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Wednesday
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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA,
see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

ATLANTA, GA

WHEN: January 11, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: 1–800–347–1997.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Methods of Withdrawing Funds From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director is revising §§ 1650.20 and 1650.21. Sections 8351 and 8435 of Title 5, United States Code, provide that in certain circumstances when a participant is withdrawing his or her Thrift Savings Plan (TSP) account balance a notice must be sent to a spouse (including a separated spouse) or former spouse, or a joint waiver of the right to a joint and survivor annuity must be obtained from a participant and spouse. This statute also requires the TSP to notify some participants' spouses when participants are applying for loans from their accounts, and requires other participants to obtain the consent of their spouses before obtaining such loans. These revised regulations provide more explicit guidance concerning the content of qualifying affidavits and court orders which serve as the basis for requests to waive the notice, waiver, or spousal consent requirements.

DATES: Revised interim rules are effective December 12, 1990. Comments must be received on or before January 2, 1991.

ADDRESSES: Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 523–6367.

SUPPLEMENTARY INFORMATION: Section 1650.20 provides that the Executive Director may waive the requirement of notice to a spouse or former spouse if the participant presents evidence that the spouse's or former spouse's whereabouts are unknown. This regulation is being amended to provide further explanation of the requirement that the participant make an effort to locate the spouse or former spouse. Also, this section is being revised to state that a declaration may be substituted for a notarized affidavit.

Section 1650.21 provides that the Executive Director may waive the requirement for a spouse's signature in situations where a joint waiver of the right to a joint and survivor annuity or consent to a loan is required, if it is shown that the spouse's whereabouts are unknown or that there are exceptional circumstances that warrant such a waiver. This regulation is being revised to give examples of the kind of exceptional circumstances that would qualify for a waiver. Also, this section is being revised to provide for waiver of the "spouse's signature" rather than "consent". This is because in withdrawal situations it is the spouse's signature on the joint waiver of the joint and survivor annuity that is being waived, whereas, in the case of a loan it is the spouse's signature consenting to the loan, which is being waived. Because the standards for waiver are the same in both instances, however, these regulations use the term "spouse's signature" to refer to both.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will only clarify existing requirements for certain participants who submit waiver applications to the Board.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. It is necessary that these revised regulations be in place at the earliest date for the direction and guidance of participants.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.
Francis X. Cavanaugh,
Executive Director.

Part 1650 of chapter VI of title 5 of the Code of Federal Regulations is hereby amended as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8434(a)(2)(E), 8434(b), 8435, 8436(b), 8467, 8474(b)(5), and 8474(c)(1).

2. Sections 1650.20 and 1650.21 are revised to read as follows:

§ 1650.20 Executive Director's waiver of requirement to notify the spouse or former spouse.

Wherever in these regulations it is required that the Executive Director give notice of an action to a spouse or former spouse of a participant, the notice may be waived in cases where the participant establishes to the satisfaction of the Executive Director that the spouse's or former spouse's whereabouts cannot be determined. A Request for Waiver (Form TSP–16) on this basis must be submitted to the Executive Director accompanied by either—

(a) A judicial, police or governmental agency determination that the spouse's or former spouse's whereabouts cannot be determined; or both

(b) An affidavit or declaration by the participant declaring or attesting to the inability of the participant to locate the spouse or former spouse and stating the efforts made by the participant to locate the spouse or former spouse; and

(c) Affidavits or declarations from two other persons, at least one of whom is not related to the participant, supporting

the participant's statement that the participant does not know the whereabouts of the spouse or former spouse.

(1) The efforts attempted by the participant must be described. Negative statements such as "I have not seen or heard from him/her" or "I have had no contact with him/her" are not sufficient. Examples of attempting to locate the spouse or former spouse include checking with relatives and mutual friends or through telephone directories or directory assistance for city of last known address.

(2) An affidavit must be sworn to before a notary public. An alternative to an affidavit is a declaration. A declaration need not be sworn to before a notary public; however, it must bear the words "I declare under penalty of perjury that the foregoing is true and correct" following the person's statement and immediately above the person's signature.

§ 1650.21 Executive Director's waiver of the requirement to obtain the spouse's signature.

Wherever in these regulations a spouse's signature is required, the Executive Director may waive the requirement if the participant can show that:

(a) The spouse's whereabouts cannot be determined in accordance with the provisions of § 1650.20; or

(b) Due to exceptional circumstances, requiring the spouse's signature would otherwise be inappropriate.

(1) The spousal signature requirement will be waived based on exceptional circumstances only when the participant presents a judicial or governmental agency determination which contains a recitation of such exceptional circumstance regarding the spouse as would warrant waiver of the signature requirement.

(2) "Exceptional circumstances" is narrowly construed and includes such circumstances as when a court order: places a restriction on contact between the spouses which precludes the participant from obtaining the spouse's signature; indicates that the spouse and the participant have been maintaining separate residences with no financial relationship for three or more years; or indicates that the spouse abandoned the participant but, for religious or similarly compelling reasons, the parties chose not to divorce.

[FR Doc. 90-29078 Filed 12-11-90; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Determining Disability and Blindness; Extension of Expiration Date for Musculoskeletal System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which the musculoskeletal system listings found in appendix 1 of part 404, subpart P (listing of impairments with regard to disability determinations) will no longer be effective from December 6, 1990, to June 6, 1992. We have made no revisions in the medical criteria in the musculoskeletal listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering revisions to update the medical criteria contained in the listings, and any revised criteria will be published as proposed rules when we have completed our review. Under this final rule extending the expiration date of the existing criteria, we will continue to use the existing criteria until any revised criteria are published as final rules.

EFFECTIVE DATE: This final rule will be effective December 12, 1990.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 966-0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to prevent an adult from performing any gainful activity (part A), or in the case of children under the age of 18, impairments which compare in severity to impairments that would make an adult disabled (part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security and Supplemental Security Income programs set out in titles II and XVI of the Social Security Act (the Act).

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A date of December 6, 1990, was established for the musculoskeletal system listings in part A to no longer be effective. The musculoskeletal system listings in part B will no longer be effective on December 6, 1993.

In May 1984, the Social Security Administration (SSA) convened an expert medical panel to review the current musculoskeletal listings and propose revisions to SSA based upon the latest advances in medical knowledge and technology. The Musculoskeletal Panel was comprised of representatives from national medical professional groups and Federal and State representatives with expertise in the evaluation of disability claims involving musculoskeletal impairments.

The panel met five times and submitted to SSA its final recommendations regarding part A on February 12, 1987 and its recommendations regarding part B on June 15, 1987, for consideration as the basis for listing changes. Panel deliberations were very thorough due to the need to consider significant medical advances with respect to the evaluation and treatment of musculoskeletal impairments. The recommendations are advisory only and require careful study as we review the existing listings and consider the development of new regulations. The potential program impact of the changes recommended by the panel requires careful analysis and consideration within the agency. So that we will have an opportunity to consider these recommended changes thoroughly, we are extending the expiration date of part A of the musculoskeletal listings.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because opportunity for public comment

is unnecessary. Prior notice and comment before publication are unnecessary because this regulation only extends the expiration date of part A of the musculoskeletal listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Since we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of the existing musculoskeletal listings is completed, proposed revisions to the existing criteria will, of course, be published for public comment.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: November 15, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 7, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

20 CFR part 404, subpart P—is amended as follows:

1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b) and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

Appendix 1 to Subpart P—[Amended]

2. Appendix 1 to subpart P is amended by revising the second paragraph of the introductory text to read as follows:

Musculoskeletal system (1.00) within 6½ years. Consequently, the listings in this body system will no longer be effective on June 6, 1992.

[FR Doc. 90–29161 Filed 12–10–90; 10:53 am]

BILLING CODE 4190–29–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–90–84]

Special Local Regulations for Marine Events; New Year's Eve Celebration Fireworks; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.501.

SUMMARY: This notice implements 33 CFR 100.501 for the New Year's Eve Celebration Fireworks Display. The fireworks display will be launched from the Town Point Park Fireworks-Mast Area, Town Point Park, Norfolk, Virginia, on the Elizabeth River, adjacent to "Waterside", between the Norfolk and Portsmouth downtown areas from 10 p.m., December 31, 1990 to 1 a.m., January 1, 1991. The regulations in 33 CFR 100.501 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 10 p.m., December 31, 1990 to 1 a.m., January 1, 1991. If inclement weather causes the postponement of the event, the regulations are effective from 6 p.m. to 8 p.m., January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

Norfolk Festevents, Ltd. submitted an application on January 19, 1990 to hold a fireworks display from 10 p.m., December 31, 1990 to 1 a.m., January 1, 1991. The fireworks display will be launched from the Town Point Park Fireworks-Mast Area, Town Point Park, Norfolk, Virginia, and will burst over the Elizabeth River. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The fireworks will be launched from within the regulated area. The waterway will be closed during the fireworks display. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501, except that the Coast Guard Patrol Commander may order that the draw be opened for commercial vessels.

Dated: December 3, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90–29098 Filed 12–11–90; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 106; FRL–3868–6]

Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Extension of temporary approval.

SUMMARY: This action provides notice of the Environmental Protection Agency's (EPA's) extension of its temporary approval of a special emission limitation allowing Orange and Rockland Utilities, Inc. to burn coal at units 4 and 5 of the Lovett Generating Station in Stony Point, New York. This extension, not to exceed six months, will continue until such time that EPA completes its review and takes final action in the **Federal Register** on New York State's request for permanent revision of its State Implementation Plan with respect to this facility.

DATES: This action is effective December 12, 1990.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Plaza, Room 1118, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: On May 30, 1985 (50 FR 23004), the Environmental Protection Agency (EPA) published in the **Federal Register** a Notice of Final Rulemaking (NFR) concerning revisions to the New York State Implementation Plan (SIP) for Sulfur Dioxide (SO_2). These revisions sought to allow Orange and Rockland Utilities, Inc. (ORU) to reconvert two units at its Lovett two units at its Lovett Generating Station in Stony Point, New York from oil to coal. This action entailed relaxing the normal emission limit of 0-4 pounds of SO_2 per million British thermal units (lbs/MMBtu) to 1.0 lb/MMBtu for units 4 and 5 if both are operated on coal, or 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all.

In order to approve such a request, EPA needed a demonstration that the conversion would not adversely affect the environment. As such, EPA approved the State's request for a period of 42 months during which ORU was required to meet specific conditions relating to coal burning and conduct air quality and model evaluation studies in order to assess the effect of the conversions on the environment. At the end of this 42-month period EPA would evaluate ORU's studies and decide whether the conversions should be allowed on a permanent basis. The 42-month period, as approved, expires on December 9, 1990.

In its May 30, 1985 NRF, EPA noted the possibility that at the end of the 42-month trial period, ORU could be left in a regulatory dilemma because of delays in processing an approvable State-submitted permanent SIP revision request. In the event of such delays, EPA gave itself the option to grant an extension of the period during which its temporary approval of the special limitation would apply until all processing is completed (See 40 CFR 52.1675). Such an extension could be allowed only if the following conditions were met;

- The final dispersion model report has been submitted on schedule by ORU.
- A permanent SIP revision request for limiting fuel sulfur content at the Lovett plant has been submitted to EPA by New York State.
- This SIP revision request permits the use of 0.7 percent sulfur content coal or coal of a higher sulfur content.
- ORU has agreed to continue the full operation of its air quality monitoring network as established for the study and to abide by the terms of its agreement with EPA concerning corrective action in the event of monitored violations of the matinal ambient air quality standards.

On September 18, 1990, New York State submitted its SIP revision request for the permanent conversion of the Lovett Power Plant from oil to coal based upon the results of the 42-month test period. However, because of the late date on which it was submitted and the volume of material included in the submittal, it will not be possible for EPA to review and take full administrative action on the request before the December 9, 1990 expiration date of the 42-month special limitation. Based upon these factors, and the fulfillment of the four necessary conditions, EPA is extending the special limitation until such time that a final action is published in the **Federal Register** concerning this facility. This extension will not exceed more than six months from the date of today's notice.

Authority: 42 U.S.C. 7401–7642.

Dated: November 21, 1990.

Constantine Sidamon-Eristoff,

Regional Administrator, Region II.

[FR Doc. 90–29110 Filed 12–11–90; 8:45 am]

BILLING CODE 6560–50–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Regulations Under Section 504 of the Rehabilitation Act of 1973, Nondiscrimination of Basis of Handicap in Federally Assisted Programs and Activities

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final Rule.

SUMMARY: The Institute of Museum Services issues regulations under section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of handicap in Federally assisted programs of IMS). These regulations do not implement the Americans with Disabilities Act.

EFFECTIVE DATES: This rule is effective on or before January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Public Information Officer, Institute of Museum Services, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0536 (Voice) or (202) 786–9136 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), which is title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976. As subsequently amended, it appears in 20 U.S.C. 961–68.

The purpose of the Act is stated in section 202, 20 U.S.C. 961, as follows:

It is the purpose (of the Museum Services Act) to encourage and assist museums in their educational role, in conjunction with formal systems or elementary, secondary, post-secondary education and with programs on nonformal education for all age groups; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage: and to ease the financial burden borne by museums as a result of their increasing use by the public.

The Act establishes an Institute of Museum Services (IMS) consisting of a National Museum Services Board (Board) and a Director. IMS is an independent agency placed in the National Foundation on the Arts and the Humanities (National Foundation). 20 U.S.C. 962.

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public. During fiscal year 1990 IMS provides four types of grant assistance to museums: (1) General operating support; (2) conservation assistance; (3) museum assessment assistance; and (4) assistance to professional museum organizations.

2. Need for the Regulations

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, provides in pertinent part:

No otherwise qualified individual with handicaps in the United States, as defined in (section 706(8) of Title 29), shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.* * *

Prior regulations of IMS have specified the applicability of section 504 to programs of assistance administered by IMS. Compare 45 CFR 1180.44 48 FR 27733 (June 17, 1983) with former 45 CFR 64.17, 45 FR 53419 (August 11, 1980), See also 45 FR 53415 (Aug. 11, 1980). Thus, formulation by the Board of rules regarding the applicability of section 504 does not establish a new statutory requirement for IMS recipients. Prior to the transfer of IMS to the National Foundation, regulations of the Education Department (of which IMS was then a part) governed the operation of section 504 as it related to programs of IMS. With the transfer of IMS to the National Foundation it is necessary to establish regulations governing the administration of section 504 as it pertains to these programs in the context of the status of IMS as an agency within the National Foundation.

In 1986 IMS issued regulations under section 504 relating to the enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Institute itself. 45 CFR part 1181. These regulations implement section 119 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978 and apply to all programs or activities conducted by the agency. 45 CFR 1181.102. It is now appropriate for IMS to issue revised regulations pertaining to nondiscrimination on the basis of handicap in federally assisted programs carried out by museums or other recipients under the Museum Services Act through grants or other financial assistance provided by IMS.

3. Description

A purpose for the transfer of IMS to the National Foundation was to improve coordination of the policies of IMS with those of other agencies in the National Foundation. The Board has determined that, in formulating regulations under section 504, it would be consistent with this purpose for IMS to look to analogous rules adopted by the National Endowment for the Humanities (NEH), which is also an agency within the National Foundation. A number of reasons support this determination. (1) By inter-agency agreement, IMS looks to NEH for administrative services with respect to section 504 matters. Making the NEH regulations applicable to IMS programs will facilitate a more efficient administration of section 504 to meet the needs of handicapped visitors to museums served by IMS.

(2) The Board desires to minimize the degree to which museums assisted both by IMS and by the Endowments, as well as members of the affected target population, must look to different sets of regulations to govern the same cross-cutting issue.

(3) The NEH regulations have been developed in light of particular questions which cultural institutions face in achieving compliance with section 504.

(4) Many museums which participate in programs administered by IMS are presumably familiar with the NEH regulations under section 504 and thus will more readily understand their responsibilities under its provisions.

For these reasons the Board determined to make applicable to IMS programs the NEH regulations under section 504 which are found in 45 CFR part 1170, 46 FR 55897 (Nov. 12, 1981).

Part 1170 was issued by NEH in 1981 and was based on the regulation for federally assisted programs issued by the Department of Health, Education, and Welfare (HEW) in 1977 (42 FR 22676) and later transferred to the Department of Health and Human Services (45 CFR part 84). Since 1977 a number of significant court opinions have been issued interpreting section 504 and the regulations implementing it. Because of this developing case law, regulations implementing section 504 in federally conducted programs issued in recent years by the IMS and more than 40 other agencies explicitly provide, unlike part 1170, that, in communicating with individuals with handicaps and ensuring that a program or activity is accessible, the Federal agency is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of the program or activity or in undue financial and administrative burdens (45 CFR 1181.150(a), 1181.160(d) (IMS); see also, e.g., 28 CFR 39.150(a) 39.160(d) (Department of Justice); 45 CFR 1175.150(a), 1175.160(d) (NEH). These provisions, which were upheld in *Department of Justice Handicapped Employees Association* v. *Meese*, No. 84–5645 (E.D. Pa., Oct. 9, 1987), are based on the Supreme Court's ruling in *Southeastern Community College* v. *Davis*, U.S. 397 (1979), that section 504 and the HEW regulations implementing it do not require actions that would have such effects. These provisions are also supported by *Alexander* v. *Choate*, 469 U.S. 287 (1985), in which the Court noted that section 504 and its implementing regulations at the time require "reasonable adjustments in the nature of the benefit offered * * * to assure meaningful access" (469 U.S. at 301 n. 21), but do not require " 'changes;' 'adjustments;' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alterations(s) in the nature of a program' " *Id.* at n. 20 (citations omitted). Thus although the NEH regulation that IMS proposes to adopt does not include the language found in the more recently issued regulations for federally conducted programs, it does provide recipients, by virtue of judicial interpretation, the same fundamental alteration/undue burdens defenses. (See e.g., *Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir., 1983); *Dopico* v. *Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F. 2d 1272 (D.C. Cir., 1981).

Numerous section 504 regulations for federally conducted programs, including the final rule issued by the Advisory Council on Historic Preservation, also contain a clarification of the requirements of the statute as applied to historic preservation programs (36 CFR 812.150(a)(2), (b)(2) (Advisory Council on Historic Preservation)); see also e.g., 45 CFR 1153.150(a)(2), (b)(2) (NEA); 45 CFR 2104.150 (a)(2), (b)(2) (Commission of Fine Arts)). In order to avoid a possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, these regulations provide that in historic preservation programs the agency is not required to take any action would result in a substantial impairment of significant historic features of an historic property (i.e., a property that is listed or eligible for listing in the National Register of Historic Places or designated as historic under a statute of the appropriate State or local government body).

