Institute Scholarship Application

(Form S2)

Concurrence

I, _____
Name of Chief Justice (or Chief Justice's Designee)
have reviewed the application for a scholarship to attend the program entitled

_____

prepared by _____
Name of Applicant
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

Signature _____

Name _____

Title _____

Date _____

Appendix V Line—Item Budget Form

For Concept Papers, Curriculum Adaptation & Technical Assistance Grant Requests:

Category	SJI funds	Cash match	In-kind match
Personnel	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/Contractual	$_____	$_____	$_____
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____

PROJECT TOTAL: $ _____

_____

Financial assistance has been or will be sought for this project from the following other sources:

_____

_____

Concept papers requesting an acccelerated award, Curriculum Adaptation grant requests, and Technical Assistance grant requests should be accompanied by a budget narrative explaining the basis for each line-item listed in the proposed budget.

Appendix VI—State Justice Institute

Form B (Instructions on Reverse Side)

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council
has reviewed the application entitled _____

_____

prepared by _____
Name of Applicant
approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.

[ ] designates _____

_____
Name of Trial or Appellate Court or Agency
as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

Signature _____

Name _____

Title _____

Date _____

[FR Doc. 96–26209 Filed 10–14–96; 8:45 am]

BILLING CODE 6820–SC–P

federal register

Tuesday
October 15, 1996

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 353

Regulations Governing United States Savings Bonds, Series EE and HH; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 353

[Department of the Treasury Circular, Public Debt Series No. 3–80]

Regulations Governing United States Savings Bonds, Series EE and HH

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule amends regulations governing Series EE and HH Savings Bonds to provide explicitly for the recognition of Federal asset forfeiture laws and providing for payment of United States Savings Bonds pursuant to Federal judicial or administrative forfeiture.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Ed Gronseth, Deputy Chief Counsel, or Bob Riffle, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–5192.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Treasury is authorized under 31 U.S.C. 3105 to prescribe the terms and conditions of savings bonds including, specifically, restrictions on transfer. The Department of the Treasury has promulgated regulations in 31 CFR, Subtitle B, that set the terms and conditions of savings bonds.

Savings bonds are Federal contracts, the terms of which are contained in laws, offering circulars, and other applicable regulations.

In recent years a number of Federal laws have been enacted providing for forfeiture of property in certain specified situations. This rule amends the regulations governing United States Savings Bonds, Series EE and HH, by providing explicitly for the recognition of Federal judicial forfeitures and Federal administrative forfeitures made pursuant to Federal forfeiture laws.

This rule does not provide for recognition of judicial or administrative forfeiture orders issued by State or local authorities.

Series E savings bonds were first issued in 1941; their sale was terminated in 1979. Series H bonds were first issued in 1952; their sale was terminated in 1979. Series EE and HH bonds were first issued beginning in 1980. Series E savings bonds were offered for sale under 31 CFR Part 316; Series EE bonds are offered under 31 CFR Part 351. Series H savings bonds were offered for sale under 31 CFR Part 332; Series HH bonds are offered under 31 CFR Part 352. All bonds are governed by additional regulations, at 31 CFR Part 315 or 353, expressly made part of the terms of the offerings.

Since Series E and H savings bonds and savings notes are no longer being issued they are not being addressed by this rule.

II. Summary of Amendment

Section 353.15 of the regulations provides that ''savings bonds are not transferable and are payable only to the owners named on the bonds, except as specifically provided in these regulations and then only in the manner and to the extent so provided.'' Section 353.5(a) of the regulations states that the registration of the bonds is conclusive of ownership. Almost all savings bonds are issued in either coownership or beneficiary form. Section 353.7 provides that a bond in coownership form is registered ''A or B'' and that a bond in beneficiary form is registered ''A payable on death to B'' or ''A POD B.''

Section 353.35 provides, in part, that ''[p]ayment of a savings bond will be made to the person or persons entitled under the provisions of these regulations * * *.'' Subpart E of Part 353 sets forth rules for recognition of judicial determinations involving savings bonds.

This rule makes payment of Series EE and HH savings bonds pursuant to a Federal judicial forfeiture or Federal administrative forfeiture an explicit part of the terms and conditions of the contract with savings bond investors. This rule amends Subpart E of the regulations by providing explicitly for the recognition of changes in ownership through Federal forfeiture proceedings.

III. Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'', pursuant to Executive Order 12866. The regulatory review procedures, therefore, do not apply. Because this rule relates to matters of public contract, as well as the borrowing power and fiscal authority of the United States, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply. There are no collections of information required by this final rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 353

Bonds, Government securities.