Nevertheless, because the primary benefit of an historic preservation program is uniquely the experience of the historic property itself, the regulations require the agency to give priority to methods of providing program accessibility that permit individuals

with handicaps to have physical access to the historic property. When such access cannot be provided, however, the regulations permit the agency to adopt alternative methods for providing program accessibility. Such methods include using audio-visual materials to depict those portions of an historic property that cannot otherwise be made accessible, assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible, or adopting other innovative methods. IMS will follow this approach in applying 45 CFR part 1170 to programs that have preservation of historic properties as a primary purpose.

4. Public participation

A notice of proposed rulemaking setting forth the rule and accompanying discussion was published on September 1, 1989 at 54 FR 36330. No comments were received in response to the notice of proposed rulemaking and the rule is being issued in final form without changes in the text that appeared in the September 1 **Federal Register** document.

5. Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

6. Regulatory Flexibility Act Certification

The Director certifies that these regulations will not have a significant economic impact on a substantial number on small entities. To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, they will not have a significant economic impact on the small entities affected because they do not impose excessive regulatory burdens or require unnecessary Federal supervision.

List of Subjects in 45 CFR Part 1180

Blind; Buildings; Civil Rights; Employment; Equal employment opportunity; Equal education opportunity; Handicapped; Historic places; Historic preservation; Museums; National boards.

Daphne Wood Murray,

Director Institute of Museum Services.

PART 1180—[AMENDED]

The Institute of Museum Services amends subchapter E of chapter XI of title 45 of the Code of Federal Regulations as follows:

1. The authority citation for part 1180 is revised to read as follows:

Authority: 20 U.S.C. 961–968; Pub. L. 97–100, 95 Stat. 1414; Pub. L. 97–394, 96 Stat. 1994; 29 U.S.C. 794.

2. Part 1180 is amended by revising § 1180.44 to read as follows:

§ 1180.44 Federal statutes and regulations on nondiscrimination.

(a) Each grantee shall comply with the following statutes:

Subject	Statute
Discrimination on the basis of race, color or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4)
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).
Discrimination on the basis of age.	The Age Discrimination Act (420 U.S.C. 8101 et. seq).

(b)–(c) [reserved]

(d) *Regulations under section 504 of the Rehabilitation Act of 1973.* The Institute applies the regulations in 45 CFR Part 1170, issued by the National Endowment for the Humanities and relating to nondiscrimination on the basis of handicap in federally assisted programs and activities, in determining the compliance of museums with section 504 of the Rehabilitation Act of 1973 as it applies to recipients of Federal financial assistance from the Institute. These regulations apply to each program or activity that receives such assistance. In applying these regulations, references to the "Endowment" of the "agency" shall be deemed to be references to the Institute and references to the "Chairman" shall be deemed to be references to the Director.

FR Doc. 90–29002 Filed 12–11–90; 8:45 am]

BILLING CODE 7036–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–104; RM–7166]

Radio Broadcasting Services; Berryville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C3 for Channel 296A at Berryville, Arkansas, and modifies the license of KTHS/KSCC, Inc., for Station KSCC(FM), as requested, to specify operation on the higher powered channel. See 55 FR 9468, March 14, 1990. Coordinates used for Channel 296C3 at Berryville are 36–20–00 and 93–20–00. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–104, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230) 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arkansas, is amended by removing Channel 296A and adding Channel 296C3 at Berryville.

Federal Communications Commission.

Beverly McKittrick

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29120 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-65; RM-7086]

Radio Broadcasting Services; Emporia, KS, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 269C2 for Channel 269A at Emporia, Kansas, and modifies the license of Station KEGS(FM) to specify Channel 269C2, in response to a petition filed by Communications Group, Inc. See 55 FR 7745, March 5, 1990. The coordinates for Channel 269C2 are 38-07-04 and 96-11-41. To accommodate the upgrade at Emporia, substitutions will be made at Fort Scott and Independence, Kansas. We shall substitute Channel 284A for Channel 269A at Fort Scott and modify the license of Station KVCY to specify operation on Channel 284A at coordinates 37-47-47 and 94-42-20. We shall also substitute Channel 275A for Channel 269A at Independence and modify the license for Station KIND(FM) to specify operation on Channel 275A at coordinates 37-15-42 and 95-45-59.

EFFECTIVE DATES: January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-65, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 269A and adding Channel 269C2 at Emporia, by removing Channel 269A and adding Channel 284A at Fort Scott, and by removing Channel 269A and adding Channel 275A at Independence.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-29121 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-378; RM-6823]

Radio Broadcasting Services; Leesville, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stannard Broadcasting Company, Inc., substitutes Channel 289C3 for Channel 288A at Leesville, Louisiana, and modified its license to specify operation on the higher powered channel. *See* 54 FR 37134, September 7, 1989. Channel 289C3 can be allotted to Leesville, Louisiana, in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.3 kilometers (10.7 miles) south of Leesville to accommodate petitioner's desired transmitter site. The coordinates for Channel 289C3 are North Latitude 30-59-30 and West Longitude 93-13-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-378, adopted November 8, 1990, and released December 6, 1990. The full text of this Commission decisions is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 288A and adding Channel 289C3 at Leesville.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-29005 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-522; RM-6967]

Radio Broadcasting Services; Jackson, TN, and Caruthersville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of C R Broadcasting, Inc., substitutes Channel 276C2 for Channel 276A at Jackson, Tennessee, and modifies its license for Station WMXX(FM) to specify operation on the higher powered channel. Also Channel 286A is substituted for Channel 276A at Caruthersville, Missouri, and the license of Pemiscot Broadcasting, Inc., for Station KLOW(FM) is modified to specify operation on Channel 286A. *See* 54 FR 48775, November 27, 1989. Channel 276C2 can be allotted to Jackson, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.1 miles) south of Jackson. The coordinates for Channel 276C2 are North Latitude 35-30-00 and West Longitude 88-50-00. Channel 286A can be allotted to Caruthersville in compliance with the Commission's minimum distance separation requirements and can be used at Station KLOW(FM)'s licensed transmitter site. The coordinates for Channel 286A are North Latitude 36-12-50 and West Longitude 89-41-25. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-522, adopted November 19, 1990, and released December 6, 1990. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140 Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 276A and adding Channel 276C2 at Jackson. The Table of FM Allotments under Missouri is amended by removing Channel 276A and adding 286A at Caruthersville.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29004 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–393; RM–7213]

Radio Broadcasting Services; Tomahawk, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C3 for Channel 224A at Tomahawk, Wisconsin, in response to a petition filed by Gregory A. Albert and Margaruite S. Albert, d/b/a Albert Broadcasting. See 55 FR 35910, September 4, 1990. We shall also modify the license of Station WJJQ–FM, Tomahawk, to specify operation on Channel 223C3. Canadian concurrence has been obtained at coordinates 45–29–27 and 89–43–33.

EFFECTIVE DATES: January 22, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–393, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 224A and adding Channel 223C3 at Tomahawk.

Federal Communications Commission

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29122 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Reclassification of the Aleutian Canada Goose From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) concludes that the Aleutian Canada goose (*Branta canadensis leucopareia*) should be reclassified from endangered to threatened status under the authority of the Endangered Species Act (the Act) of 1973, as amended in 1988. Aleutian geese currently nest on six islands of the Aleutian Archipelago and on one island in the Semidi Island Group, southward of the Alaska Peninsula, Alaska. Aleutian geese are particularly vulnerable to severe storms and disease. Additionally, Aleutian geese are subject to markedly increased social and economic pressures to develop their winter habitat and to the continued presence of introduced arctic foxes (*Alopex lagopus*) on many former nesting islands. Delisting is not justified at this time. This change in classification from endangered to threatened status reflects an improvement in population status, and will not diminish the protection of Aleutian Canada geese under the Act.

EFFECTIVE DATE: January 11, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the following officies: U.S. Fish and Wildlife Service, Ecological Services Anchorage, 605 W. 4th Avenue, Room 62, Anchorage, Alaska 99501; or Portland Regional Office, U.S. Fish and Wildlife Service, 1002 N.E. Holladay Street, Portland, Oregon, 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Anderson (see ADDRESSES section/Alaska) at 907/271–2888 or FTS 868–2888 or Mr. Robert Ruesink (see ADDRESSES section/Oregon) at 503/231–6131, FTS 429–6131.

SUPPLEMENTARY INFORMATION:

Background

Branta canadensis leucopareia is one of 11 currently recognized subspecies of the large and diverse *Branta canadensis* group (Bellrose 1976). It is the only subspecies in this group whose range once included both the North American and the Asian continents (Amaral 1985). The Aleutian Canada goose is currently known to nest on remote islands southward of the Alaska Peninsula and in the Aleutian Archipelago of Alaska. Aleutian geese can be distinguished from most other Canada geese by their small size (only cackling Canada geese, *B. c. minima*, are smaller) and a ring of white feathers at the base of the neck in birds older than eight months. Most Aleutian geese migrate from their breeding grounds in Alaska during September. They may stop along the Washington and Oregon coast en route to the wintering grounds in California, where they begin arriving in mid-October. Geese from Kaliktagik Island winter in coastal Oregon near Pacific City. Aleutian geese depart the wintering areas in April and return to Alaska to nest and rear young during May through September.

The decline in numbers of Aleutian geese and the reduction of their breeding range is attributed to predation by arctic fox, which were introduced on many Aleutian islands during the period 1836–1930. Aleutian geese were also hunted recreationally and for food in the Pacific Flyway, particularly California,

until 1975. The Aleutian Canada goose was added to the U.S. Department of the Interior's list of native endangered species on March 11, 1967 (32 FR 4001) and to the list of foreign endangered species (i.e. Japan) on June 2, 1970 (35 FR 8495).

At the time of listing, Aleutian Canada goose population estimates were based upon sparse data. Kenyon (1963) speculated that only 200–300 individuals of this species remained. Nesting was believed to be restricted to Buldir Island in the western Aleutians, and the migratory routes and wintering habits of Aleutian geese were largely unknown. Introduced arctic foxes persisted on many islands throughout the Aleutian chain—islands that formerly provided nesting habitat for a large number of Aleutian Canada geese. Surveys in the Aleutian Islands in the late 1930's showed that geese were rare or extirpated in locations where foxes had been introduced (Murie 1959).

Prior to listing, the Service began efforts to eliminate fox populations from islands formerly occupied by nesting geese. By 1965, arctic fox were eradicated from Amchitka Island, and by the late 1970's, Nizki-Alaid and Agattu Islands were also fox free. More recently, Amukta and Rat Islands were cleared of introduced foxes. Apparently, all foxes were eliminated from Kiska Island following experimental fox control efforts in 1987, but additional surveys are needed to verify the island is fox free.

While fox control efforts in Alaska made former breeding habitat once again suitable for nesting geese, hunting closures on key wintering areas in California and Oregon are primarily responsible for Aleutian goose population increases, from 790 birds in 1975 to about 6,000 birds in fall 1989. Annual increases in numbers of Aleutian Canada geese on the California wintering grounds have averaged 16 percent (McNab and Springer 1989; Springer and Gregg 1988) during this 14-year period (Table 1).

TABLE 1.—PEAK NUMBER OF ALEUTIAN CANADA GEESE WINTERING IN CALIFORNIA, 1975–1989

Year	Peak count	Increase (percent)
1975 (spring)	790	
1975–76	900	15
1976–77	1,200	33
1977–78	1,500	25
1978–79	1,590	6
1979–80	1,740	9
1980–81	2,000+	15
1981–82	2,700	35
1982–83	3,500	30
1983–84	3,800	9
1984–85	4,200	11
1985–86	4,300	2
1986–87	4,800+	12
1987–88	5,400	12
1988–89	5,800	7
1989–90	6,200	7

The 1977 Aleutian Canada Goose Recovery Plan, which was revised in 1982, includes the following three primary subobjectives for reclassification and delisting the species:

1. Maintain the wild population of Aleutian Canada goose at a level of 1,200 or greater.
2. Reestablish self-sustaining populations of geese (50 breeding pairs/area) on three former breeding areas in addition to Buldir Island.
3. Continue an active public relations program.

Specific criteria for reclassifying and delisting are:

> After self-sustaining populations of 50 or more breeding pairs have been reestablished on each of 2 areas or *a total of 100 or more pairs have been reestablished on 3 areas (with 10 pairs the minimum colony size),* recommendations for reclassifying the Aleutian Canada goose to threatened status will be sent to the Director, U.S. Fish and Wildlife Service. When 50 or more breeding pairs are reestablished on each of 3 areas, recommendations for removal from the list of threatened and endangered species will be sent to the Director (emphasis added).

These requirements are subject to the wild population maintaining a level of 1,200 birds or greater and the "reestablished populations" being considered additional to and not inclusive of the Buldir Island nesting colony.

Based on the best current estimates available, the primary remnant breeding population on Buldir Island numbers between 1,100–1,500 pairs. The remnant nesting population on Kiliktagik Island of the Semidi Islands Group numbers between 20–22 pairs. The remnant nesting population on Chagulak Island of the Islands of Four Mountains Group numbers between 20–25 pairs. One pair was observed on Amukta Island in the Islands of Four Mountains Group for the second year in a row, and two pair were observed on Little Kiska Island of the Rat Islands Group during the 1990 field season. Agattu and Nizki-Alaid Islands of the Near Islands Group sustain +55 and 7 pairs, respectively.

Summary of Comments and Recommendations

In the September 29, 1989, proposed rule (54 FR 40142–40146) and associated notifications, all interested parties were requested to submit comments for use in preparing a final rule. Appropriate State and Federal agencies, Native groups, scientific organizations, and other interested parties were contacted and requested to comment. Notices were published in Alaska's Anchorage Daily News and the Aleutian Eagle on October 15, 1989. On December 8, 1989, notices were published in three California newspapers, the San Francisco Chronicle, the Sacramento Bee, and the Colusa County Sun Herald; one notice was published in an Oregon newspaper, the Oregonian. Each notice invited general public comment.

To ensure notification and comment opportunity over this large area, the normal 60-day comment period was extended an additional 60 days, for a total of 120 days. During this period, 40 written and oral comments were received. Two Federal agencies, one State agency, and two hunting-advocacy organizations expressed support for the proposal. Opposition was expressed by one state agency, six environmental organizations, and 28 individuals.

Requests for a public hearing were received from three environmental organizations and one individual. A public hearing was held on January 17, 1990, at the San Francisco Bay National Wildlife Refuge office in Fremont, California. Nine persons presented oral statements at the public hearing.

All comments received during the public hearing and comment period are summarized below. Comments of a similar nature or point are grouped into several general issues. These issues, and the Service's response to each, are discussed below.

Comment: Eight comments suggested that the reclassification criteria, as specified in the 1982 Aleutian Canada Goose Recovery Plan, had not been achieved. Some comments indicated that estimates of breeding pair numbers on Chagulak Island are unreliable, being based on incomplete, dated surveys.

Response: Because of remote and widely separated locations, it is not logistically possible to survey all nesting areas in any one year. In addition, the difficult working conditions associated with these islands often prevent

thorough surveys. In such instances population estimates are extrapolations based on the best available data. Following publication of the original proposal, the Service conducted 1990 nesting surveys on five of the seven nesting islands, including Chagulak Island where quantitative nesting data were lacking. As discussed in the previous section, the 1990 preliminary data affirm that the reclassification criteria have been achieved.

Comment: Twenty-two comments express concern that winter/migration habitat for the species is threatened by development or pollution. The El Sobrante area of California is cited as an example of Aleutian goose winter habitat currently threatened by residential development.

Response: Although the availability of winter/migration habitat has been sufficient to allow an average 16 percent growth per year in the Buldir segment of the Aleutian Canada goose population over a 14-year period, the potential future shortage of adequate winter/migration habitat is one of the more serious obstacles to full recovery of the species. Current threats to winter habitat include urbanization, changing agricultural practices, and pollution. The Service continues to implement its program to protect winter habitat for the Aleutian Canada goose and other waterfowl through fee simple and easement acquisition. Recent accomplishments include acquisition of habitat in the San Joaquin Valley as part of the newly-formed San Joaquin National Wildlife Refuge. The already approved and funded acquisition of important winter habitat at the Faith and Mapes Ranches near Modesto is being negotiated. Traditional migration areas have been acquired in the Sacramento Valley, including areas within the Butte Sink. Other areas used by this species continue to be protected by existing units of the Sacramento National Wildlife Refuge. As part of the continuing recovery effort, the Service intends to prepare a ranked list of Aleutian goose use areas to be protected. Such a list will guide the Service in developing habitat protection programs.

The State of California is taking an active role in habitat protection using funding generated through bond initiatives. California is also participating with the Service in a joint venture program under the North America Waterfowl Management Plan, working toward achieving an 80,000-acre habitat protection goal for the Central Valley.

Comment: Nine commentors state that the Service initiated this action contrary to the recommendations of the Aleutian Canada Goose Recovery Team.

Response: The consensus at the 1989 meeting of the recovery team was that the status of the species had improved to the point that it was no longer in imminent danger of extinction. At that time, the recovery team could not confirm that the reclassification criteria had been met, based on the lack of quantitative nesting data for Chagulak Island. Preliminary results of the 1990 nesting survey confirm that the reclassification criteria have been achieved.

Comment: Seven comments were received contending that the Aleutian Canada goose population is still too small, and that the reclassification criteria are inadequate.

Response: The reclassification criteria based on the best professional judgment of species experts and Service staff. These criteria were developed to help measure the progress of the recovery program. The Service believes, based on the best information currently available, that the species status has markedly improved and that it is no longer in imminent danger of extinction. We emphasize that this is a reclassification action, which acknowledges the improved status of the species. Reclassification to threatened status does not remove protection now afforded it under the Act.

Comment: Eleven commenters express concern that this action would allow hunting of Aleutian Canada geese to resume, thereby endangering the species.

Response: The action to reclassify the Aleutian Canada goose from endangered to threatened status will not permit legal hunting for this species. The species will continue to receive full protection under the Act. The Service recognizes the positive contribution that hunting closures have made in the progress of Aleutian goose recovery and will continue the closures of the important Aleutian goose use areas in California to Canada goose hunting.

Comment: Six comments warn of the potential for a natural or man-made disaster that could endanger the species.