Dated: October 8, 1996.

Gerald Murphy,

Fiscal Assistant Secretary.

For the reasons set forth in the preamble, Title 31, Subtitle B, Chapter II, Part 353 of the Code of Federal Regulations is amended as follows:

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

1. The authority citation for Part 353 continues to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. In Subpart E a new section, § 353.24, is added to read as follows:

§ 353.24 Payment pursuant to judicial or administrative forfeiture.

(a) *Definitions.* As used in this part:

(1) *Contact point* means the individual designated to receive referrals from the Bureau of the Public Debt, as provided for in this section, by the Federal investigative agency, United States Attorney's Office, or forfeiting agency specified in Public Debt Form 1522.

(2) *Forfeiting agency* means the federal law enforcement agency responsible for the forfeiture.

(3) *Forfeiture.*

(i) *Administrative forfeiture* means the process by which property may be forfeited by a Federal agency rather than through judicial proceedings.

(ii) *Judicial forfeiture* means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(4) *Public Debt Form 1522* means the written notification of the forfeiture provided by the forfeiting agency to the Bureau of the Public Debt on a Public Debt Form 1522 SPECIAL FORM OF REQUEST FOR PAYMENT OF UNITED STATES SAVINGS AND RETIREMENT SECURITIES WHERE USE OF A DETACHED REQUEST IS AUTHORIZED. Public Debt Form 1522 must specify: the contact point; the issue date of each bond; the serial number for each bond; the date of forfeiture; the forfeiture fund to which payment is to be made; and be signed by an individual authorized by the forfeiting agency. The forfeited bonds and the completed Public Debt Form 1522 are to be mailed to the Department of the Treasury, Bureau of the Public Debt, Parkersburg, WV 26106–1328.

(b) *Forfeiture of bond.* (1) Upon receipt and review of the Public Debt

Form 1522, as described in (a)(4) above, the Bureau of the Public Debt will make payment to the forfeiture fund specified on the form.

(2) The Bureau of the Public Debt will record the forfeiture, the forfeiture fund into which the proceeds were paid, the contact point, and any related information.

(3) The Bureau of the Public Debt will rely exclusively upon the information provided by the Federal agency in the Public Debt Form 1522 and will not make any independent evaluation of the validity of the forfeiture order, the request for payment, or the authority of the individual signing the request for payment.

(4) The amount paid is limited to the redemption value of the savings bonds as of the date of forfeiture specified in the Public Debt Form 1522.

(c) *Inquiry from previous owner.* (1) Upon payment made pursuant to (b), all inquiries from the previous owner, including requests for payment, reissue, or applications for relief, related to forfeited savings bonds will be referred by the Bureau of the Public Debt to the contact point named in the Public Debt Form 1522.

(2) The Bureau of the Public Debt will notify the submitter of the inquiry of the referral to the contact point.

(3) The Bureau of the Public Debt will not investigate the inquiry and will defer to the forfeiting agency's determination of the appropriate course of action, including settlement where appropriate. Any settlement will be paid from the forfeiture fund into which the proceeds were deposited.

[FR Doc. 96–26375 Filed 10–11–96; 8:45 am]

BILLING CODE 4810–39–P

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Federal Register

Vol. 61, No. 200

Tuesday, October 15, 1996

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

Laws

Public Laws Update Services (numbers, dates, etc.) **523–6641**
For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**
The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**
Privacy Act Compilation **523–3187**
TDD for the hearing impaired **523–5229**

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FEDERAL REGISTER PAGES AND DATES, OCTOBER

51205–51348 1
51349–51574 2
51575–51766 3
51767–52232 4
52233–52678 7
52679–52870 8
52871–53034 9
53035–53302 10
53303–53590 11
53591–53824 15

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6922 51205
6923 51347
6924 51767
6925 52233
6926 52675
6927 52677
6928 53289
6929 53291
6930 53293
6931 53295
6932 53297
6933 53301
6934 53591
6935 53593

Executive Orders:
13019 51763

Administrative Orders:
Presidential Determinations:
No. 96–54 of September 28, 1996 52679

5 CFR

Ch. XIV 51207
550 .....51319, 52497, 53490

7 CFR

Ch. VI 52671
Ch. VII 52671
6 53002
12 53490
90 51349
91 51349
92 51349
93 51349
94 51349
95 51349
96 51349
97 51349
98 51349
271 53595
272 53595
274 53595
278 53595
301 .....52190, 53601
319 51208
354 53603
502 51210
920 51575
927 52681
929 51353
931 52681
945 51354
950 53606
958 52682
981 53607
989 52684
993 51356
1485 53303
3010 53608

Proposed Rules:
Ch. VI 52664
Ch. VII 52664
201 51791
301 51376
361 51791
407 52717
997 51811
998 51811
999 51811
1214 .....51378, 51391
1466 53574

8 CFR

274 52235
292 53609
103 53303

Proposed Rules:
312 51250

9 CFR

92 52236
94 51769
102 52871
104 52871
105 52871
113 51769
116 52871
304 53305
308 53305
310 53305
320 53305
327 53305
381 53305
416 53305
417 53305

Proposed Rules:
91 52387

10 CFR

2 53554
13 53554

Proposed Rules:
20 52388
30 51835
32 .....51835, 52388
35 52388
36 52388
39 52388
40 51835
50 51835
52 51835
60 51835
61 51835
70 51835
71 51835
72 51835
110 51835
150 51835

11 CFR

Proposed Rules:
104 52901

12 CFR

2 51777
213 52246
245 52875
935 52686

Proposed Rules:

620 53331
630 53331
935 52727

14 CFR

Ch. I 53610
39 ....51212, 51357, 52688, 52876, 53035, 53038, 53040, 53042, 53044, 53046, 53611, 53613
71 ....51360, 51361, 51362, 52281, 52282, 52283, 53050
73 ....53051, 53052
91 51782
97 ....53053, 53054, 53056
440 51395

Proposed Rules:

Ch. I 51845
25 53680
39 ....51250, 51255, 51618, 51619, 51621, 51624, 51845, 51847, 52394, 53155, 53337, 53339, 53683
71 ....51319, 52397, 52398, 52689, 52734, 53157

15 CFR

Ch. VII 51395
400 53505
902 51213
922 57577
946 53307

16 CFR

24 51577
260 53304
1020 52877

17 CFR

232 52283
240 52996
420 52498

19 CFR

101 51363

Proposed Rules:

10 51849

21 CFR

50 51498
56 51498
73 51584
177 51364
178 51587
312 51498
314 51498
355 52285
520 ....52690, 53614
522 53320
556 53320
558 ....51588, 53615
601 51498
808 52602
812 ....51498, 52602
814 51498
820 52602
1309 52287
1310 52287
1313 52287

Proposed Rules:

310 53685
330 51625
352 53340

22 CFR

41 53058
228 53615
603 51593

Proposed Rules:

171 53158
605 53185

24 CFR

1 52216
2 52216
8 52216
42 51756
91 51756
92 51756
103 52216
104 52216
146 52216
180 52216
252 51319
570 51756
576 51546
585 52186
3500 51782

Proposed Rules:

42 53341
92 53341
215 53341
219 53341
221 53341
236 53341
290 53341
511 53341
570 53341
574 53341
576 53341
582 53341
583 53341
585 53341
882 53341
885 53341
886 53341
889 53341
890 53341
906 53341
941 53341
950 53341
968 53341
970 53341
983 53341
570 51556
572 53276

26 CFR

1 53058
301 53058
602 53058

Proposed Rules:

1 ....51256, 52902, 53161, 53688
301 53161

27 CFR

Proposed Rules:

55 53688

29 CFR

270 51596
4044 53623

30 CFR

934 52691

Proposed Rules:

202 52735
206 52735
913 51631

31 CFR

353 53822

Proposed Rules:

356 51851

32 CFR

706 52879

33 CFR

100 ....52695, 53321
120 51597
128 51597

Proposed Rules:

100 ....53422, 53344
165 ....53345, 53346

34 CFR

614 51783
617 51783
619 51783
641 51783

Proposed Rules:

222 52564
350 53560
351 53560
352 53560
353 53560
355 53560
357 53560
360 53560
607 52399
608 52399
609 52399
628 52399
636 52399
637 52399
645 52399
647 52399
649 52399
650 52399
655 52399
658 52399
660 52399
661 52399
669 52399

36 CFR

Proposed Rules:

61 51536
1190 51397
1191 51397

37 CFR

Proposed Rules:

1 518355

38 CFR

4 52695

39 CFR

111 ....52702, 53321

Proposed Rules:

111 53280

40 CFR

9 ....51365, 52287
50 52852
51 52848
52 ....51214, 51366, 51598, 51599, 51784, 52297, 52865, 52882, 53066, 53328, 53624, 53628, 53633, 53636, 53639
60 52865
70 ....51368, 51370
81 ....53328, 53639
86 51365
89 52088
90 52088
91 52088
180 51372
271 52884
300 ....51373, 52886, 52887, 53328
721 52287
763 52703