Response: The Service shares this concern. At the current Aleutian goose population level and distribution, threats of disaster are great enough to justify a threatened classification. Natural disasters include storms and disease that could result in the loss of large numbers of Aleutian Canada geese during nesting, over-wintering or migration. The Service will continue to expand the goose's nesting distribution to reduce the potential impacts of a natural disaster. The effects of man-made disasters, such as hazardous material spills, could be lessened through prevention and response planning. The Recovery Team recently updated the Aleutian Canada Goose Disease and Contamination Hazard Contingency Plan.

Comment: Three commenters argue that the widely separated breeding populations of Aleutian Canada geese may actually represent separate subspecies of *Branta canadensis*. These comments are based upon the great distances, approximately 600 miles, which separate each breeding population at Buldir, Chagulak, and Kiliktagik Islands, and the differences in migrational and wintering behavior exhibited by these nesting populations.

Response: The Service is not aware of evidence sufficient to warrant further taxonomic division of *Branta canadensis leucopareia*. Based on physical (Johnson et al. 1979) and genetic (Shields and Wilson 1987) analyses, the Service believes that the available evidence sustains the view that the remnant population segments from Buldir, Chagulak, and Kiliktagik Islands are part of a once continuous insular nesting population formerly nesting from the western Gulf of Alaska to the Kurile Islands of the Soviet Union.

It is not anticipated that this action will have an adverse effect on any of the remnant breeding segments of the Aleutian goose population. Behavioral differences among the remnant populations will be recognized in the revised species recovery plan and will be taken into account during development of management strategies for full recovery of the Aleutian goose population.

Summary of Factors Affecting the Species

After thorough review and consideration of all information available, the Service has determined that the Aleutian Canada goose *Branta canadensis leucopareia*) should be reclassified from endangered to threatened status. The Service's listing regulations (50 CFR Part 424) provide for a review of the five following factors when reclassifying (or listing or delisting) a species (sec. 424.11). The Service has studied the relevant information available for the Aleutian Canada goose and summarizes this information for each of the five factors below:

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historically, Aleutian Canada geese are known to have bred on most of the larger islands of the Aleutian Chain, as well as the Commander and northern Kurile Islands (U.S. Fish and Wildlife Service 1982). At the time of listing, the known remnant breeding range for the species was restricted to 4,914-acre (1,900 hectare) Buldir Island, which, because of its small size and inhospitable topography, was spared the introduction of foxes. The wintering range was sought to have included Japan and the coastal areas of British Columbia to California (Delacour 1954). The wintering area of the Buldir Island nesting population was unknown.

In addition to the introduction of foxes on many islands, other disturbances to the historical breeding range of the Aleutian Canada goose existed, for example, private inholdings, military activity, and the introduction of other mammals (i.e. cattle, rats, voles, and ground squirrels). Islands where Aleutian geese are currently known to next are inhabited and relatively undisturbed. Current nesting islands include Buldir, Little Kiska, Agattu, Nizki-Alaid, Chagulak, and Amukta of the Aleutian Archipelago; and Kiliktagik Island off the Alaska Peninsula. All nesting islands are within the boundaries of the Alaska Maritime National Wildlife Refuge.

The wintering range for this species has been the focus of study from 1974 to the present. Areas in California and Oregon essential to the winter survival of this species have been identified and partially protected. For example, the Service has added lands to the National Wildlife Refuge System in western Oregon; acquired Castle Rock, California; acquired habitat and protective easements in the San Joaquin and Sacramento Valleys; and recently approved habitat acquisitions that will be added to the new San Joaquin River National Wildlife Refuge. Other areas important to the wintering flock in Del Norte County were acquired by the State of California and are part of its Wildlife Area and State Park systems. The above actions notwithstanding, one of the greatest obstacles to the future recovery of the Aleutian goose is the dwindling availability of sufficient wintering habitat. Some privately owned agricultural areas currently used by wintering Aleutian geese are being converted from row crops or pasture-land to crops of little or no food value to geese. Winter habitat is also being lost completely to commercial development.

2. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, Aleutian geese were harvested for food by Aleuts, a people indigenous to the Aleutian Islands. Aleutian geese were also taken by market hunters on the wintering grounds. In the recent past, Aleutian geese were hunted recreationally and to some extent for food within the Pacific Flyway, particularly in California. Although it is generally recognized that predation by introduced arctic fox on the nesting grounds caused the initial near extinction of Aleutian geese, hunting during migration and on the goose's wintering areas have kept their numbers depressed. Management of the Canadian goose harvest in California was complicated by three factors: (1) specific areas important to Aleutian geese were not identified; (2) several subspecies of Canada geese wintered in the Central Valley of California; and (3) most hunters are unable to readily differentiate between Canada goose subspecies.

The area west of Unimak Pass, Alaska, was closed in 1973 to the hunting of Canada geese. In contrast, little was known about the wintering behavior of Aleutian geese, and as a result, a great deal of field work was needed in order to learn which areas were important. Sightings and band return data helped biologists to determine movements and distribution of Aleutian geese. Subsequently, a comprehensive effort ensued to protect wintering flocks from hunting and to secure roosting and feeding habitat. Three areas in California—Del Norte and Humboldt Counties; areas near Colusa; and areas near Modesto and Los Banos—have been closed to Canada goose hunting since 1975. In Oregon, portions of Coos, Curry and Tillamook Counties have been closed, since 1982. More recently, Aleutian Canada geese in Washington, Oregon, and California have also benefited indirectly from hunting closures to protect wintering dusky Canada geese (*B. c. occidentalis*) and cackling Canada geese.

Cooperation and support among federal, state, county, and municipal governments and various interest groups have made the effort to protect Aleutian geese on the wintering grounds easier. The effectiveness and success of the hunting closures are clearly demonstrated in two ways: (1) available data indicate that annual mortality to illegal hunting is usually far less than one percent of the total population; and (2) the wild population has increased from 790 birds in 1975, when the closures in California were implemented, to nearly 6,000 birds in 1989 (McNab and Springer 1989). It is anticipated that key migration and wintering areas in Alaska, Oregon, and California will continue to be closed to Aleutian Canada goose hunting until this species is delisted.

3. Disease or Predation

Predation by introduced arctic fox throughout the Aleutian Archipelago has a severe impact on this species as well as on all ground nesting birds. In the period, 1949 to the present, the Service eliminated introduced arctic fox from Amchitka (73,024 acres; 29,552 hectares), Agattu (55,535 acres; 22,475 hectares), Nizki-Alaid (3,175 acres; 1,285 hectares), Rat (6,861 acres; 2,777 hectares), and Amukta Islands (12,425 acres; 5,028 hectares). Fox removal apparently succeeded on Kiska Island (69,598 acres; 28,166 hectares); however additional surveys are needed to verify that foxes no longer occur on this island. Together with several small islands (e.g. Little Kiska) that either escaped fox introductions or where fox populations died out, more than 244,000 acres (98,785 hectares) are currently fox free in the Aleutians. This represents, however, less than 15 percent of the habitat that once was used by nesting geese prior to fox introductions.

Concurrent with the fox removal program, the Service began to reintroduce Aleutian geese on fox-free islands. Reintroductions of captive-raised geese on Amchitka Island were unsuccessful. In 1980, family groups of Aleutian geese from Buldir Island were transplanted to several islands. In 1984, the Service confirmed that a small population of nesting geese was reestablished on Agattu island. This marked the first nesting of wild Aleutian Canada geese on Agattu since the 1930's. Although more than 450 Aleutian geese were released on Amchitka, no confirmed nesting has been observed on this island. Service efforts also have resulted in the return of Aleutian geese to Nizki-Alaid Island where a small breeding population was confirmed in 1988. During the 1990 field season, two pairs were observed nesting on Little Kiska Island.

It is fortunate for the recovery effort that no other major mammalian predators, except fox, were introduced in the Aleutian Archipelago. The Service intends to continue fox eradication on specified islands. However, several species of small mammals, such as ground squirrels and Norway rats, which were introduced on numerous islands throughout the Aleutian

Archipelago, are common predators of avian eggs, hatchlings, goslings and young birds. On Kisha Island, for example, when foxes were eradicated, the insular small mammal population exhibited a significant numerical increase. This population eruption in turn prompted loss of vegetative cover. Loss of vegetative cover affects the survival rate of various species of birds, and ultimately increases the vulnerability of nesting geese to avian predators, such as bald eagles.

In general, Aleutian goose mortality due to avian predators (e.g., common ravens, parasitic jaegers, glaucous-winged gulls, and peregrine falcons) on nesting islands are not a significant threat. Similarly, peregrine falcons, prairie falcons, eagles, and coyotes on the wintering grounds in Oregon and California may occasionally prey on Aleutian Canadian geese. Predation of Aleutian geese on the wintering grounds is not a significant mortality factor. Conversely, bald eagles may kill large numbers of Aleutian geese on the island groups eastward of Buldir Island, such as in the Rat Islands Group (Amchitka, Kiska, and Little Kiska) where bald eagle predation is an on-going problem associated with the release of transplanted geese.

Low level bacterial and parasitic infestations were detected in geese from Buldir Island, but losses to these and other diseases in the nesting range are not believed to be significant. In contrast, the Aleutian goose wintering flock in California is often concentrated with other subspecies of Canada geese in areas where food, water or roosting sites are available; under these circumstances considerable mortality to disease has occurred. In 1987, for example, approximately 50 Aleutian Canada geese succumbed during an outbreak of avian cholera that also killed several hundred waterfowl in the Modesto area. Cholera is a chronic problem in San Joaquin Valley, and, while geese can be hazed from locations where cholera is prevalent, few safe alternative roosting areas are currently available.

The threat of large losses of Aleutian geese to disease will increase as the population grows and the available wintering habitat sustains correspondingly greater concentrations of geese. To address this issue, the Aleutian Canada Goose Recovery Team prepared "A Disease and Contamination Hazard Contingency Plan" (Wilbur, S., *et al.* 1987). The purpose of this plan is to minimize losses of geese through establishing a protocol for responding to disease outbreaks or contaminants.

4. The Inadequacy of Existing Regulatory Mechanisms

This species is protected by the Endangered Species Act of 1973, as amended, 1988; The Migratory Bird Treaty Act; and the Convention on International Trade in Endangered Species as Appendix I species. Captive-raised *B. C. leucopareia* are treated as if listed in Appendix II. It is also currently designated as endangered by the Alaska Department of Fish and Game, and is recognized as endangered by the Oregon Department of Fish and Wildlife and the Washington Department of Wildlife. The Service does not believe that reclassification to threatened status will result in substantive change in the protection afforded this species under these regulatory mechanisms. Regulatory mechanisms deemed necessary to protect this species and its essential habitat will remain in effect.

5. Other Natural or Man-Made Factors Affecting its Continued Existence

The discovery of a remnant breeding population of Aleutian Canada geese in 1982 on Chagulak Island (2,082 acre, 842 hectare) greatly benefited the recovery program (Bailey and Trapp 19). Another apparent remnant breeding population was discovered in 1979 on Kiliktagik Island (93 hectares) south of the Alaska Peninsula (Hatch and Hatch 1983). The Kiliktagik Island nesting location is approximately 600 miles east of what was previously considered the historical breeding range for the species (U.S. Fish and Wildlife Service 1982). Physical measurements of geese from Kiliktagik Island show that they are intermediate between Aleutian Canada geese and a slightly larger mainland subspecies, *B. c. taverneri* (Johnson *et al.* 1979). Shields and Wilson (1987) examined samples of mitochondrial DNA from these and other Aleutian-type geese (*leucopareia* from Buldir and Chagulak Islands, and two mainland-occurring subspecies, *taverneri* and *minima*. They concluded that geese from Kiliktagik Island showed a clear affinity to *leucopareia* from Buldir and Chagulak and are separable from both *taverneri* and *minima*. This information, together with morphological and behavioral similarities, as well as historical accounts of geese observed in the Semidi Island Group as early as 1790, support the conclusion that the Aleutian geese on Kiliktagik Island are a remnant population. This population segment apparently is part of a continuous insular form of Aleutian Canada goose that extended from the western Gulf of Alaska and Alaska Peninsula region to the Commander and Kurile Islands of the Soviet Union (Hatch and Hatch 1983).

Aleutian geese, using coastal areas during winter and periods of migration, traditionally roost on off-shore islands such as Castle Rock near Crescent City, California and on rocky islands such as Chief Kiwanda Rock near Pacific City, Oregon. The use of these sites exposes Aleutian geese to storm systems that sometimes drive the birds into the sea. Storm-related drownings killed 43 Aleutian Canada geese near Crescent City in 1984, and 23 Aleutian geese near Pacific City in 1987 (Springer *et al.* 1989; Lowe 1987). A small number of Aleutian geese have also died as a result of collisions with man-made structures such as powerlines, and from lead poisoning due to ingestion of spent lead shot. Man-made structures probably do not pose a significant collision hazard for the species, and mortality from lead poisoning in the future should be negligible as the use of lead shot is phased out.

Animal populations when reduced to very small numerical levels may exhibit a reduced genetic variability. Such populations may lack the ability to adapt to events that jeopardize their existence (Brussard 1986). At their lowest level, early estimates placed the world's population of Aleutian geese, between 200–800, and the total population nested on a single island. Subsequent field work, however, showed that three remnant populations persisted on three widely separate islands. It is unlikely, therefore, due to the separation of three nesting segments and the relatively large minimum population size of Aleutian geese that the present populations suffers deleterious effects from lost genetic variability and, hence, fitness.

Summary of Status

The Aleutian goose has been the focus of a comprehensive 20-year recovery program. The species benefits from many management and research accomplishments, both on the breeding and on the wintering grounds. From the initial core population on Buldir Island, the wild population has increased an average of 16 percent annually since 1975 and now exceeds 6,000 birds. Aleutian geese translocated from Buldir Island now breed on Agattu and Nizki-Alaid Islands of the Near Islands Group and Little Kiska Island of the Rat Islands Group. During the course of recovery efforts, biologists discovered remnant populations on Chagulak and Kiliktagik Islands.

Translocation of adults and their young from Buldir Island facilitates the

reestablishment of breeding populations extirpated by introduced foxes. This strategy proved effective on Agattu and Little Kiska Islands, and in the near future it will be used on Kiska Island. All current nesting islands and most of the historic breeding habitat for this species in North America occur within the Alaska Maritime National Wildlife Refuge.

In California and Oregon, efforts to acquire or protect key wintering habitat have been partially successful. Several important areas, including Castle Rock, were acquired and are now part of the National Wildlife Refuge System. Other important wintering areas are not currently protected and are threatened with conversion from pasture or agricultural lands to other uses such as housing, highway, and commercial development. Recent authorization for a 10,300 acre (4,170 hectare) addition to the National Wildlife Refuge System west of Modesto may alleviate some of the threats to the wintering population in this region (Helvie 1987).

Chronic outbreaks of avian cholera and botulism pose additional threats to wintering waterfowl populations. Cumulatively, fewer than 100 Aleutian geese are known to have succumbed to disease since 1975. Although documented mortality to date has been low, the potential for catastrophic losses is present. Hence, geese are routinely hazed from areas where cholera is prevalant. Hazing, however, forces geese to use less preferred roosting sites, travel greater distances to feeding areas and increases the potential for hunting mortality. The recent development of a Disease and Contaminant Hazard Contingency Plan (Wilber *et al.* 1987) will improve agency response and minimize losses to these potential threats. The Service's Madison National Wildlife Health Research Center has developed an effective vaccine for immunizing Canada geese from avian cholera. Although no wild Aleutian geese have been inoculated, the capability exists. The methodology for raising this species in captivity is also well established. More than 140 *leucopareia* are currently being held by zoos and waterfowl propagators in the United States and Canada. This captive flock ensures a separate and secure gene pool should the wild population suffer severe losses from disease or natural calamity.

Some pertinent definitions from 50 CFR 424.02 are as follows:

(e) *Endangered species* means a species which is in danger of extinction throughout all or a significant portion of its range.

(k) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature . . .

(m) *Threatened species* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

Population increases, current nesting on seven fox free islands, and protection of the wintering flock through hunting closures and habitat acquisition have significantly reduced the degree of threat to this species. In reviewing the progress toward recovery that this species has made since listing, the Service concludes that the Aleutian Canada goose is no longer in imminent danger of extinction. However, due to the small size of reestablished breeding populations, the continued presence of introduced arctic fox on many former nesting islands, and threats to the species on the wintering grounds from habitat alteration and disease, the Service finds that delisting is premature.

Based on a careful assessment of the best scientific and commercial information available regarding past, present and future threats faced by this species, the preferred action is to reclassify the Aleutian Canada goose from endangered to threatened status. The Service will recommend that this species be delisted when recovery criteria as outlined in the revised recovery plan are achieved.

Available Conservation Measures

This rule changes the status of the Aleutian Canada goose at 50 CFR 17.11 from endangered to threatened. This rule acknowledges that the populations of Canada geese breeding on Kiliktagik Island in the Semidi Islands and wintering in Tillamook County, Oregon, are *Branta canadensis leucopareia*. Furthermore, this rule formally recognizes the relative security of this subspecies from no longer being in danger of extinction throughout a significant portion of its range. This change in classification does not significantly alter the protection of this species under the Endangered Species Act. Anyone taking, attempting to take, or otherwise possessing an Aleutian Canada goose in an illegal manner would be subject to penalty under Section 11 of the Act. There are no differences in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act would also continue to protect this species from federal actions that would jeopardize the continued existence of the species.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

In addition to the list of references provided below, species experts, numerous other scientific papers, letters, and unpublished field and administrative reports were consulted in preparation of this document. Persons interested in examining these materials may do so at the Ecological Services Anchorage field office (see ADDRESSES section) by appointment during normal business hours (907/271–2888).

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Author

The primary author of this rule is Mr. Brian Anderson, Endangered Species Specialist, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room 62, Anchorage, Alaska 99501 (907/271–2888).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. To amend the table § 17.11(h) under BIRDS for the entry of "Goose, Aleutian Canada" by revising the entries under "Status" to read "T" and under "When listed" to read "1, 3, 410."

Dated: November 28, 1990.

Constance B. Harriman

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 90–29095 Filed 12–11–90; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN 1018–AB38

Endangered and Threatened Wildlife and Plants; Final Rule to Delist the Dusky Seaside Sparrow and Remove its Critical Habitat Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service removes the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) from the List of Endangered and Threatened Wildlife and also removes its critical habitat designation. All available information indicates that this bird is extinct. The dusky seaside sparrow is known to have occurred only on Merritt Island and the upper St. Johns River marshes of Brevard County, Florida. It has been extirpated by the conversion of salt marshes to mosquito impoundments and by drainage, land use changes, and unsuitable fire regimes. This action removes the protection of the Endangered Species Act from the dusky seaside sparrow and its critical habitat.

EFFECTIVE DATES: January 11, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (904/791–2580; FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The dusky seaside sparrow was described by Ridgway in 1873, as *Ammodromus maritimus* var. *nigrescens* (Baird and Ridgway 1873). The bird had been discovered by Charles Maynard in 1872 and described by him in 1875, but Ridgway's description preceded Maynard's. The species was subsequently transferred to the genus *Ammospiza*. It was retained as a full species until 1973, when it was reduced to subspecific status under the seaside sparrow, *Ammospiza maritima* (American Ornithologists' Union 1973). In 1982, seaside sparrows were placed in the genus *Ammodramus* (American Ornithologists' Union 1982).

The dusky seaside sparrow is distinguished from other subspecies of the seaside sparrow by its dark coloration and by characteristics of its song (McDonald 1988). Avise and Nelson (1989) found that the mitochondrial DNA of the dusky seaside sparrow was virtually indistinguishable from other Atlantic coast populations of *Ammodramus maritimus*, and implied that the subspecific status of the subspecies was not merited. McDonald (1988), however, supported the validity of the taxon and the dusky seaside sparrow is expected to continue to be recognized as a valid subspecies in the next American Ornithologists' Union check-list.

The subspecies has never been found outside its limited range of cordgrass (*Spartina bakeri*) marshes on Merritt Island and the adjacent St. Johns River basin in Brevard County, Florida. Historically, the dusky seaside sparrow occurred in marshes along the Indian River on the northwest coast of Merritt Island from the Moore Creek-Banana Creek area to Dimmit Creek; and on the mainland in marshes on the east side of the St. Johns River from just south of Salt Lake south to the vicinity of Cocoa. The mainland range was entirely confined to areas between State Routes 46 and 520, within a 10-mile radius of Titusville.

Howell (1932) considered dusky seaside sparrows to be common throughout their range on Merritt Island, but less common in the St. Johns River Basin. Trost (1968) reported that the construction of mosquito control impoundments, beginning in 1956, caused the tidal salt marsh vegetation to change to fresh water species. He believed that these alterations had resulted in a marked population decline in the dusky seaside sparrow. He also stated that the field notes of D.J. Nicholson reported an estimated 70 percent decline in populations from 1942 to 1953, following widespread use of DDT for mosquito control on Merritt Island.

Service actions concerning the dusky seaside sparrow began with its listing as an endangered species, pursuant to the Endangered Species Preservation Act of 1966. This listing was published in the **Federal Register** on March 11, 1967 (32 FR 4001). This listing was maintained under the Endangered Species Act of 1973, as amended.

Merritt Island National Wildlife Refuge was established in 1963, and

efforts were made to restore one of the mosquito impoundments to salt marsh (Sykes 1980). A notice of intent to determine critical habitat for the dusky seaside sparrow was published May 16, 1975 (40 FR 21499). Critical habitat was proposed for the bird on December 3, 1976 (41 FR 53074) and was designated on September 22, 1977 (42 FR 47840). Subsequently, much of the critical habitat in the St. Johns River marshes was acquired as the St. Johns National Wildlife Refuge. Despite these conservation efforts, dusky seaside sparrow populations continued to decline as salt marsh vegetation deteriorated.

Sharp (1970a) estimated that 2,000 pairs had originally occurred on Merritt Island, but if Nicholson's (in Trost 1968) estimate of a 70 percent reduction was accurate, only about 600 pairs were left by 1957. Sharp also quotes an estimate by Trost of 70 pairs in 1961–1963. Sharp's (1970a) 1968 spring survey found only 33–34 singing males remaining on Merritt Island. Subsequent surveys (Sykes 1980) found the following numbers of singing males on Merritt Island: 1969, 30; 1970, 18; 1971, 8; 1972, 11; 1973–1975, 2 each year; 1976, none; 1977, 2. No dusky seaside sparrows were found on Merritt Island after 1977.

The earliest available population estimate of the dusky seaside sparrow for the St. Johns River marshes is Sharp's (1970a) 1968 figure of 894 singing males. Sharp subsequently (1970b) found 143 singing dusky seaside sparrows on the proposed St. Johns National Wildlife Refuge lands in 1970. Baker (1978) reported a continuing decline in singing male surveys in the St. Johns River marshes: 1972, 110; 1973, 54; 1974, 37; 1975, 47; 1976, 11; 1977, 28; 1978, 24; 1979, 13. An extensive survey effort in 1980 (Delany et al. 1981) found only four singing males; no dusky seaside sparrows were found in 1981 (Delany et al. 1981).

Three male birds were taken into captivity in 1979, and three more in 1980, to begin a captive breeding program. The Service, the Florida Game and Fresh Water Fish Commission, the Florida State Museum (now the Florida Museum of Natural History), the Florida Audubon Society, the Santa Fe Community College Teaching Zoo, and the Walt Disney World Discovery Island were involved in the project at various points. When it became apparent that no female dusky seaside sparrows were likely to be found, some work was done crossing the dusky males with females of Scott's seaside sparrow (*Ammodramus maritimus peninsulae*), a subspecies found on the west coast of Florida; several birds were produced as the result of crosses and subsequent backcrosses. In 1982, however, the Service decided that because such hybrid offspring were not listed under the Endangered Species Act, such progeny should not be released on the refuge. However, the Service agreed to give custody of the birds to another party. The ultimate custodian of the male duskies and their offspring was Discovery World, assisted by the Florida Audubon Society. The advanced age of the captive dusky males resulted in difficulties with the cross breeding program, and the last dusky male died of natural causes on June 16, 1987. All offspring also died or were lost by accident by the summer of 1989.

Following the death of the last captive dusky seaside sparrow in 1987, representatives of the Service, the Florida Game and Fresh Water Fish Commission, and the Florida Audubon society agreed that it would be appropriate to carry out another survey for the dusky seaside sparrow prior to a proposal to delist the bird. Accordingly, participants from the above organizations carried out a survey in the spring of 1989 (Bentzien 1989). Suitable habitat for the bird appeared to have decreased greatly since the 1980–1981 surveys, and no dusky seaside sparrows were detected.

The decline of the birds in the St. Johns National Wildlife Refuge and in adjacent marshes was due to drainage, highway construction, burning of marshes to improve pasture, and wildfire. Wildfires were particularly severe in 1973 and in 1975–1976. Although fire is a natural feature in the St. Johns marshes, the lowered water tables and deliberate man-caused burns in the already fragmented habitat meant that the dusky seaside sparrow had very little available habitat following extensive burning.

On June 21, 1990 (55 FR 25588), the Service proposed to delist the dusky seaside sparrow and to remove its critical habitat designation.

Summary of Comments and Recommendations

In the June 21, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, required by section 4(b)(5)(D) of the Act, were published in the Melbourne, Florida, Florida Today on May 12, 1990, and the Orlando Sentinel on May 13, 1990. Only one comment was received: The Florida Game and Fresh Water Fish Commission stated that it concurred with the rationale for delisting the dusky seaside sparrow, and did not oppose that action.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the dusky seaside sparrow should be removed from the List of Endangered Species and that its critical habitat designation should be removed. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more factors described in section 4(a)(1). These factors and their application to the dusky seaside sparrow (*Ammodramus maritimus nigrescens*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The dusky seaside sparrow was known to occur only in a small area near Titusville, Brevard County, Florida. The marsh habitat to which this bird was restricted has been destroyed or modified by flooding marshes for mosquito control, and by drainage, development, and fire. The dusky seaside sparrow is believed to be extinct.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Not applicable.

C. Disease or predation. Not applicable.

D. The inadequacy of existing regulatory mechanisms. Not applicable.

E. Other natural or manmade factors affecting its existence. The last captive dusky seaside sparrow died on June 16, 1987.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if: (1) It becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that enough evidence exists to declare the dusky seaside sparrow extinct.

Effect of Rules

This final rule removes the dusky seaside sparrow from the List of Endangered and Threatened Wildlife, and removes its critical habitat designation. Federal agencies no longer need to consult with the Secretary to insure that any action authorized,

funded, or carried out by such agency is not likely to jeopardize the continued existence of the dusky seaside sparrow or adversely modify its critical habitat. Federal restrictions on taking of this species no longer apply. The Service's Division of Wildlife Resources will reevaluate management options for the St. Johns National Wildlife Refuge.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

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Author

The primary author of this final rule is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for the "Sparrow, dusky seaside * * * *Ammordramus (=Ammospiza) maritimus nigrescens*" under BIRDS from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

3. Amend § 17.95(b) for animals by removing the critical habitat entry for the dusky seaside sparrow (*Ammospiza maritima nigrescens*).

Dated: October 14, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–29096 Filed 12–11–90; 8:45 am]

BILLING CODE 4310–55

Proposed Rules

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

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

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Ch. XIV

Processing Representation and Unfair Labor Practice Cases

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of opportunity to file recommendations on modifications to the representation and unfair labor practice regulations.

SUMMARY: The Authority and the General Counsel invite all agencies, unions and interested persons to submit written recommendations on modifications to the Authority and General Counsel representation, unfair labor practice and related miscellaneous regulations.

The Authority and the General Counsel intend to examine existing unfair labor practice, representation and related miscellaneous regulations to determine whether modifications should be made to improve case processing procedures and promote the earliest resolution of disputes. The Authority and General Counsel also intend to identify any portion of the regulations that could be rewritten so that the processing of unfair labor practice charges and complaints and representation petitions can be more easily understood by persons who are not practitioners in labor-management relations or the law.

This review process will be comprehensive and pertain to all phases of the processing of unfair labor practice charges and complaints and representation petitions. Recommendations are solicited on the filing, investigation and settlement of unfair labor practice charges, and on the litigation and settlement of unfair labor practice complaints. Suggestions which promote the earliest resolution of disputes and the expedition of unfair labor practice hearings are encouraged.

The review also will cover all procedures employed to process representation issues. Recommendations are solicited on the filing and investigation of the various representation petitions, as well as the hearing, decision-making and election processes.

Proposed regulations which may result from the review will be published for comment at a later date.

DATES: Recommendations in response to this notice will be considered if received by February 15, 1991. Requests for extensions of time will not be granted absent extraordinary circumstances.

ADDRESSES: Mail recommendations to David L. Feder, Assistant General Counsel for Legal Policy and Advice, Office of the General Counsel, Federal Labor Relations Authority, 500 C Street, SW., Room 326, Washington, DC 20424, Attn: "Regulation Review."

FOR FURTHER INFORMATION CONTACT: David L. Feder, Assistant General Counsel for Legal Policy and Advice, Office of the General Counsel, 500 C Street, SW., Room 326, Washington, DC 20424, Telephone: (202) 382-0834.

SUPPLEMENTARY INFORMATION: The Authority and the General Counsel of the Federal Labor Relations Authority intend to review and, where appropriate, revise the unfair labor practice and representation regulations. These rules of practice and procedure were last reviewed in a study started in 1984 (49 FR 25243 and 35096), culminating in minor amendments to the regulations in December 1986 (51 FR 45751).

Part 2422 of chapter XIV of title 5 of the Code of Federal Regulations (1990) contains the current regulations governing the processing of representation petitions. The unfair labor practice regulations are contained in part 2423. Part 2429 contains miscellaneous and general regulatory requirements which also govern the processing of representation petitions and unfair labor practice charges and complaints.

All of these regulations and rules of practice and procedure governing the processing of representation and unfair labor practice matters are subject to this review. The Authority and the General Counsel will, as determined appropriate, undertake a thorough review of existing regulations and rules of practice and procedure and will review all written recommendations. The Authority and the General Counsel will, as determined appropriate, issue proposed amendments to the existing representation, unfair labor practice and miscellaneous regulations. All agencies, unions and interested persons will be afforded an opportunity to submit comments on any proposed modifications to the existing regulations.

All submissions should contain proposed regulatory language in addition to comments supporting the recommended regulatory change. This review is limited to modifications to the existing regulations and rules of practice and procedure. Recommendations which seek to overrule substantive interpretations of the Statute by the Authority and the circuit courts of appeals concerning the rights and obligations of agencies, unions and employees under the terms of the Statute will not be considered.

Format

All submissions should contain separate headings and citations for each section of the existing regulations discussed. An original and (2) copies of each set of comments, with any enclosures, should be submitted only on 8½ by 11 inch paper.

List of Subjects in 5 CFR Ch. XIV

Administrative practice ad procedure, Government employees, Labor-management relations.

Dated: December 4, 1990.

For the Authority.

Solly Thomas,

Executive Director.

For the General Counsel.

Michael Doheny,

Deputy General Counsel.

[FR Doc. 90-28940 Filed 12-11-90; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

Recapture of Section 502 Rural Housing Subsidy

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Farmers Home Administration corrects a proposed rule published October 25, 1990 (55 FR 42987). In the proposed rule a sentence was inadvertently omitted that could possible affect the public comment process. This action is taken to correct this ovrsight. The intended effect is to nake the proposed rule read as intended.

DATES: Comments on the proposed rule must be received on or before December 24, 1990.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulation, Analysis and Control Branch, FmHA, room 6346, South Agriculture Building, Washington, DC, 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Phil Girad, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, FmHA, room 5309, South Agriculture Building, Washington, DC, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: The sentence "The PRAS adjustment is not appealable." was omitted from § 1951.410.

Accordingly, the Farmers Home Administration is correcting its proposed revisions to title 7, chapter XVIII, part 1951, Code of Federal Regulations, as follows:

PART 1951—SERVICING AND COLLECTIONS

Subpart I—Recapture of Section 502 Rural Housing Subsidy

On page 42990, § 1951.410 is correctly revised to read as follows:

§ 1951.410 Elimination of principal reduction attributed to subsidy.

Principal reduction attributed to subsidy (PRAS) will be eliminated on new accounts under the Agency's new accounting method of applying the borrower's reduced payment at the note rate with a monthly non cash credit for the amount of interest credit. For borrowers who accrued PRAS prior to FmHA's conversion to the note rate subsidy method of granting interest assistance, FmHA will make a one-time adjustment by adding the accumulated PRAS to the unpaid principal balance. This adjustment will not increase the monthly installment and will allow the account to pay out over the full term rather than ahead of schedule. Affected borrowers will be notified of the amount and date of the adjustment. The PRAS adjustment is not appealable.

Dated: December 5, 1990.

Leigh Nalley,

Acting Administrator Farmers Home Administration.

[FR Doc. 90–29025 Filed 12–11–90; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE–RM–90–201]

Energy Conservation Program for Consumer Products; Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Nine Types of Consumer Products

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Extension of comment period for clothes washers.

SUMMARY: The Department of Energy (DOE) hereby extends the comment period on the Advance Notice of Proposed Rulemaking (ANOPR) for energy conservation standards for clothes washers only (Docket No. CE–RM–90–201) from December 12, 1990, to April 12, 1991. DOE's receipt of comments on all other aspects of the ANOPR, including product-specific comments pertaining to the other eight appliance types, remains unchanged at December 12, 1990; in addition, interested parties are also encouraged to provide preliminary comments on the clothes washer product type by December 12, 1990.

DATES: Written comments in response to this ANOPR must be received by DOE by December 12, 1990; in the case of the clothes washer product, type-written comments must be received by DOE by April 12, 1991.

ADDRESSES: Written comments are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Energy Efficiency Standards for Consumer Products, Docket No. CE–RM–90–201, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3012.

FOR FURTHER INFORMATION CONTACT:

Dr. Barry P. Berlin, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

Discussion

On September 28, 1990, the DOE published an ANOPR on energy conservation standards for nine types of consumer products, including clothes washers. (55 FR 39624).

In the ANOPR, DOE stated that further consideration of amended standard levels for clothes washers, the subject of a pending final rule, would be included in this rulemaking. This would enable DOE to obtain information concerning the economic justification and technical feasibility of a design option—a top-loading, horizontal axis clothes washer—manufactured and marketed in Europe but not available in the United States, and which appears to have the potential for saving significant amounts of energy and water.

Because that clothes washers design option is unknown to most U.S. manufacturers, Maytag Company, by letter dated November 2, 1990, and the Association of Home Appliance Manufacturers (AHAM), by letter dated November 5, 1990, petitioned the Department to extend the closing date of the comment period of the ANOPR for clothes washers for six months from December 12, 1990, the scheduled close of the comment period, in order for manufacturers to have time to provide full and complete comments. A meeting at AHAM's request was held on November 6, 1990, between representatives of DOE and AHAM at which AHAM further articulated the reasoning upon which the requests were based.

The ANOPR requested comment on the economic justification and technical feasibility of the top-loading, horizontal axis clothes washer as a "design option." The manufacturers' concern was that the potential economic consequences of such a standard are so great that sufficient time must be allowed to thoroughly examine all aspects of this proposal. Manufacturers, it was stated, are now in the process of obtaining a representative sample of the top-loading, horizontal axis machine from Europe so that their comments may be based on fact rather than speculation.

DOE concludes that a six-month delay in the ANOPR comment period for clothes washers would jeopardize the Congressionally mandated date of

January 1, 1992, for the final rule for seven of the products included in this rulemaking. However, by readjusting its schedule of analytical work to be performed for the products in this rulemaking, DOE finds that a four-month extension of the close of the comment period for clothes washers can be accommodated. DOE hereby extends the comment period for clothes washers to April 12, 1991. The additional time will allow all interested parties to provide full and complete comments. The close of the comment period for all other matters pertaining to this rulemaking remains December 12, 1990.

Issued in Washington, DC, on December 7, 1990.

B. Reid Detchon,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 90-29185 Filed 12-10-90; 11:35 am]

BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

RIN 3064-AA55

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations to provide that state savings banks that are members in the Savings Association Insurance Fund ("SAIF") i.e., savings banks that convert from savings associations, will be subject to the same activity and investment restrictions, transactions with affiliates restrictions and loan to one borrower limits that are applicable to savings associations. In addition, under the regulation SAIF member savings banks would be required: (1) To provide the FDIC with the same prior notice before the acquisition or establishment of a subsidiary, or initiating the conduct of any new activity in an existing subsidiary, that is required for savings associations, (2) to deduct investments in, and extensions of credit to, subsidiaries from the bank's capital to the same extent as is the case for a savings association, (3) to file with the FDIC a copy of any application requesting approval of the conversion that is filed with another or state agency, and (4) to file a capital plan with the FDIC within 30 days of conversion if as of the conversion the bank does not meet the capital requirements set out in the FDIC's regulations.