Proposed Rules:

52 ....51257, 51397, 51631, 51638, 51651, 51659, 51877, 52401, 52864, 52902, 53163, 53166, 53174, 53180, 53692, 53693, 53694
59 52735
60 52864
81 53694
261 51397
271 51397
281 51875
302 51397
372 ....51322, 51330

42 CFR

57 51787
412 51217
413 ....51217, 51611
489 51217
1003 52299

43 CFR

Proposed Rules:

2760 51666
3200 52736
3210 52736
3220 52736
3240 52736
3250 52736
3260 52736
3740 51667
3810 51667
3820 51667

44 CFR

62 51217
64 ....51226, 51228

45 CFR

46 51531
79 52299
1386 51751

46 CFR

61 52497
108 51789
110 51789
111 51789
112 51789
113 51789
161 51789
190 52497
197 52497
501 51230
502 51230
506 52704
514 51230
583 51230

47 CFR

1 52887

2 52301
20 51233
24 51233
25 52301
51 52706
64 52307
68 52307
73 ....51789, 52899, 52900, 53643, 53644
90 52301
Proposed Rules:
Ch. I 53694
73 53698
90 51877
97 52767

48 CFR

401 53645
402 53645
403 53645
404 53645
405 53645
406 53645
407 53645
408 53645
409 53645
410 53645
411 53645
412 53645
413 53645
414 53645
415 53645
416 53645
417 53645
418 53645
419 53645
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421 53645
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423 53645
424 53645
425 53645
426 53645
427 53645
428 53645
429 536450
430 53645
431 53645
432 53645
433 53645
434 53645
435 53645
436 53645
437 53645
438 53645
439 53645
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441 53645
442 53645
443 53645
444 53645
445 53645
446 53645
447 53645
448 53645
449 53645
450 53645
451 53645
452 53645
453 53645
501 51373
702 51234
706 51234
715 51234
716 51234
722 ....51234, 52497
726 51234
733 51234
737 51234
752 51234
837 52709
852 52709
1212 53677
1815 52325
1816 52325
1852 52325
1870 52325
6101 52347
6102 52347
Proposed Rules:
1 ....52232, 52998
2 52998
3 52232
4 52232
6 ....52232, 52999
8 ....52232, 52844
9 52232
12 ....52232, 52999
13 52844
14 ....52232, 52998
15 ....52998, 52999
16 52232
19 52232
22 52232
23 52232
25 52232
27 52232
29 52232
31 ....52232, 52998
32 52232
36 ....52232, 52998
37 52232
38 52844
42 52232
45 52232
47 52232
49 52232
51 52844
52 ....52232, 52998, 52999
53 ....52232, 52998
917 ....53185, 53699
950 ....53185, 53699
952 ....53185, 53699
970 ....53185, 53699

49 CFR

106 51334
107 51334
171 ....51235, 51334
172 ....51236, 51238, 51334
173 ....51238, 51241, 51334, 51495
174 51334
175 51334
176 51334
177 51334
178 51334
179 51334
180 51334
593 51334
1011 52710
1104 52710
1111 52710
1112 52710
1113 52710
1114 52710
1115 52710
1121 52710
Proposed Rules:
383 52401
391 52401
571 51669
575 52769

50 CFR

SubCh. D 53329
17 ....53070, 53089, 53108, 53124, 53130, 53137
216 51213
217 52370
285 53677
622 52715
648 ....52384, 52715
679 ....51374, 51789, 52385, 52716, 53153, 53154, 53679
Proposed Rules:
17 ....51878, 52402, 53186
23 52403
217 52404
222 52404
229 52769
424 51398
648 52903
649 52903
660 51670

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT TODAY

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Okra (frozen); grade standards; published 9-12-96

Peas, field and black-eye (frozen); grade standards; published 9-12-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Overtime services relating to imports and exports:

Commuted traveltime allowances; published 10-15-96

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Shingle packed bacon; net weight statements; labeling requirement removed; published 8-14-96

AGRICULTURE DEPARTMENT

Organization, functions, and authority delegations:

Finance and management office; CFR part removed; published 10-15-96

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisors:

Electronic media use; interpretation; published 8-14-96

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Colorado; published 9-9-96

New Mexico; published 9-9-96

Washington; published 9-9-96

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:

Applications for stay or review of bank clearing agency actions; published 9-13-96

FEDERAL RESERVE SYSTEM

Availability of funds and collection of checks (Regulation CC):

Technical amendments; published 5-21-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Chlortetracycline