DATES: Comments must be received by January 11, 1991.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F St., NW., Washington, DC 20429 on business days between 8:30 a.m. and 5:00 p.m. comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898-3838].

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Counsel, (202) 898-3730, Legal Division, FDIC, 550 17th Street, NW., Washington, DC. 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The application and notice requirements set forth in section 303.13 of the FDIC's regulations (12 CFR 303.13) shall apply to any SAIF member state savings bank that was formerly a savings association to the same extent as though the savings bank had not converted. The application and notice requirements of § 303.13 of 12 CFR part 303 have been reviewed and approved by the Office of Management and Budget ("OMB") in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064-0104. The estimated average annual burden associated with these application and notice requirements is approximately 5 hours per response. Submission to the FDIC of capital plans has been reviewed and approved by OMB in connection with the Paperwork Reduction Act under control number 0364-0075. The estimated average annual burden associated with the capital plan is 42 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Assistant Executive Secretary (Administration), room F-400, Federal Deposit Insurance Corporation, Washington, DC, 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064-0104, 3064-0075), Washington, DC, 20503.

Discussion of Proposed Regulation

Background

On August 9, 1989 President Bush signed the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA", Pub. L. No. 101-73, 103 Stat. 183 (1989)) into law. Among other things, FIRREA established the Savings Association Insurance Fund ("SAIF") to replace the Federal Savings and Loan Insurance Corporation ("FSLIC") (the entity that had previously insured savings and loan associations) and placed SAIF under the administration of the FDIC. All previously FSLIC insured savings associations were made members of SAIF. The statute also provides that all future state or federal savings associations are to be members of SAIF.

One of the announced Congressional purposes of FIRREA is to "curtail investments and other activities of savings associations that pose unacceptable risks to the Federal deposit insurance funds." Section 101 of FIRREA, 103 Stat. 187. It is clear that Congress concluded that the best way to remove unacceptable risks presented to SAIF as a result of activities and investments undertaken by SAIF members is to limit the activities and investments a state savings association can make to those activities and investments that are permissible for a federal savings association. This was accomplished by an amendment to the Federal Deposit Insurance Act ("FDI Act") (new section 28 (12 U.S.C. 1831(e), see discussion below). Congress also saw fit to impose a limit on loans to one borrower for all savings associations (see section 5(u) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(u)). The decision by Congress to do so evidences a conclusion that making loans to any one borrower in excess of the limits set by section 5(u) of HOLA presents an unacceptable risk to SAIF. It is also apparent that the activities of certain subsidiaries of savings associations were found to be a potential source of risk to SAIF from which the parent association (and thus SAIF) should be insulated. Section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)) provides that a savings association's investment in, and loans to, a subsidiary engaged in activities not permissible for a national bank shall be deducted form the savings association's capital. In addition, Congress not only chose to make SAIF institutions subject to the loan to affiliate restrictions contained in section 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c-1) it imposed additional restrictions on transactions with affiliates. (See section 11(a)(1) of HOLA, 12 U.S.C. 1468). Finally, Congress specifically required SAIF member savings associations to provide the FDIC with prior notice before establishing or acquiring a subsidiary or conducting any new activity through a subsidiary. (Section

18(m)(1) of the FDI Act, 12 U.S.C. 1828(m)(1)). Thus, the agency given the responsibility of administering SAIF was given the opportunity to review in advance the proposed establishment or acquisition of a subsidiary by a SAIF member institution and the conduct of new activities by an existing subsidiary of a SAIF member institution.

The FDIC is aware that a growing number of states have enacted, or are considering enacting, legislation to allow a SAIF member savings association to become a savings bank. To date eleven states (California, Texas, Florida, Illinois, Ohio, Alabama, Indiana, Louisiana, North Carolina, Wisconsin, and Tennessee) fall into this category. These states are not among those which have traditionally allowed for savings banks. Additionally, in some instances states that have had savings banks for many years are interpreting their existing statutes to allow a savings association to become a savings bank. All of these institutions would retain their membership in SAIF.

Whether any particular institution becomes a savings bank for the purposes of the FDI Act pursuant to any of these statutes depends upon the particular state legislation. Section 3(g) of the FDI Act (12 U.S.C. 1813(g)) defines a savings bank as "a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business." Thus, whether any savings association has in fact become a savings bank under the FDI Act (i.e., is no longer a savings association) is a question that can only be answered after reviewing the particular enabling legislation. In some cases there may be little or no substantive difference between the rights and powers granted state savings associations by a particular state and the savings bank charter which the SAIF member institution would pick up. In short, the legislation may do no more than allow a savings association to change its name to a savings bank. In such instances the new entity may not be considered a savings bank for the purposes of the FDI Act. (The FDIC is interested in receiving comment on what criteria should be used, or considered relevant, by the FDIC in determining whether the requirements of section 3(g) of the FDI Act are met.)

Depending upon the specifics of the legislation, a savings association that does become a SAIF member savings bank may be authorized to engage in activities, and make investments (including investments in noninvestment grade corporate debt securities, i.e., "junk bonds") that Congress specifically found to pose an unacceptable risk to SAIF. These new SAIF member savings banks may be able to make loans to any one borrower in excess of that which would have been permitted the institution as a SAIF member had it not become a state savings bank and may be able to enter into transactions with affiliates that Congress judged to create an unacceptable risk to SAIF. There may be no requirement to deduct investments in and loans to subsidiaries from the institution's capital (assuming that the state law establishes specific capital requirements) and there may be no requirement to provide the FDIC with advance notice before establishing or acquiring a subsidiary or conducting any new activity in an existing subsidiary. In short, the very safeguards Congress determined to be necessary to protect SAIF from risk would no longer apply to institutions that continue to be SAIF members and which may be able to exercise powers and make investments previously exercised by state savings associations that Congress found to contribute so heavily to the savings and loan crisis. Cong. Rec. H2714, June 15, 1989 (remarks of Rep. Glickman); Cong. Rec. S4090–4092, April 18, 1989; Cong. Rec. S3996, April 17, 1989.

The FDIC is of the belief that potential harm is posed to SAIF if SAIF member institutions side step the FIRREA restrictions by changing their status to savings banks. There is ample evidence that investing in junk bonds and real estate and making excessive loans to any one borrower, etc. raise safety and soundness concerns and that such concerns pose a serious threat to SAIF.

The financial soundness of a savings association is in large part determined by the amount of equity capital the institution holds and the quality of its investment portfolio. Capital serves two purposes: (1) It provides a buffer against potential losses, and (2) it reduces risk taking (investors with more of their own funds at risk tend to manage an institution more conservatively). As asset portfolios are funded by insured deposits, it is important to carefully supervise investment policies of thrift institutions. A thrift's investment portfolio should be appropriately diversified and the quality of the assets therein must be maintained. Today, as a result of the passage of FIRREA, the ability of savings associations to hold noninvestment grade corporate debt securities and equities is limited, loans to any one borrower are limited, and a savings association's investments in certain subsidiaries are deducted from the association's capital. These restrictions are vital in helping to ensure diversification, maintaining good asset quality, and ensuring an adequate level of capital.

Thrift acquisition of noninvestment grade corporate debt securities and equities present significant risks. The potential impact of price volatility associated with such speculative investments is illustrated by recent experiences in the junk bond market. Numerous junk bonds are now in default; such bonds typically trade, if at all, at only a fraction of their original price. Examples of such bonds held by thrifts include Gillett Holding Corp. bonds which have been trading at approximately 18 cents on the dollar and Federated Department Stores Inc. bonds also in default and currently quoted at three cents on the dollar. At the peak of junk bond issues in the 1980's, savings and loan associations had ivnested an estimated $15.1 billion in junk bonds. By July 1990 the Resolution Trust Company held $3.7 billion in high-yield bonds acquired from 26 institutions.

Equity prices are more volatile than either corporate earnings or dividends. Equities involve speculation in asset price movements unrelated to the earnings potential of the firm. The drop of 22.6% (508 points) in the Dow Jones Industrial Average (DJIA) on October 19, 1987, the largest one-day decline in history, provides a recent example of the potential variability of equity portfolios. In foreign markets, recent Japanese stock market declines have created capital problems for Japanese banks holding large investments in equities. Price fluctuations of less diversified portfolios may exhibit even greater volatility than broad market indexes.

The market volatility of noninvestment grade debt securities and equities has two negative effects on the portfolios of thrift institutions. First, as asset values vary, the net worth (and equity capital) of savings associations experience wide swings. An institution holding these assets may become insolvent in a short period of time as assets decline in value. Second, these financial instruments may become difficult or even impossible to market, particularly when the firms default on their debt. This is likely to exacerbate liquidity problems for an institution at the time when liquidity is needed most.

Similar problems are likely to be associated with deviations from the one-borrower rule. The safety of an institution is compromised if a thrift

asset portfolio is not properly diversified. When loans to a single borrower exceed a relatively small proportion of the overall investment portfolio, the risks born by the financial institution increase. In a properly diversified loan portfolio, losses from any one source will have a small impact on the institution. Increased concentration, however, makes an institution more susceptible to failure should a single borrower default.

Subsidiaries represent a different level of risk to thrift institutions. Subsidiaries tend to concentrate in relatively high-risk, competitive industries such as real estate development. These activities are generally relegated to subsidiaries precisely because they are too hazardous to permit in the thrift. Losses from subsidiary activities may easily exceed capital levels, a situation which would cause the thrift institution to fail and subsequently impose costs on the FDIC. The requirement that savings associations deduct investments in and extensions of credit to a subsidiary is appropriate to protect thrift capital against potential subsidiary failures. The capital deduction rule ensures that thrifts invest (either directly or indirectly) no more in a subsidiary than they can afford to lose. This maintains the capital base for protection against potential asset losses within the thrift institution itself.

The restrictions discussed above were imposed in savings associations under FIRREA because these institutions, for a number of reasons, have been more likely to engage in such high risk activities. Conversion from a savings institution to a state savings bank does not eliminate the need for these restrictions. The FDIC is both empowered and obligated to protect SAIF from harm. Likewise the FDIC is obliged to give effect to the intent of Congress to protect SAIF from undue risk. Therefore, the Board of Directors has determined that the FDIC should clearly establish by regulation that SAIF member savings banks will continue to be subject to the safeguards enacted by FIRREA designed to protect SAIF from harm.

The Board of Directors recognizes that the restrictions that would be imposed by the proposed regulation may address safety and soundness and risk concerns of such general application that they may warrant being extended to FDIC insured entities in general. Some of the activities and investments that would be prohibited under the proposed regulation for SAIF member state savings banks may be inconsistent with the purposes of federal deposit insurance and as such should be prohibited for insured institutions in general. FDIC staff is currently studying the issue of "expanded bank powers"and plans to make recommendations to the Board of Directors on whether insured institutions should be permitted to engage in activities beyond those traditionally associated with banks. Depending upon the results of that study, the FDIC may determine that it is appropriate to extend the same type of restrictions set forth in this proposed regulation to a broader group of insured institutions.The action being proposed at this time is in effect an emergency measure to maintain the status quo regarding the powers and activities of SAIF member institutions.

Description of Proposed Regulation

The proposed regulation amends part 333 of the FDIC's regulations by adding a new section 333.3. Section 333.3 is applicable to any savings association that converts to a state savings bank and retains its membership in SAIF. For the purposes of § 333.3, a conversion refers to a change in status from a savings association to a SAIF member state savings bank regardless of the manner in which the change in status occurs. The FDIC is aware that there are in existence several federally chartered savings banks that are members of SAIF that are able to exercise certain grandfathered powers pursuant to seciton 5(i)(4) of HOLA (12 U.S.C. 1464(i)(4)). These institutions are not presently subject to the FIRREA restrictions on activities, etc. To our knowledge, none of these institutions have converted to state savings banks. If they do, however, they would be subject to the regulation. Although Congress did not impose the FIRREA restrictions on these institutions, the FDIC has safety and soundness concerns about the activities in question. The FDIC has therefore determined that it would be appropriate to impose the FIRREA restrictions should these institutions convert. Comment is invited on this determination. Commenters who are of the opinion that doing so is ill advised should provide comment on why such activities if conducted by these institutions should not be viewed as posing a risk to SAIF.

Paragraph (a) of the proposed regulation provides that section 303.13 of the FDIC's regulations shall apply to a SAIF member state savings bank to the same extent as though the savings bank were a state savings association. Section 303.13 implements section 18(m)(1) and sections 28(a), 28(b), 28(c), and 28(d) of the FDI Act. Section 28 of the FDI Act as added by FIRREA (12 U.S.C. 1831(e)): (1) Prohibits a state savings association from engaging as principal on or after January 1, 1990 in any activity of a type that is not permissible for federal savings associations unless the FDIC determines that the activity poses no significant risk to SAIF and the savings association is, and continues to be, in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(t)) (section 28(a)); (2) provides that a state savings association may engage in activities that are permissible for a federal association but in an amount that would not be permissible for a federal savings association if the state savings association meets the fully phased-in capital requirements set out in section 5(t) of HOLA and the FDIC has not determined that conducting the activity to such an extent poses a significant risk to SAIF (section 28(b)); (3) prohibit a state savings association from making any equity investments that are not permissible for a federal savings association with the exception of an investment in service corporations if the FDIC grants approval. (The FDIC may approve an investment in an impermissible service corporation if the savings association meets the fully phased-in capital requirements of section 5(t) of HOLA and the FDIC determines that the investment does not pose a significant risk to SAIF.) (Section 28(c)); and (4) prohibits state and federal savings associations from acquiring noninvestment grade corporate debt securities (section 28(d)). A savings association that acquired an equity investment or a noninvestment grade corporate debt security prior to the passage of FIRREA that is now an impermissible investment must divest that investment by July 1, 1994. (Sections 28(c) and (d)). Section 18(m)(1) (12 U.S.C. 1828(m)(1)) provides that state as well as federal savings associations (with certain exceptions) must provide the FDIC with 30 days prior notice before acquiring or establishing a subsidiary or conducting any new activity through an existing subsidiary.

Section 303.13 establishes application and notice requirements designed to implement the above described provisions of law. The effect of the cross reference to section 303.13 is that any SAIF member state savings bank that converts from a savings association, be it a state or federal savings association, will be subject to the prohibitions

recited in section 303.13 and must file the applications and/or notices required by that section. For example, if a state savings association has filed a plan of divestiture pursuant to section 303.13(d) with respect to an impermissible equity investment, a change of status to a SAIF member state savings bank will not remove the institution's obligation to divest the equity investment. Likewise, a SAIF member state savings bank must continue to apply for the FDIC's permission under 303.13(b)(1) if it intends to engage in an activity not permissible for a federal savings association.

If a federal savings association becomes a state SAIF member savings bank, the savings bank will be treated for the purposes of § 303.13 as though it is a state savings association. In several instances applications may or may not be necessary under § 303.13 based upon whether an institution meets the fully phased-in capital requirements prescribed by section 5(t) of HOLA. For the purposes of § 333.3 the references to fully phased-in capital as per HOLA should be understood to refer to meeting the capital requirements of part 325 of the FDIC's regulations.

Paragraph (b) of the proposed regulation prohibits a SAIF member state savings bank that converts from a savings association from making loans to any one borrower to an extent greater than the bank could have done under federal law had the bank not converted. Thus, a converted savings bank will continue to be subject to the loans to one borrower limits set forth in section 5(u) of HOLA. However, if the limit under state law is more restrictive, the state limit shall apply. If the savings bank made any loans since its conversion that would have been in violation of the federal limit had it not converted, those loans need not be divested. (See paragraph (e)(3) of the proposal.)

Paragraph (c)(1) of the proposal provides that the investment in, and extensions of credit to, a subsidiary by a SAIF member state savings bank that has converted from a savings association shall be deducted from the bank's capital to the same extent that such deduction would be required under federal law had the bank not converted from a savings association. Thus, a converted state savings bank will continue to be subject to the capital deduction requirements set out in section 5(t)(5) of HOLA. This provision results in a deduction from capital if a savings bank invests in a subsidiary that engages in activities that a national bank cannot conduct.

Paragraph (c)(2) provides that any savings bank that converts from a savings association and is under capitalized as of the conversion must file a plan with the appropriate FDIC regional director within 30 days of the conversion describing the means and timing by which the bank will achieve its minimum capital requirements under the FDIC's regulations. Any under capitalized savings bank that converts from a savings association that fails to submit a plan, or whose plan is not approved, will be deemed to be engaged in an unsafe or unsound practice in accordance with part 325 of the FDIC's regulations. The requirement to file a capital plan has been included in the proposal as the FDIC is concerned that some states may allow severely under capitalized savings associations to convert to savings banks. If this occurs, the FDIC needs to be in a position to see that prompt, appropriate supervisory measures are taken to correct the capital deficiency.

Paragraph (d) of the proposed regulation concerns transactions with affiliates. Section 11(a)(1) of HOLA (12 U.S.C. 1468(a)(1)) makes savings associations subject to the restrictions on transactions with affiliates established by sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1). That provision of HOLA, however, imposes two additional restrictions on transactions with affiliates: (1) No loan or other extension of credit may be made to any affiliate by a savings association unless that affiliate is engaged only in activities which the Board of Governors of the Federal Reserve System has determined are permissible for bank holding companies, and (2) no savings association can purchase or invest in securities issued by an affiliate other than shares of a subsidiary. Paragraph (d) reimposes these restrictions on SAIF member state savings banks. The term affiliate shall for the purposes of this paragraph have the same meaning as applicable for the purposes of section 23A of the Federal Reserve Act.

Paragraph (e) of the proposed regulation covers savings banks that converted prior to the adoption of the regulation. Under paragraph (e)(1)(i) such institutions that are engaged in an activity, or that have an investment, of the type covered by § 303.13 of the FDIC's regulations are prohibited from continuing the activity or retaining the investment without the FDIC's consent. The application procedures set forth in § 303.13 are to be followed when requesting consent to continue the activity or retain the investment. Requests for consent must be filed within 30 days after the regulation becomes effective. If a request for consent is filed, the institution will not be considered to be in violation of the regulation pending approval of the regional director.

Consent will not be granted unless to do so is consistet with § 303.13. Thus, for example, consent to continue an impermissible activity will not be granted if the FDIC determines that the activity poses a significant risk to SAIF or if the savings bank does not meet the capital requirements of part 325. If a savings bank purchased junk bonds, their retention is not consistent with § 303.13. The bonds must be divested as quickly as prudently possible but in no event later than July 1, 1994. If the institution acquired an impermissible equity investment, it must be divested by July 1, 1994 unless retention is approved. If consent to conduct an activity is denied, the institution must phase out the activity as quickly as prudently possible.

Under paragraph (e)(3), an institution that converted prior to the adoption of the regulation that established or acquired a subsidiary after its conversion (but prior to the effective date of the regulation) and any institution that initiated any new activity in an existing subsidiary after its conversion (but prior to the effective date of the regulation) must file the notice required by § 303.13(f) pertaining to subsidiaries.

The proposed regulation does not provide any special treatment for institutions that converted prior to the regulation's adoption insofar as the deduction of investments in, and loans to, subsidiaries is concerned. Thus, for example, a savings association that converted to a savings bank prior to the adoption of the regulation and which also prior to the adoption of the regulation established a subsidiary that is engaged in an activity prohibited to a national bank will still be required to deduct its investment in the subsidiary from its capital. Institutions that do not meet the FDIC's capital requirements as of the effective date of the regulation must file a capital plan within 30 days.

SAIF member savings banks that converted piror to the adoption of the regulation are not required under the proposal to divest loans made in that interim period to affiliates which engage in activities that are not permissible for bank holding companies. (See paragraph (e)(3)). If, however, a converted SAIF member savings bank purchased or invested in securities issued by any of its affiliates in the interim period, the

institution must request the FDIC's consent to retain the securities. The procedures for seeking consent are the same as described above. (See paragraph (e)(5)).

Paragraph (f) of the proposal provides that it should be unlawful for a SAIF member savings bank to have converted from a savings association unless the FDIC was given advance notice of the intended conversion and a follow-up notice that the conversion did in fact occur is filed with the FDIC within 10 days after the conversion. The follow-up notice only needs to confirm that the conversion took place and the date thereof. The proposal requires that a copy of any application, notice etc. that is required by statute or regulation to be filed seeking approval of the conversion must also be filed with the FDIC simultaneously with the submission of the application to the appropriate state or federal agency. If the conversion application was filed with the appropriate agency before the regulation became effective, the institution must file a copy of the application with the FDIC as soon as possible after the effective date of the regulation. The copy (as well as the follow-up notice) is to be submitted to the FDIC regional director for supervision for the region in which the bank's principal office is located. The regional director may, for good cause, accept a notice in lieu of a copy of the conversion application, etc. Such notice only needs to indicate that it is the institution's present intent to convert.

Paragraph (f) further provides that any SAIF member state savings bank that converted from a savings association prior to the adoption of the regulation must notify the FDIC of its conversion within 30 days after the effective date of the regulation. Receiving this information will enhance the FDIC's ability to assess the risks posed to SAIF by the conversion of the particular institution given the state enabling legislation and will allow for advance planning on the scheduling of examinations, etc. (The FDIC is the appropriate federal supervisory agency with respect to state savings banks.)

Statutory Authority

As discussed above, the FDIC's Board of Directors has determined that certain acts and practices by SAIF member state savings banks present a threat to SAIF and that the deduction of such an institution's investment in, and loans to, certain subsidiaries is necessary to further prevent risk to SAIF. Likewise the Board of Directors has determined that in order to prevent risks to the fund the FDIC should receive prior notice from such institutions before a subsidiary is acquired or established or an existing subsidiary initiates any new activity. The Board of Directors has also determined that advance notice of a conversion is necessary if the FDIC is to properly discharge its responsibilities under the FDI Act. Finally, consistent with existing regulations, the Board of Directors has determined that as it is unsafe and unsound for an under capitalized institution to operate without a capital plan. SAIF member savings banks that do not meet the FDIC's capital requirements must file a capital plan after their conversion.

Based upon these determinations, the FDIC is proposing to adopt the regulation more fully described above. The FDIC's action in doing so is fully consistent with the FDIC's purpose and is authorized by sections 6, 8, 9, and 18(m)(3)(A) of the FDI Act (12 U.S.C. 1816, 1818, 1819 (Tenth), 1828(m)(3)(A)).

The FDIC has the broad general authority to adopt this regulation under section 9 of the FDI Act which authorizes the FDIC to issue whatever regulations "it may deem necessary to carry out the provisions of the (Federal Deposit Insurance Act) or of any other law which it has the responsibility of administering or enforcing * * *". 12 U.S.C. 1819 (Tenth). Pursuant to this authority the FDIC may adopt substantive regulations designed to further the purposes for which the federal deposit insurance system was established. It is settled that binding legislative rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purpose of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publications Services*, 411 U.S. 336, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durhan*, 393 U.S. 268, 280–281 (1969)). It is clear from the legislative history of the FDI Act that in the shadow of the banking collapse Congress sought to restore public confidence in the banking system, promote safe and sound banking practices, eliminate runs on banks by depositors, and safeguard deposits. It did so through the mechanism of providing for a system of federal deposit insurance and creating the FDIC to administer the deposit insurance program. *FDIC* v. *Allen*, 584 F.Supp. 386 (E.D. Tenn. 1984). More recently, with the enactment of FIRREA, the FDIC was given the responsibility of administering the federal deposit insurance system for savings associations as well as banks. FIRREA placed the savings and loan insurance fund under the FDIC's administration, established an elaborate funding mechanism designed to rehabilitate the fund, and established safeguards designed to protect savings associations and SAIF. The legislative history of FIRREA is replete with statements that Congress sought to correct the problems which lead to the failure of so many savings and loan associations and the savings and loan insurance system. In some measure those failures were attributed to activities, investments and practices authorized for state savings associations; activities etc. that federally chartered entities could not do.

Administering the SAIF fund means, among other things, taking action to protect the solvency of SAIF. As the safety and soundness of SAIF is inextricably linked with the safety and soundness of SAIF member institutions and the risks those institutions undertake, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n. 6 (8th Cir. 1942), and the FDIC is directed under section 11(f) of the FDI Act to pay insured deposits whenever an insured depository institution is closed "on account of inability to meet the demands of its depositors" (12 U.S.C. 1821(f), the FDIC must preserve the solvency of SAIF in order to fulfill its mandate when called upon. Any practice by an insured institution that may jeopardize its safety and soundness, or in some other manner present a risk to SAIF, is therefore a proper target of the FDIC's regulatory oversight.[1]

Section 6 of the FDI Act (12 U.S.C. 1816) represents an additional source of authority for the regulation apart from that derived from the FDIC's general rulemaking authority. Section 6 provides the FDIC with express authority to determine what activities are appropriate for financial institutions in light of the federal deposit insurance safety net and what activities, if

[1] Any SAIF member institution that was FSLIC insured prior to the enactment of FIRREA and which fails prior to August 9, 1992 is the responsibility of the Resolution Trust Corporation ("RTC"). Funds expended in the resolution of such failures do not come from SAIF. That fact does not mean, however, that there is no need for the FDIC to act now to prevent SAIF member savings banks from engaging in the practices covered by the regulation. The ill effects associated with these investments, etc. may not necessarily result in failures in the short term but will certainly accumulate over the long term. In the meantime, imposing the restrictions should help reduce the number of failures RTC needs to resolve. This perhaps unintended "by product" of the regulation is consistent with the FDIC's statutory responsibilities as the manager of RTC. As such, it is yet another reason why the regulation is within the scope of the FDIC's authority.

conducted by an insured institution, will pose an unacceptable risk to the funds. Before an institution receives deposit insurance the FDIC must be satisfied that the institution will exercise its corporate powers properly, that those powers are not inconsistent with the purposes for which the deposit insurance system was established, and that the institution if permitted to join the deposit insurance system will not pose an unacceptable risk to the fund. The FDIC's ability to determine what corporate powers are consistent with the purposes of the FDI Act and what powers pose a risk to the fund in essence creates a fundamental, and continuing, condition of deposit insurance. This provision of the FDI Act confers an important power and responsibility on the FDIC to assess its insurance risk and the corollary responsibility and authority to take steps to limit that risk. In doing so the FDIC is not limited to announcing its determinations on a case-by-case basis but may adopt a regulation of general applicability setting forth what powers, practices, etc. are considered to pose a risk to the fund of such magnitude as to warrant prohibiting those activities to institutions currently in the fund and conditioning entry into the fund on not engaging in such practices. *Independent Bankers Association* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979, *cert. denied*, 449 U.S. 823 (1980).

The FDIC also derives authority for the regulation from section 8 of the FDI Act (12 U.S.C. 1818). The FDIC was given the authority, and the responsibility, under section 8 of the FDI Act to ensure that banks observe safe and sound banking practices. This was done so that the FDIC might act to ensure that the banking system will function properly; that the public confidence in the banking system does not falter; and that the solvency of the deposit insurance fund is not endangered due to bank failures. Over the years the FDIC's enforcement powers have been strengthened by Congress in an ever increasing recognition that the FDIC needs strong tools to accomplish its purposes. A wide latitude of discretion was given to the FDIC "in filling in and administering the details embodied by the general standard" in the FDI Act to promote safe and sound banking practices. *Heimann*, 1169. What is and is not an unsafe or unsound banking practice and what constitutes an unsafe or unsound condition is left to the FDIC to determine in its expertise as "* * * one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of [unsafe and unsound banking] practices to the expertise of the appropriate regulatory agencies." *Gross National Bank* v. *Comptroller of the Currency*, 573 F.2d 889, 897 (5th Cir. 1978). The FDIC may do so either by order or regulation. It was established by the court in *Heimann* that the Office of the Comptroller of the Currency, which has the authority to initiate a cease-and-desist action against a national bank, is not confined to initiating individual enforcement actions under section 8 but may, at its discretion, adopt substantive regulations defining what constitutes an unsafe or unsound practice and what practices involve the violation of particular statutes or regulations.

> [A] regulation giving advance notice of conduct which the Comptroller disapproves as threatening to the safety and soundness of the banks he regulates is wholly consistent with the statutory scheme * * *. His ability to forewarn by specifying and clarifying the nature and scope of his concerns will at the same time minimize the necessity for recurrent and costly investigation into the conduct of the many individual banks under his supervision. *Heimann*, 1168–1169.

That the principle in *Heimann* applies equally in the case of other federal financial regulators which were given cease-and-desist authority over the insitutions they supervise was made clear in *Lincoln Savings and Loan Association* v. *Federal Home Loan Bank Board*, 856 F.2d 1558, 1563 (DC Cir. 1988). The *Lincoln* court citing *Heimann* as precedent equally applicable to the FHLBB found that the FHLBB's power to issue an order to cease and desist engaging in an unsafe and unsound banking practice carries with it the authority to announce by regulation what constitutes an unsafe or unsound banking practice. Like the Comptroller of the Currency and the FHLBB, the FDIC can rely upon the provisions of the FDI Act granting it authority to issue cease-and-desist orders (section 8(b)) and to promulgate rules with respect to such proceedings (section 8(n)) as authority for this regulation.

The proposed regulation is also authorized by section 8(a) of the FDI Act. As indicated above, section 8(a) permits the FDIC to terminate deposit insurance when it is determined that an institution is in an unsafe or unsound condition. That provision provides the authority for the adoption of substantive rules designed to protect bank safety and soundness and protect the deposit insurance fund in much the same way that section 8(b) authorizes the adoption of substantive regulations. The FDIC is permitted to announce by regulation the banking practices which it has determined to be unsafe and unsound and thereby forewarn of the circumstances in which termination of deposit insurance may be sought. *National Council of Savings Institutions* v. *Federal Deposit Insurance Corporation*, 664 F.Supp. 572 (D.D.C. 1987).

Finally, in addition to the authority conferred on the FDIC to adopt this regulation based on sections 6, 8 and 9 of the FDI Act, the FDIC is granted the express authority to do so under section 18(m)(3)(A) of the FDI Act (12 U.S.C. 1828(m)(3)(A)). Section 18(m)(3)(A) expressly provides that the FDIC may adopt regulations prohibiting any specific activity that poses a serious threat to SAIF. The Board of Directors has herein determined that if the restrictions imposed by this regulation are not observed a serious threat will be posed to SAIF. Furthermore, the Board of Directors has determined that receiving advance notice of a conversion of a SAIF member state savings bank will enhance the FDIC's ability to protect SAIF from serious threats and will allow for the more timely and orderly discharge of the FDIC's responsibilities to examine and supervise state savings banks.

Regulatory Flexibility Analysis

The Board of Directors has determined that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. Therefore, the FDIC is not required to conduct a regulatory flexibility act analysis pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Compliance with the proposal will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers, or managers. It is therefore not expected that compliance with the regulation will have a disparate economic impact on institutions depending upon their size. In addition, pursuant to the FDIC's statement of policy on the drafting of regulations, it has been determined that a cost-benefit analysis, including a small bank impact statement is not required.

List of Subjects in 12 CFR Part 333

Banks, Banking.

In consideration of the foregoing, the FDIC hereby proposes to amend part 333 of title 12 of the Code of Federal Regulations as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819, 1828(m).

2. Part 333 is amended by adding new § 333.3 to read as follows:

§ 333.3 Savings Association Insurance Fund ("SAIF") member savings banks formerly savings associations.

(a) *Activities, investments, prior notice on subsidiaries.* The prohibitions and application and notice requirements set forth in § 303.13(a) through § 303.13(f) of this chapter shall apply to all SAIF member state savings banks to the same extent as though the savings bank is a state savings association. Any FDIC employee who has been delegated the authority to act on notices and applications filed pursuant to § 303.13 shall have the same delegated authority to act on an application or notice filed pursuant to the requirements of this section. For the purposes of administering this section, all references in § 303.13 of this chapter to the fully phased-in capital requirements prescribed under section 5(t) of the Home Owners' Loan Act ("HOLA", 12 U.S.C. 1464(5)(t)) shall be understood to refer to the capital requirements prescribed by part 325 of the FDIC's regulations.

(b) *Loans to one borrower.* No SAIF member state savings bank may make loans to any one borrower to a greater extent than a savings association is permitted under section 5(u) of HOLA (12 U.S.C. 1464(u)).

(c) *Capital.* (1) The investment in, and extensions of credit to, a subsidiary by a SAIF member state savings bank shall be deducted from the savings bank's capital to the same extent that would be required under section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)) in the case of a savings association.

(2) Any SAIF member state savings bank that converts from a savings association that does not meet the minimum capital requirements set out in part 325 of this chapter as of the date of its conversion must file a plan describing the means and timing by which the savings bank will achieve its minimum capital requirements. The plan must be filed with the FDIC regional director for supervision for the region in which the savings bank's principal office is located no later than 30 days after its conversion. For the purposes of § 333.3, any savings association that changes its status to a SAIF member state savings bank regardless of the manner in which the status change occurs will be considered to have converted from a savings association to a savings bank.

(d) *Affiliate transactions.* No SAIF member state savings bank may engage in any transaction with any of its affiliates if such transaction would be prohibited under section 11(a)(1) of HOLA (12 U.S.C. 1468) in the case of a savings association.

(e) *SAIF member state savings banks that converted prior to (insert effective date of regulation).* (1) Section 333.3(a) notwithstanding,

(i) Any SAIF member state savings bank that converted from a savings association prior to [insert effective date of regulation] which as of that date is engaged in a activity, or has an investment, of the type covered by § 303.13 of this chapter, may not continue the activity, or retain the investment, without the FDIC's consent. Requests for consent should be filed in accordance with the procedures set forth in § 303.13 of this chapter within 30 days after (insert effective date of regulation); and

(ii) No SAIF member state savings bank that files a request for consent pursuant to § 333.3(e)(1)(i) shall be found in violation of § 333.3 pending aproval from the regional director. Consent will only be granted if the FDIC determines that the activity or the retention of the investment is consistent with § 303.13 of this chapter. If consent is denied, the bank must divest the investment in accordance with § 303.13 of this chapter. In the case of a denial of a request to continue an activity, the bank shall cease the activity as quickly as prudently possible.

(2) Any SAIF member state savings bank that converted from a savings association prior to (insert effective date of regulation) that established or acquired a subsidiary since its conversion but prior to (insert effective date of regulation), or which initiated the conduct of new activities in an existing subsidiary since such conversion but prior to (insert effective date of regulation), must file the notice required by § 303.13(f) of this chapter.

(3) Section 333.3(b) and 333.3(d) notwithstanding, a SAIF member state savings bank that coverted from a savings association prior to (insert effective date of regulation) shall not be required by this section to divest any loans made prior to that date that would have at that time been in violation of the federal loans to one borrower limit or the federal restriction on transactions with affiliates had the savings bank not converted.

(4) Any SAIF member state savings bank that converted from a savings association prior to (insert effective date of regulation) that does not meet the minimum capital requirements set out in part 325 of this chapter as of (insert effective date of regulation) must file a plan describing the means and timing by which the savings bank will achieve its minimum capital requirments. The plan must be filed with the FDIC regional director for supervision for the region in which the savings bank's principal office is located not later than 30 days after (insert effective date of regulation).

(5) Any SAIF member state savings bank that converted from a savings association prior to (insert effective date of regulation) that after its conversion but prior to such date purchased or invested in securities issued by an affiliate (other than shares issued by a subsidiary) cannot retain those securities without the FDIC's consent. Request for consent should be filed in accordance with the procedures set forth in § 303.13 of this chapter within 30 days after (insert effective date of regulation). No SAIF member state savings bank that files a request for consent pursuant to this section shall be found in violation of § 333.3 pending approval from the regional director. If consent is denied, the bank must divest the securities in accordance with § 303.13 of this chapter.

(f) *Notice of conversion.* (1) It shall be unlawful for any SAIF member state savings bank to have converted from a savings association unless prior to the conversion the bank filed with the FDIC a copy of any application, notice, etc. required by statute or regulation to be filed with any other federal or state agency seeking approval for the conversion. The copy shold be sent to the FDIC regional director for supervision for the region in which the bank's principal office is located at the same time it is submitted to the appropriate agency for approval. If a conversion application was submitted prior to (insert effective date or regulation), a copy of the application should be filed with the FDIC regional director as soon as possible after (insert effective date of regulation). If the conversion takes place, the savings bank must file a follow-up notice with the regional director not later than 10 days after the conversion confirming that the conversion did occur and the date thereof.

(2) Section 333.3(f)(1) notwithstanding, when the regional director determines that there is good cause to do so, the regional director may accept a letter notice in satisfaction of the requirement to file with the FDIC a copy of the conversion applicaiton or notice.