Correction; published 10-15-96

New drug applications--

Monensin blocks; published 10-15-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:

Multifamily and single family nonjudicial foreclosure procedures; Federal regulatory reform; published 9-13-96

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Agreements promising non-deportation or other immigration benefits; published 9-13-96

Aliens--

Law students and graduates; representation and appearances; published 10-15-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

de Havilland; published 9-9-96

Bombardier; published 10-8-96

Piaggio; published 9-9-96

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Lamps, reflective devices, and associated equipment--

Motorcycle headlamps; new photometric requirements; published 8-29-96

TREASURY DEPARTMENT

Fiscal Service

Bonds and notes, U.S. Treasury:

Federal asset forfeiture laws; payment of U.S. Savings Bonds under Federal judicial or administrative forfeiture; published 10-15-96

TREASURY DEPARTMENT

Government Securities Act of 1986; large position reporting and recordkeeping requirements; published 9-12-96

UNITED STATES INFORMATION AGENCY

Privacy Act; implementation; published 9-30-96

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Dates (domestic) produced or packed in California; comments due by 10-24-96; published 9-24-96

Onions (Vidalia) grown in Georgia; comments due by 10-24-96; published 9-24-96

Peanuts, domestically and foreign produced; comments due by 10-24-96; published 10-4-96

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Pet birds; importation; comments due by 10-21-96; published 8-21-96

Viruses, serums, toxins, etc.:

Biological products and guidelines; definition; comments due by 10-22-96; published 8-23-96

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority); comments due by 10-25-96; published 8-7-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Federal Agriculture Improvement and Reform Act of 1996:

Conservation provisions; implementation; public forums; comments due by 10-22-96; published 10-7-96

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Federal Agriculture Improvement and Reform Act of 1996:

Conservation provisions; implementation; public forums; comments due by 10-22-96; published 10-7-96

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:

Accessibility guidelines--

Buildings and facilities; children's facilities; comments due by 10-21-96; published 7-22-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic sea scallop; comments due by 10-21-96; published 8-29-96

CONSUMER PRODUCT SAFETY COMMISSION

Hazardous substances:

Fireworks devices; fuse burn time; comments due by 10-21-96; published 8-7-96

DEFENSE DEPARTMENT

Acquisition regulations:

Carbon fiber; comments due by 10-21-96; published 8-21-96

Federal Acquisition Regulation (FAR):

Novation and related agreements; comments due by 10-21-96; published 8-21-96

Grant and agreement regulations:

Grants and cooperative agreements award and administration; uniform policies and procedures; comments due by 10-25-96; published 8-26-96

EDUCATION DEPARTMENT

Postsecondary education:

Student assistance general provisions--

Federal Perkins loan, Federal work-study, Federal supplemental educational opportunity grant, and Federal Pell grant programs; comments due by 10-21-96; published 9-19-96

ENERGY DEPARTMENT
Acquisition regulations:
Management and operating contracts--
Competition and extension contract reform initiative; implementation; comments due by 10-25-96; published 10-10-96
Competition and extension contract reform initiative; implementation; correction; comments due by 10-25-96; published 10-15-96

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Electric utilities (Federal Power Act):
Rate schedules filing--
Capacity reservation open access transmission tariffs; comments due by 10-21-96; published 7-25-96

ENVIRONMENTAL PROTECTION AGENCY
Air pollution; standards of performance for new stationary sources:
Nebraska City Power Station, NE; alternate opacity standard rescission; comments due by 10-24-96; published 9-24-96
Air quality implementation plans:
Preparation, adoption, and submittal--
Motorist compliance enforcement mechanisms for pre-existing programs; vehicle inspection and maintenance program requirements; comments due by 10-23-96; published 9-23-96
Prevention of significant deterioration and nonattainment new source review; Federal regulatory review; comments due by 10-21-96; published 7-23-96
Air quality implementation plans; approval and promulgation; various States:
New York; comments due by 10-21-96; published 9-19-96
North Carolina; comments due by 10-21-96; published 9-20-96
Texas; comments due by 10-23-96; published 9-23-96
Washington; comments due by 10-23-96; published 9-23-96
Clean Air Act:
State operating permits programs--
Maine; comments due by 10-21-96; published 9-19-96
Hazardous waste program authorizations:
New Mexico; comments due by 10-21-96; published 9-19-96
Pesticide programs:
Pesticides and ground water strategy; State management plan regulation; comments due by 10-24-96; published 6-26-96
Risk/benefit information; reporting requirements; comments due by 10-21-96; published 9-20-96

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Alabama; comments due by 10-21-96; published 9-9-96
Colorado; comments due by 10-21-96; published 9-9-96
Kansas; comments due by 10-21-96; published 9-9-96

FEDERAL DEPOSIT INSURANCE CORPORATION
Insured State banks; activities and investments; comments due by 10-22-96; published 8-23-96

FEDERAL TRADE COMMISSION
Agency information collection activities:
Proposed collection; comment request; comments due by 10-25-96; published 8-26-96

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Novation and related agreements; comments due by 10-21-96; published 8-21-96

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Risk-based capital:
Stress tests; house price index (HPI) use and benchmark loss experience establishment; comments due by 10-24-96; published 8-19-96

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority); comments due by 10-25-96; published 8-7-96

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Aliens--
Conditional residents and fiancees; persons admitted for permanent residence; status adjustment; comments due by 10-21-96; published 8-20-96

JUSTICE DEPARTMENT
Justice Programs Office
Grants:
Indian Tribes program; violent offender incarceration and truth-in-sentencing; comments due by 10-24-96; published 9-24-96

JUSTICE DEPARTMENT
Americans with Disabilities Act:
Nondiscrimination on basis of disability--
State and local government services; childrens' facilities in public accomodations and commercial facilities; comments due by 10-21-96; published 7-22-96
Grants:
Police Corps program; comments due by 10-24-96; published 9-24-96

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Novation and related agreements; comments due by 10-21-96; published 8-21-96

PERSONNEL MANAGEMENT OFFICE
Prevailing rate systems; comments due by 10-23-96; published 9-23-96

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
de Havilland; comments due by 10-21-96; published 9-11-96
Airbus; comments due by 10-21-96; published 9-11-96
American Champion Aircraft Corp.; comments due by 10-25-96; published 8-28-96
Boeing; comments due by 10-24-96; published 8-28-96
Boeing et al.; comments due by 10-24-96; published 9-13-96
Fokker; comments due by 10-24-96; published 9-13-96
McDonnell Douglas; comments due by 10-24-96; published 9-13-96
Pilatus Britten-Norman; comments due by 10-21-96; published 8-22-96
Raytheon; comments due by 10-21-96; published 8-20-96
Saab; comments due by 10-21-96; published 9-11-96
Airworthiness standards:
Special conditions--
Eurocopter Deutschland model MBB-BK helicopters; comments due by 10-25-96; published 8-26-96
Class C and Class D airspace; comments due by 10-22-96; published 8-22-96
Class D airspace; comments due by 10-25-96; published 9-17-96
Class E airspace; comments due by 10-21-96; published 9-17-96

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Motor carrier replacement information/registration system; comments due by 10-25-96; published 8-26-96
Motor carrier safety standards:
Training of entry-level drivers of commercial motor vehicles; comments due by 10-25-96; published 4-25-96

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy standards:
Passenger automobiles; low volume manufacturer exemptions; comments due by 10-21-96; published 9-5-96

LIST OF PUBLIC LAWS

This is a list of public bills from the 104th 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. 657/P.L. 104–241

To extend the deadline under the Federal Power Act applicable to the construction of three hydroelectric projects in the State of Arkansas. (Oct. 9, 1996; 110 Stat. 3141)

H.R. 680/P.L. 104–242

To extend the time for construction of certain FERC licensed hydro projects. (Oct. 9, 1996; 110 Stat. 3142)

H.R. 1011/P.L. 104–243

To extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Ohio. (Oct. 9, 1996; 110 Stat. 3143)

H.R. 1014/P.L. 104–244

To authorize extension of time limitation for a FERC-issued hydroelectric license. (Oct. 9, 1996; 110 Stat. 3144)

H.R. 1290/P.L. 104–245

To reinstate the permit for, and extend the deadline under the Federal Power Act applicable to the construction of, a hydroelectric project in Oregon, and for other purposes. (Oct. 9, 1996; 110 Stat. 3145)

H.R. 1335/P.L. 104–246

To provide for the extension of a hydroelectric project located in the State of West Virginia. (Oct. 9, 1996; 110 Stat. 3146)

H.R. 1366/P.L. 104–247

To authorize the extension of time limitation for the FERC-issued hydroelectric license for the Mt. Hope Waterpower Project. (Oct. 9, 1996; 110 Stat. 3147)

H.R. 1791/P.L. 104–248

To amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services. (Oct. 9, 1996; 110 Stat. 3148)

H.R. 2501/P.L. 104–249

To extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in Kentucky, and for other purposes. (Oct. 9, 1996; 110 Stat. 3150)