(3) A SAIF member savings bank that converted from a savings association prior to (insert effective date of regulation) must notify the FDIC regional director for supervision for the region in which the bank's principal office is located not later than (insert a date 30 days from the effective date of the regulation) that the conversion took place and the date thereof.

By order of the Board of Directors, Dated at Washington, DC this 29th day of November, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-28920 Filed 12-11-90; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5h

[FI-81-86]

RIN 1545-AJ31

Bad Debt Reserves of Banks

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations relating to the repeal of bad debt reserves for large banks. The proposed regulations implement section 585(c) of the Internal Revenue Code.

DATES: Written comments and requests for a public hearing must be received by February 11, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (FI-81-86), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bernita L. Thigpen, telephone 202-566-3297 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collections of information in these regulations are in § 1.585-8. This information is required by the Internal Revenue Service in connection with making or revoking an election. This information will be used to monitor elections made by respondents. The likely respondents are banks.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total reporting burden: 625 hours.

The estimated burden per respondent varies from 10 minutes to 20 minutes, depending on individual circumstances, with an estimated average of 15 minutes.

Estimated number of respondents: 2,500.

Estimated number of responses per respondent: 1.

Background

This document provides proposed regulations on the repeal, for large banks, of the reserve method of accounting for bad debts that is allowed by section 585 of the Internal Revenue Code. These regulations reflect Code section 585(c), which was added by section 901 of the Tax Reform Act of 1986, Public Law No. 99-514, 100 Stat. 2085, 2375-2380 (1986), and amended by section 1009(a) of the Technical and Miscellaneous Revenue Act of 1988, Public Law No. 100-647, 102 Stat. 3342, 3445 (1988). When finalized, these proposed regulations will supersede related portions of 26 CFR 5h. 5, which provides temporary regulations on the time and manner of making various elections under the Tax Reform Act of 1986.

Explanation of Provisions

New Code section 585(c) provides that large banks may not use the reserve method of section 585 for taxable years beginning after December 31, 1986. After this debate, large banks must use the specific charge-off method of accounting for bad debts. Section 585(c) also provides procedures for changing from the reserve method of section 585 to the specific charge-off method. Section 585(c)(3) provides a recapture method of change, and section 585(c)(4) provides an elective cut-off method of change.

The regulations contained in this document propose to implement section 585(c) by adding new §§ 1.585-5 through 1.585-8 and by making conforming amendments in §§ 1.585-1, 1.585-2 and 1.585-3. Proposed § 1.585-5 states the general rule of denial of bad debt reserves for large banks and provides guidance on determining whether an institution is a large bank. Proposed §§ 1.585-6, 1.585-7 and 1.585-8 provide guidance for large banks on changing from the reserve method of section 585 to the specific charge-off method. The regulations are proposed to be effective for taxable years beginning after December 31, 1986.

Section 1.585-5 Denial of Bad Debt Reserves for Large Banks

Proposed § 1.585-5(a) states the general rule of denial of bad debt reserves for large banks. This section also requires a large bank to change in its "disqualification year" to the specific charge-off method of accounting for bad debts. Proposed § 1.585-5(d)(1) defines the term "disqualification year" for this purpose.

Pursuant to proposed § 1.585-5(a), a large bank that maintained a bad debt reserve under section 585 for the taxable year immediately before its disqualification year must follow the rules prescribed in proposed § 1.585-6 or § 1.585-7 for changing to the specific charge-off method. However, these rules do not apply to a large bank that maintained a reserve under section 593 for the taxable year immediately before its disqualification year.

Proposed § 1.585-5(b) provides rules for determining whether an institution is a large bank. Proposed § 1.585-5(b)(1) states the $500 million test of section 585(c)(2). Under this test, a bank is a large bank if—for the current taxable year or for any preceding taxable year beginning after December 31, 1986—the bank has average total assets in excess of $500 million or the bank is a member of a parent-subsidiary controlled group that has average total assets in excess of $500 million.

Proposed § 1.585-5(c) provides rules for determining the average total assets of a bank or group for any taxable year. Under proposed § 1.585-5(c)(1), this average is based on the total assets held by the bank or group on each "report date" during the year. Proposed § 1.585-5(c)(2) defines the term "report date" for this purpose. Proposed § 1.585-5(c)(3) provides that the amount of assets held by a bank or group is the adjusted bases of the assets for Federal income tax

purposes. Proposed § 1.585–5(c)(4) provides a method of estimating the adjusted tax bases of assets for this purpose.

Proposed §§ 1.585–5(b)(2) and 1.585–5(b)(3) also provide rules for determining whether an institution is a large bank. Under proposed § 1.585–5(b)(2), certain banks that receive assets from a large bank and remain under that bank's control are treated as large banks. Under proposed § 1.585–5(b)(3), certain banks that acquire substantially all of the assets of a large bank also are treated as large banks. Comments are requested on a scope of these rules.

Section 1.585–6 Recapture Method of Change

Proposed § 1.585–6 (provides guidance on using the recapture method set forth in section 585(c)(3). Under this method, a bank includes the balance of its bad debt reserve in income over a four-year period, and recapture is suspended for any taxable years in which the bank is financially troubled.

Proposed § 1.585–6(a) provides general rules for using the recapture method. If a bank follows the rules prescribed in proposed § 1.585–6, its change to the specific charge-off method will be treated as made with the consent of the Commissioner. Proposed § 1.585–6(b) specifies the portion of the reserve to be included in income in each year of the recapture period.

Proposed § 1.585–6(c) explains the consequences of a disposition of loans by a large bank that is using the recapture method. Pursuant to proposed § 1.585–6(c)(1), such a disposition generally does not affect the bank's obligation to recapture its reserve under proposed § 1.585–6. However, if the bank ceases to engage in the business of banking before it completes recapture of its reserve, it must include the remaining amount of the reserve in income at that time. Pursuant to proposed § 1.585–6(c)(3), if a bank transfers loans to another corporation in a section 381 transaction, the acquiring corporation steps into the transferor's shoes with respect to completing the recapture method.

Proposed § 1.585–6(d) provides guidance for financially troubled banks. Proposed § 1.585–6(d)(1) requires suspension of recapture for any taxable year in which a bank is financially troubled. Proposed § 1.585–6(d)(2) allows a bank that is financially troubled for its disqualification year to elect to recapture more than 10 percent of its reserve. This election may be made for the bank's disqualification year, for the first taxable year after the disqualification year in which the bank is not financially troubled, or for any intervening taxable year. Proposed § 1.585–6(d)(3) explains when a bank is considered financially troubled.

Proposed § 1.585–6(d)(4) implements section 585(c)(3)(C), which provides relief from certain penalties for failure to pay estimated tax. Essentially this section waives the penalty for failure to pay estimated tax in cases where a bank that is financially troubled in one quarter (and therefore does not pay quarterly estimated tax attributable to recapture) is not financially troubled for the year as a whole (and thus has underpaid its estimated tax). In effect, proposed § 1.585–6(d)(4) provides that the determination of whether a bank is financially troubled, for purposes of waiving the penalty for failure to pay an installment of estimated tax, is to be made as of the last day prescribed for payment of the installment, based on the portion of the taxable year that precedes and includes that day.

Section 1.585–7 Elective Cut-Off Method of Change

Proposed § 1.585–7 provides guidance on using the cut-off method set forth in section 585(c)(4). Under this method, a bank continues to maintain its reserve for loans that it held when it became a large bank ("pre-disqualification loans"), but it may not deduct new additions to the reserve. If the reserve balance at the end of any taxable year exceeds the amount of the bank's outstanding pre-disqualification loans, the bank must include the amount of the excess in income for that year.

Proposed § 1.585–7(a) provides general rules for using the cut-off method. Proposed § 1.585–7(b) provides guidance on maintaining the reserve for pre-disqualification loans, and proposed § 1.585–7(c) provides guidance on including excess amounts of the reserve in income.

Proposed § 1.585–7(d) explains the consequences of a disposition of loans by a large bank that is using the cut-off method. Generally the bank reduces the balance of its outstanding pre-disqualification loans by the amount of the loans disposed of. However, proposed § 1.585–7(d)(2) provides a special rule for section 381 transactions, and proposed § 1.585–7(d)(3) addresses dispositions that are intended to change the status of pre-disqualification loans.

Section 1.585–8 Making and Revoking Elections

Proposed § 1.585–8 provides rules on making and revoking the elections allowed under section 585(c). These are the election to recapture more than 10 percent of a bank's bad debt reserve and the election to use the cut-off method of change instead of the recapture method.

Proposed § 1.585–8(a) provides rules on the time of making elections. Under proposed § 1.585–8(a)(1), any election under section 585(c) must be made by the later of the date that is 60 days after the proposed regulations are published as final regulations, or the due date (taking extensions into account) of the electing bank's tax return for the year for which the election is made. Proposed § 1.585–8(a)(2) waives the penalty for certain failures to pay estimated tax that result from making or revoking an election.

Proposed § 1.585–8(b) provides rules on the manner of making elections. For tax returns filed after the proposed regulations are published as final regulations, proposed § 1.585–8(b)(1) requires an election to be made by attaching a statement to the electing bank's tax return for the year for which the election is made. This section also describes the information to be included in the statement.

Proposed § 1.585–8(c) provides rules on revoking elections. An election allowed under section 585(c) may be revoked without the consent of the Commissioner on or before the final date for making the election. After this date, the election may be revoked only with the Commissioner's consent. Proposed § 1.585–8(c) also provides rules on the manner of revoking an election.

Proposed § 1.585–8(d) addresses elections relating to banks that are members of parent-subsidiary controlled groups. Such an election is to be made by the bank. An election made by one member of a group is not binding on any other member.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register.**

List of Subjects

26 CFR 1.581–1 through 1.601–1

Banks, Income taxes.

26 CFR Part 5h

Elections under various public laws, Income taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter 1, parts 1 and 5h of the Code of Federal Regulations are proposed to be amended as follows.

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Sections 1.585–5 through 1.585–8 also issued under 26 U.S.C. 585(b)(4).

Par. 2. Section 1.585–1 is amended as follows:

1. The first sentence of paragraph (a) is amended by removing "166(c)" and inserting in lieu thereof "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

2. The seventh sentence of paragraph (a) is amended by removing "166(c) and the regulations thereunder" and inserting in lieu thereof "585 (or, for taxable years beginning before January 1, 1987, section 166(c)) and the regulations under section 166".

3. The tenth sentence of paragraph (a) is amended by removing "(a), (b), and (c)".

4. The following new sentence is added at the end of paragraph (a): "For rules relating to large banks, see §§ 1.585–5 through 1.585–8.".

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

§ 1.585–1 Reserve for losses on loans of banks.

* * * * *

(b) *Application of section*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, section 585 and this section apply to the following financial institutions:

(i) Any bank (as defined in section 581 and the regulations thereunder) other than a mutual savings bank, domestic building and loan association, or cooperative bank, to which section 593 applies, and

(ii) Any corporation to which paragraph (b)(1)(i) of this section would apply except for the fact that it is a foreign corporation and in the case of any such foreign corporation, the rules provided by section 585, this section, §§ 1.585–2, 1.585–3, and 1.585–4 apply only with respect to loans outstanding the interest on which is effectively connected with the conduct of a banking business within the United States.

(2) *Exception.* For taxable years beginning after December 31, 1986, section 585 (a) and (b) and this section do not apply to any large bank (as defined in § 1.585–5(b)). For these years, a large bank may not deduct any amount under section 585 or any other section for an addition to a reserve for bad debts.

§ 1.585–2 [Amended]

Par 3. In § 1.585–2, the last sentence of paragraph (d)(3) is amended by adding "585(a)(1) or former section" immediately before "166(c)".

§ 1.585–3 [Amended]

Par 4. Section 1.585–3 is amended as follows:

1. The first sentence of paragraph (a) is amended by removing "166(c)" and inserting in lieu thereof "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

2. The first sentence of paragraph (b) is amended by removing "166(c)" and inserting in lieu thereof "585(a) (or, for taxable years beginning before January 1, 1987, section 166(c))".

3. The second and third sentences of paragraph (b) are amended by removing "166(c)" and inserting in lieu thereof "585(a) (or former section 166(c))".

Par. 5. New §§ 1.585–5, 1.585–6, 1.585–7 and 1.585–8 are added to read as follows:

§ 1.585–5 Denial of bad debt reserves for large banks.

(a) *General rule.* For taxable years beginning after December 31, 1986, a large bank (as defined in paragraph (b) of this section) may not deduct any amount under section 585 or any other section for an addition to a reserve for bad debts. However, for these years, except as provided in § 1.585–7, a large bank may deduct amounts allowed under section 166(a) for specific debts that become worthless in whole or in part. Any large bank that maintanined a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in paragraph (d)(1) of this section) must follow the rules prescribed in § 1.585–6 or § 1.585–7 for changing from the reserve method of accounting for bad debts that is allowed by section 585, to the specific charge-off method of accounting for bad debts, in its disqualification year. However, the rules prescribed in §§ 1.585–6 and 1.585–7 do not apply to a large bank that maintained a reserve for bad debts under section 593 for the taxable year immediately preceding its disqualification year.

(b) *Large bank*—(1) *General definition.* For purposes of this section, a large bank is any institution described in § 1.585–1(b)(1) (i) or (ii) if, for the taxable year (or for any preceding taxable year beginning after December 31, 1986)—

(i) The average total assets of the institution (determined under paragraph (c) of this section) exceed $500,000,000, or

(ii) The institution is a member of a parent-subsidiary controlled group (as defined in paragraph (d)(2) of this section) and the average total assets of the group exceed $500,000,000.

(2) *Large bank resulting from transfer by large bank where control is retained.* If a large bank (as defined in paragraph (b)(1) or (b)(3) of this section) transfers a significant portion of its assets directly or indirectly to another corporation (the "transferee") and, after the transfer, more than 50 percent (in voting power or value) of the outstanding stock of the tranferee is owned by the bank, the tranferee is treated as a large bank for any taxable year ending after the date of the transfer in which it is an institution described in § 1.585–1(b)(1) (i) or (ii). For this purpose, stock of a transferee is considered owned by a transferor bank if it is owned by any member of a parent-subsidiary controlled group (as defined in paragraph (d)(2) of this section) of which the bank is a member, by any related party within the meaning of section 267(b) or 707(b), or by any person that received the stock in a transaction to which section 355 applies.

(3) *Large bank resulting from transfer of substantially all the assets of large bank*—(i) *In general.* If a corporation acquires substantially all of the assets of a large bank (as defined in paragraph (b)(1) or (b)(2) of this section) and the acquiring corporation's method of accounting for bad debts with respect to its banking business (determined under

paragraph (b)(3)(ii) of this section) immediately after the acquisition is the method used immediately before the acquisition by the large bank whose assets are acquired, the acquiring corporation is treated as a large bank for any taxable year ending after the date of the acquisition in which it is an institution described in § 1.585–1(b)(1) (i) or (ii). See §§ 1.585–6(c)(3) and 1.585–7(d)(2) for rules on the treatment of assets acquired from large banks in section 381(a) transactions.

(ii) *Determination of method.* An acquiring corporation's method of accounting for bad debts, determined under this paragraph (b)(3)(ii), is the method determined by applying § 1.381(c)(4)–1, regardless of whether section 381(a) applies to the acquisition. In applying § 1.381(c)(4)–1 for this purpose, the following rules apply: (1) a large bank whose assets are acquired is considered to be on the specific charge-off method with respect to all of its assets immediately before the acquisition; (2) if an acquiring corporation has more than one banking business immediately after the acquisition, all such businesses are treated as one integrated business; and (3) if an acquiring corporation's banking business does not have a principal method of accounting for bad debts under § 1.381(c)(4)–1, the business's method is considered to be the method used immediately before the acquisition by the bank whose assets are acquired.

(4) *Example.* The following examples illustrate the principles of this paragraph (b):

Example 1. Bank M, a calendar year taxpayer, is an institution described in § 1.585–1(b)(1)(i). For its taxable year beginning on January 1, 1987, M has average total assets of $600 million. Since M's average total assets for 1987 exceed $500 million, M is a large bank for that year. Pursuant to § 1.585–5(d)(1), 1987 is M's disqualification year. If M maintained a bad debt reserve under section 585 for its immediately preceding taxable year (1986), M must change in 1987 to the specific charge-off method of accounting for bad debts, in accordance with § 1.585–6 or § 1.585–7.

Example 2. Assume the same facts as in Example 1. Also assume that in 1988 M disposes of a portion of its assets and, as a result, M's average total assets for taxable year 1988 fall to $400 million. M remains a large bank for taxable year 1988 and succeeding taxable years, since its average total assets for a preceding taxable year (1987) beginning after December 31, 1986, exceeded $500 million.

Example 3. Bank P, a calendar year taxpayer, is an institution described in § 1.585–1(b)(1)(i). P has average total assets of $300 million for its taxable year beginning on January 1, 1988. For the same year, P is a member of a parent-subsidiary controlled group (within the meaning of § 1.585–5(d)(2)) that has average total assets of $800 million. In February 1989, the group sells its stock in P to several individual investors. P is a large bank for taxable year 1988 because it is a member of a group described in § 1.585–5(b)(1)(ii) for that year. P also is a large bank for taxable year 1989 and succeeding taxable years because it was a member of a group described in § 1.585–5(b)(1)(ii) for a preceding taxable year (1988) beginning after December 31, 1986.

Example 4. Bank Q is a large bank, within the meaning of § 1.585–5(b)(1), for its taxable year beginning on January 1, 1988, and hence for all later years. On March 1, 1989, Q transfers $200 million of its $600 million of assets to Bank R, a newly created subsidiary, in a transaction to which section 351 applies; these assets are R's only assets. On the same day, Q then spins off R in a transaction to which section 355 applies. After these transactions, the shareholders of Q own more than 50 percent of R's outstanding stock. Although R's average total assets do not exceed $500 million, R becomes a large bank on March 1, 1989, pursuant to § 1.585–5(b)(2). These transactions do not affect Q's status as a large bank.