H.R. 2508/P.L. 104–250

Animal Drug Availability Act of 1996 (Oct. 9, 1996; 110 Stat. 3151)

H.R. 2594/P.L. 104–251

Railroad Unemployment Insurance Amendments Act of 1996 (Oct. 9, 1996; 110 Stat. 3161)

H.R. 2630/P.L. 104–252

To extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois. (Oct. 9, 1996; 110 Stat. 3166)

H.R. 2660/P.L. 104–253

To increase the amount authorized to be appropriated to the Department of the Interior for the Tensas River National Wildlife Refuge, and for other purposes. (Oct. 9, 1996; 110 Stat. 3167)

H.R. 2695/P.L. 104–254

To extend the deadline under the Federal Power Act applicable to the construction of certain hydroelectric projects in the State of Pennsylvania. (Oct. 9, 1996; 110 Stat. 3168)

H.R. 2700/P.L. 104–255

To designate the building located at 8302 FM 327, Elmendorf, Texas, which houses operations of the United States Postal Service, as the ''Amos F. Longoria Post Office Building''. (Oct. 9, 1996; 110 Stat. 3169)

H.R. 2773/P.L. 104–256

To extend the deadline under the Federal Power Act applicable to the construction of 2 hydroelectric projects in North Carolina, and for other purposes. (Oct. 9, 1996; 110 Stat. 3170)

H.R. 2816/P.L. 104–257

To reinstate the license for, and extend the deadline under the Federal Power Act applicable to the construction of, a hydroelectric project in Ohio, and for other purposes. (Oct. 9, 1996; 110 Stat. 3171)

H.R. 2869/P.L. 104–258

To extend the deadline for commencement of construction of a hydroelectric project in the State of Kentucky. (Oct. 9, 1996; 110 Stat. 3172)

H.R. 2967/P.L. 104–259

To extend the authorization of the Uranium Mill Tailings Radiation Control Act of 1978, and for other purposes. (Oct. 9, 1996; 110 Stat. 3173)

H.R. 2988/P.L. 104–260

To amend the Clean Air Act to provide that traffic signal synchronization projects are exempt from certain requirements of Environmental Protection Agency Rules. (Oct. 9, 1996; 110 Stat. 3175)

H.R. 3068/P.L. 104–261

To accept the request of the Prairie Island Indian Community to revoke their charter of incorporation issued under the Indian Reorganization Act. (Oct. 9, 1996; 110 Stat. 3176)

H.R. 3118/P.L. 104–262

Veterans' Health Care Eligibility Reform Act of 1996 (Oct. 9, 1996; 110 Stat. 3177)

H.R. 3458/P.L. 104–263

Veterans' Compensation Cost-of-Living Adjustment Act of 1996 (Oct. 9, 1996; 110 Stat. 3212)

H.R. 3539/P.L. 104–264

Federal Aviation Reauthorization Act of 1996 (Oct. 9, 1996; 110 Stat. 3213)

H.R. 3546/P.L. 104–265

Walhalla National Fish Hatchery Conveyance Act (Oct. 9, 1996; 110 Stat. 3288)

H.R. 3660/P.L. 104–266

Reclamation Recycling and Water Conservation Act of 1996 (Oct. 9, 1996; 110 Stat. 3290)

H.R. 3871/P.L. 104–267

To waive temporarily the Medicaid enrollment composition rule for certain health maintenance organizations. (Oct. 9, 1996; 110 Stat. 3298)

H.R. 3877/P.L. 104–268

To designate the United States Post Office building located at 351 West Washington Street in Camden, Arkansas, as the ''David H. Pryor Post Office Building''. (Oct. 9, 1996; 110 Stat. 3299)

H.R. 3916/P.L. 104–269

To make available certain Voice of America and Radio Marti multilingual computer readable text and voice recordings. (Oct. 9, 1996; 110 Stat. 3300)

H.R. 3973/P.L. 104–270

To provide for a study of the recommendations of the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives. (Oct. 9, 1996; 110 Stat. 3301)

H.R. 4138/P.L. 104–271

Hydrogen Future Act of 1996 (Oct. 9, 1996; 110 Stat. 3304)

H.R. 4167/P.L. 104–272

Professional Boxing Safety Act of 1996 (Oct. 9, 1996; 110 Stat. 3309)

H.R. 4168/P.L. 104–273

Helium Privatization Act of 1996 (Oct. 9, 1996; 110 Stat. 3315)

S. 1577/P.L. 104–274

To authorize appropriations for the National Historical Publications and Records Commission for fiscal years 1998, 1999, 2000, and 2001. (Oct. 9, 1996; 110 Stat. 3321)

S. 1711/P.L. 104–275

Veterans' Benefits Improvements Act of 1996 (Oct. 9, 1996; 110 Stat. 3322)

S. 1802/P.L. 104–276

To direct the Secretary of the Interior to convey certain property containing a fish and wildlife facility to the State of Wyoming, and for other purposes. (Oct. 9, 1996; 110 Stat. 3352)

S. 1931/P.L. 104–277

To provide that the United States Post Office and Courthouse building located at 9 East Broad Street, Cookeville, Tennessee, shall be known and designated as the ''L. Clure Morton United States Post Office and Courthouse''. (Oct. 9, 1996; 110 Stat. 3354)

S. 1970/P.L. 104–278

National Museum of the American Indian Act Amendments of 1996 (Oct. 9, 1996; 110 Stat. 3355)

S. 2085/P.L. 104–279

To authorize the Capitol Guide Service to accept voluntary services. (Oct. 9, 1996; 110 Stat. 3358)

S. 2100/P.L. 104–280

To provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police. (Oct. 9, 1996; 110 Stat. 3359)

S. 2153/P.L. 104–281

To designate the United States Post Office building located in Brewer, Maine, as the ''Joshua Lawrence Chamberlain Post Office Building'', and for other purposes. (Oct. 9, 1996; 110 Stat. 3360)

S.J. Res. 64/P.L. 104–282

To commend Operation Sail for its advancement of brotherhood among nations, its continuing commemoration of the history of the United States, and its nurturing of young cadets through training in seamanship. (Oct. 9, 1996; 110 Stat. 3361)

Last List October 10, 1996

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.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–028–00032–1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–028–00052–5)	21.00	Apr. 1, 1996
200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–028–00054–1)	31.00	Apr. 1, 1996
18 Parts:			
1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
400–End	(869–028–00058–4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869–028–00059–2)	26.00	Apr. 1, 1996
141–199	(869–028–00060–6)	23.00	Apr. 1, 1996
200–End	(869–028–00061–4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869–028–00062–2)	20.00	Apr. 1, 1996
400–499	(869–028–00063–1)	35.00	Apr. 1, 1996
500–End	(869–028–00064–9)	32.00	Apr. 1, 1996
21 Parts:			
1–99	(869–028–00065–7)	16.00	Apr. 1, 1996
100–169	(869–028–00066–5)	22.00	Apr. 1, 1996
170–199	(869–028–00067–3)	29.00	Apr. 1, 1996
200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
300–499	(869–028–00069–0)	50.00	Apr. 1, 1996
500–599	(869–028–00070–3)	28.00	Apr. 1, 1996
600–799	(869–028–00071–1)	8.50	Apr. 1, 1996
800–1299	(869–028–00072–0)	30.00	Apr. 1, 1996
1300–End	(869–028–00073–8)	14.00	Apr. 1, 1996
22 Parts:			
1–299	(869–028–00074–6)	36.00	Apr. 1, 1996
300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
23	(869–028–00076–2)	21.00	Apr. 1, 1996
24 Parts:			
0–199	(869–028–00077–1)	30.00	May 1, 1996
200–219	(869–028–00078–9)	14.00	May 1, 1996
220–499	(869–028–00079–7)	13.00	May 1, 1996
500–699	(869–028–00080–1)	14.00	May 1, 1996
700–899	(869–028–00081–9)	13.00	May 1, 1996
900–1699	(869–028–00082–7)	21.00	May 1, 1996
1700–End	(869–028–00083–5)	14.00	May 1, 1996
25	(869–028–00084–3)	32.00	May 1, 1996
26 Parts:			
§§ 1.0-1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
§§ 1.170–1.300	(869–028–00087–8)	24.00	Apr. 1, 1996
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–028–00089–4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1901.1 to 1910.999)	(869–026–00114–6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–026–00117–1)	35.00	July 1, 1995
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
200–End	(869–026–00123–5)	25.00	July 1, 1995
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
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–026–00126–0)	26.00	July 1, 1995
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
*1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
*1–51	(869–028–00141–6)	50.00	July 1, 1996
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
87-135	(869–028–00149–1)	5.00	July 1, 1996
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–028–00152–1)	22.00	July 1, 1996
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–028–00155–6)	33.00	July 1, 1996
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–028–00157–2)	33.00	July 1, 1996
*790–End	(869–028–00158–7)	19.00	July 1, 1996
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	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–028–00161–1)	17.00	July 1, 1996
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–026–00194–4)	31.00	Oct. 1, 1995
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994

[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 Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.