Example 5. Bank S is a large bank, within the meaning of § 1.585–5(b)(1)(ii), for its taxable year beginning on January 1, 1987. As a result, S changes to the specific charge-off method of accounting for bad debts in that year. Bank T, which is not a large bank under § 1.585–5(b)(2), uses the reserve method of accounting for bad debts. On June 30, 1988, T acquires substantially all of S's assets in a transaction to which section 381(a) does not apply. Immediately before the acquisition, S's banking business has total assets of $200 million, and T's has total assets of $250 million. To determine whether T is a large bank under § 1.585–5(b)(3), it is necessary to determine under § 1.585–5(b)(3)(ii) T's method of accounting for bad debts with respect to its banking business immediately after the acquisition. This determination requires an application of § 1.381(c)(4)–1. For this purpose, T's original and acquired banking businesses are treated as an integrated business. Applying § 1.381(c)(4)–1(c)(2)(iii), it is determined that the business's principal method of accounting for bad debts immediately after the acquisition is the reserve method. Hence, the acquisition does not cause T to become a large bank under § 1.585–5(b)(3).

(c) *Average total asset*—(1) *In general.* For purposes of paragraph (b)(1) of this section, the average total assets of an institution or group for any taxable year are determined by—

(i) Computing, for each report date (as defined in paragraph (c)(2) of this section) within the taxable year, the amount of total assets (as defined in paragraph (c)(3) of this section) held by the institution or group as of the close of business on the report date;

(ii) Adding these amounts; and

(iii) Dividing the sum of these amounts by the number of report dates within the taxable year.

(2) *Report date*—(i) *Institutions.* A report date for an institution generally is the last day of the regular period for which the institution must report to its primary Federal regulatory agency. However, an institution that is required to report to its primary Federal regulatory agency more frequently than quarterly may choose the last day of the calendar quarter as its report date, and an institution that is required to report to its primary Federal regulatory agency less frequently than quarterly must choose the last day of the calendar quarter as its report date. If an institution does not have a Federal regulatory agency, its primary State regulatory agency is considered its primary Federal regulatory agency for purposes of this paragraph (c)(2)(i). In the case of a short taxable year that does not otherwise include a report date, the last day of the taxable year is the institution's report date for the year.

(ii) *Groups.* A report date for a parent-subsidiary controlled group is the report date, determined under paragraph (c)(2)(i) of this section, for any one member of the group that is an institution described in § 1.585–1(b)(1)(i) or (ii). The same report date must be used in applying paragraph (b)(1)(ii) of this section to all members of a parent-subsidiary controlled group for a taxable year.

(iii) *Member of group for only part of taxable year.* If an institution is a member of a parent-subsidiary controlled group for only part of a taxable year, paragraph (b)(1)(ii) of this section is applied to the institution for that year on the basis of the group's average total assets for the portion of the year that the institution is a member of the group. This, only the group's report dates that are included in that portion of the year are taken into account in determining the group's average total assets for purposes of applying paragraph (b)(1)(ii) to the institution. If no report date of the group is included in that portion of the year, the first or last day of that portion of the year must be treated as the group's report date for purposes of this paragraph (c)(2)(iii).

(3) *Total assets.* The amount of total assets held by an institution or group is the amount of cash, plus the sum of the adjusted bases of all other assets, held by the institution or group. For this purpose, the adjusted basis of an asset is its basis for Federal income tax purposes, determined under sections 1012, 1016 and other applicable sections of the Internal Revenue Code. In determining the amount of total assets held by a group, any asset of a member

of the group that is an interest in another member of the group is not to be counted.

(4) *Estimated adjustment tax bases*—(i) *In general.* The amount of the adjusted Federal income tax bases ("tax bases") of assets held on a report date may be estimated, for purposes of applying paragraph (c)(3) of this section. This estimate must be based on the adjusted bases of the assets on that date as determined by reference to the asset holder's books and records maintained for financial reporting purposes ("book bases"). The estimate must reflect any change in the ratio between the asset holder's tax and book bases of assets that occurs during the taxable year, and the estimate must assume that this change occurs ratably. If an institution or group member estimates the tax bases of assets held on any report date during a taxable year, it must do so for all assets (other than cash) held on that report date, and it must do so for all other report dates during the year. However, the tax bases of assets may not be estimated for any report date that is the first or last day of the taxable year.

(ii) *Formulas.* The estimated amount of the tax bases of assets held on any report date during a taxable year is based on the following variables: the total book bases of the assets on the report date ("B"); the asset holder's "tax/book ratio" as of the close of the preceding taxable year ("R"); and the result (whether positive or negative) obtained when R is subtracted from the asset holder's "tax/book ratio" as of the close of the current taxable year ("Y"). For purposes of determining R and Y, an asset holder's "tax/book ratio" is the ratio of (1) the total tax bases of all of the holder's assets (other than cash) to (2) the total book book bases of those assets. If an asset holder's taxable year is the calendar year and its report date is the last day of the calendar quarter, its estimated tax bases of assets held on the first three report dates of the year are determined under the following formulas:

1st Report Date = $B \times (R + \frac{1}{4}Y)$
2nd Report Date = $B \times (R + \frac{1}{2}Y)$
3rd Report Date = $B \times (R + \frac{3}{4}Y)$

For an example illustrating the application of these formulas, see Example 2 in paragraph (c)(5) of this section.

(5) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. Bank U is a fiscal year taxpayer, and its fiscal year ends on January 31. U reports to its primary Federal regulatory agency as of the last day of the calendar quarter. Thus, U's report dates under § 1.585-5(c)(2)(i) are March 31, June 30, September 30, and December 31. For its taxable year beginning on February 1, 1987, U has total assets (within the meaning of § 1.585-5(c)(3)) of $480 million on March 31, $490 million on June 30, $510 million on September 30, and $540 million on December 31. Thus, pursuant to § 1.585-5(c)(1), U's average total assets for its taxable year beginning on February 1, 1987, are $505 million.

Example 2. Bank W is a calendar year taxpayer, and its report date (within the meaning of § 1.585-5(c)(2)(i)) is the last day of the calendar quarter. The adjusted tax bases of all of W's assets (other than cash) are $450z on December 31, 1989, and $480z on December 31, 1990. The book bases of those assets are $500z on December 31, 1989; $520z on March 31, 1990; $540z on June 30, 1990; $560z on September 30, 1990; and $600z on December 31, 1990. Applying the formulas provided in § 1.585-5(c)(4)(ii), W's "tax/book ratio" as of the close of 1989 ("R"), is 0.9 (450z/500z). W's "tax/book ratio" as of the close of 1990 is 0.8 (480z/600z). Thus, "Y" is −0.1. The estimated adjusted tax bases of all of W's assets (other than cash) on the first three report dates of 1990 are as follows:

1st
$= B \times [R + \frac{1}{4}Y]$
$= \$520z \times [0.9 + \frac{1}{4}(-0.1)]$
$= \$455z$

2nd
$= B \times [R + \frac{1}{2}Y]$
$= \$540z \times [0.9 + \frac{1}{2}(-0.1)]$
$= \$459z$

3rd
$= B \times [R + \frac{3}{4}Y]$
$= \$560z \times [0.9 + \frac{3}{4}(-0.1)]$
$= \$462z$

(d) *Definitions.* The following definitions apply for purposes of this section and §§ 1.585-7 and 1.585-8:

(1) *Disqualifications year.* A bank's disqualification year is its first taxable year beginning after December 31, 1986, for which the bank is a large bank within the meaning of paragraph (b) of this section.

(2) *Parent-subsidiary controlled group.* A parent-subsidiary controlled group includes all of the members of a controlled group of corporations described in section 1563(a)(1). The members of such a group are determined without regard to whether any member is an "excluded member" described in section 1563(b)(2), a foreign entity, or a commercial bank.

§ 1.585-6 Recapture method of changing from the reserve method of section 585.

(a) *General rule.* This section applies to any large bank (as defined in § 1.585-5(b)) that maintained a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in § 1.585-5(d)(1)) and that does not elect the cut-off method set forth in § 1.585-7. Except as otherwise provided in paragraphs (c) and (d) of this section, any bank to which this section applies must include in income the amount of its net section 481(a) adjustment (as defined in paragraph (b)(3) of this section) over the four-year period beginning with the bank's disqualification year. If a bank follows the rules prescribed in this section, its change to the specific charge-off method of accounting for bad debts in its disqualification year will be treated as a change in accounting method that is made with the consent of the Commissioner. Paragraph (b) of this section specifies the portion of the net section 481(a) adjustment to be included in income in each year of the recapture period; paragraph (c) provides rules on the effect of disposing of loans; and paragraph (d) provides rules on the suspension of recapture by financially troubled banks.

(b) *Four-year spread of net section 481(a) adjustment*—(1) *In general.* If a bank to which this section applies does not make the election allowed by paragraph (b)(2) of this section, the bank must include in income the following portions of its section 481(a) adjustment in each year of the four-year recapture period: 10 percent in the bank's disqualification year; 20 percent in the first taxable year after its disqualification year; 30 percent in the second taxable year after its disqualification year; and 40 percent in the third taxable year after its disqualification year.

(2) *Election to include more than 10 percent in disqualification year.* A bank to which this section applies may elect to include in income, in its disqualification year, any percentage of its net section 481(a) adjustment that is large than 10 percent. Any such election must be made at the time and in the manner prescribed by § 1.585-8. If a bank makes such an election, the bank must include in income the remainder, if any, of its net section 481(a) adjustment in the following portions: ⅜ of the remainder in the first taxable year after the bank's disqualification year; ⅓ of the remainder in the second taxable year after its disqualification year; and ⅜ of the remainder in the third taxable year after its disqualification year. For this purpose, the remainder of a bank's net section 481(a) adjustment is any portion of the adjustment that the bank does not elect to include in income in its disqualification year.

(3) *Net section 481(1) adjustment.* For purposes of this section, the amount of a bank's net section 481(a) adjustment is the amount of the bank's reserve for bad debts as of the close of the taxable year

immediately preceding its disqualification year. Since the change from the reserve method of section 585 is initiated by the taxpayer, the amount of the bank's bad debt reserve for this purpose is not reduced by amounts attributable to taxable years beginning before 1954.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. Bank M is a large bank within the meaning of § 1.585–5(b). M's disqualification year is its taxable year beginning on January 1, 1989, and M maintained a bad debt reserve under section 585 for the preceding taxable year. Pursuant to § 1.585–5(a), M must change from the reserve method of accounting for bad debts to the specific charge-off method in its disqualification year. M does not elect the cut-off method set forth in § 1.585–7. Thus M must follow the recapture method set forth in this § 1.585–6. M's net section 481(a) adjustment, as defined in § 1.585–6(b)(3), is $2 million. M does not make the election allowed by § 1.585–6(b)(2). Pursuant to § 1.585–6(b)(1), M must include the following amounts in income: $200,000 in taxable year 1989; $400,000 in 1990; $600,000 in 1991; and $800,000 in 1992.

Example 2. Assume the same facts as in Example 1, except that M elects under § 1.585–6(b)(2) to recapture 55 percent of its net section 481(a) adjustment in its disqualification year. Pursuant to § 1.585–6(b)(2), M must include the following amounts in income: $1,100,000 in taxable year 1989; $200,000 in 1990; $300,000 in 1991; and $400,000 in 1992.

(c) *Effect of disposing of loans*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, if a bank to which this section applies sells or otherwise disposes of any of its outstanding loans on or after the first day of its disqualification year, the disposition does not affect the bank's obligation under this section to include in income the amount of its net section 481(a) adjustment, and the disposition does not affect the amount of this adjustment.

(2) *Cessation of banking business.* If a bank to which this section applies ceases to engage in the business of banking before it is otherwise required to include in income the full amount of its net section 481(a) adjustment, the bank must include in income the remaining amount of the adjustment in the taxable year in which it ceases to engage in the business of banking. For this purpose, a bank is not considered to have ceased engaging in the business of banking if the cessation is the result of a transaction to which section 381(a) applies.

(3) *Section 318 transactions.* If a bank to which this section applies transfers outstanding loans to another corporation on or after the first day of the bank's disqualification year (and before it has included in income the full amount of its net section 481(a) adjustment) in a transaction to which section 381(a) applies, the acquiring corporation steps into the shoes of the transferor with respect to using the recapture method prescribed in this § 1.585–6. The unrecaptured balance of the transferor's net section 481(a) adjustment carries over in the transaction to the acquiring corporation, and this corporation must complete the four-year recapture procedure begun by the transferor. In the section 381(a) transaction, the acquiring corporation assumes all of the transferor's rights and obligations under paragraph (b) of this section. However, if an acquiring corporation that is not a large bank (within the meaning of § 1.585–5(b)) establishing a bad debt reserve for loans received in the section 381(a) transaction, the section 481(a) adjustment carried over in the transaction is at least partially offset by a new negative section 481(a) adjustment attributable to the reserve. See § 1.381(c)(4)–1.

(4) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. Bank P is a bank to which this § 1.585–6 applies. P's disqualification year is its taxable year beginning on January 1, 1989, and P recaptures 10 percent of its net section 481(a) adjustment in that year pursuant to § 1.585–6(b)(1). In 1990 P disposes of a portion of its loan portfolio in a transaction to which section 381(a) does not apply, and P continues to engage in the business of banking. Pursuant to § 1.585–6(c)(1), the disposition does not affect P's obligation under § 1.585–6(b)(1) to recapture the remainder of its net section 481(a) adjustment in 1990, 1991 and 1992. Nor does the disposition affect the amount of the adjustment.

Example 2. Assume the same facts as in Example 1, except that P ceases to engage in the business of banking in 1990, and this cessation is not the result of a transaction to which section 381(a) applies. Pursuant to § 1.585–6(c)(2), in 1990 P must include in income the remaining 90 percent of its net section 481(a) adjustment.

Example 3. Assume the same facts as in Example 1, except that P's 1990 disposition of loans is a transaction to which section 381(a) applies. Thus, in the transaction, P transfers substantially all of its loans to an acquiring corporation (Q). Q may be treated as a large bank, pursuant to § 1.585–5(b)(2) or § 1.585–5(b)(3), for taxable years ending after the date of the transaction. If so, and if Q was on the reserve method of accounting immediately before the section 381(a) transaction, it must change to the specific charge-off method for all of its loans. Regardless of whether Q is a large bank, pursuant to § 1.585–6(c)(3) Q steps into P's shoes with respect to using the recapture method prescribed in § 1.585–6. The unrecaptured balance of P's net section 481(a) adjustment carries over to Q in the section 381(a) transaction, and Q must complete the four-year recapture procedure begun by P. However, if Q is not a large bank and Q establishes a bad debt reserve for loans received in the transaction, the section 481(a) adjustment that is carried over is at least partially offset by a new negative section 481(a) adjustment.

(d) *Suspension of recapture by financially troubled banks*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, a bank that is financially troubled (within the meaning of paragraph (d)(3) of this section) for any taxable year shall not include any amount in income under paragraphs (a) and (b) of this section for that taxable year and must disregard that taxable year in applying paragraphs (a) and (b) to other taxable years. See paragraph (d)(4) of this section for rules on determining estimated tax payments of financially troubled banks, and see paragraph (d)(5) for examples illustrating this paragraph (d).

(2) *Election to recapture.* A bank that is financially troubled (within the meaning of paragraph (d)(3) of this section) for its disqualification year may elect to include in income, in one taxable year, any percentage of its net section 481(a) adjustment that is greater than 10 percent. This election may be made for the bank's disqualification year, for the first taxable year after the disqualification year in which the bank is not financially troubled (within the meaning of paragraph (d)(3) of this section), or for any intervening taxable year. Any such election must be made at the time and in the manner prescribed by § 1.585–8. A bank that makes this election shall include an amount in income under paragraphs (a) and (b) of this section in the year for which the election is made ("election year") and shall not disregard this year in applying paragraphs (a) and (b) to other taxable years. Such a bank must follow the rules of paragraph (b)(2) of this section in applying paragraph (b) to later taxable years, treating the election year as the disqualification year for purposes of applying paragraph (b)(2). However, if the bank is financially troubled for any year after its election year, the bank shall not include any amount in income under paragraphs (a) and (b) of this section for the later year and must disregard the later year in applying paragraphs (a) and (b) to other taxable years.

(3) *Definition of financially troubled*—(i) *In general.* For purposes of this section, a bank is considered financially

troubled for any taxable year if the bank's nonperforming loan percentage for that year exceeds 75 percent. For this purpose, a bank's nonperforming loan percentage is the percentage determined by dividing (1) the sum of the outstanding balances of the bank's nonperforming loans (as defined in paragraph (d)(3)(iii) of this section) as of the close of each quarter of the taxable year, by (2) the sum of the amounts of the bank's equity (as defined in paragraph (d)(3)(iv) of this section) as of the close of each such quarter. If a taxable year consists of less than 3 months, the last day of the taxable year is treated as the last day of a quarter. In lieu of determining its nonperforming loan percentage on the basis of loans and equity as of the close of each taxable quarter, a bank may, for all years, determine this percentage on the basis of loans and equity as of the close of each report date (as defined in § 1.585–5(c)(2)). In the case of a bank that is a foreign corporation, all nonperforming loans and equity of the bank are taken into account, including loans and equity that are not effectively connected with the conduct of a banking business within the United States.

(ii) *Parent-subsidiary controlled groups.* If a bank is a mamber of a parent-subsidiary controlled group (as defined in § 1.585–5(d)(2)) for the taxable year, the nonperforming loans and the equity of all members of the group that are financial institutions within the meaning of section 265(b)(5) (or comparable foreign financial institutions) are treated as the nonperforming loans and the equity of the bank for purposes of paragraph (d)(3)(i). However, any asset of a member financial institution that represents an equity interest in another member financial institution is not to be counted. Likewise, any nonperforming loan of a member financial institution that is a loan to another member financial institution is not to be counted.

(iii) *Nonperforming loan.* For purposes of this section, a nonperforming loan is any loan that is considered to be nonperforming by the holder's primary Federal regulatory agency (or, if the holder does not have a Federal regulatory agency, any loan that would be considered nonperforming under the standards prescribed by the Federal Financial Institutions Examination Council).

(iv) *Equity.* For purposes of this section, the equity of a bank or other financial institution is its equity (*i.e.*, assets minus liabilities) as determined by the institution's primary Federal regulatory agency (or, if the institution does not have a Federal regulatory agency, by its primary State regulatory agency). The balance in a reserve for bad debts is not treated as equity.

(4) *Estimated tax payments of financially troubled banks.* If a bank is financially troubled (within the meaning of paragraph (d)(3) of this section) for any quarter of a taxable year, it must be determined, for purposes of applying section 6655(e)(2)(A)(i) with respect to the installment of estimated tax for the quarter (and any later quarter of the taxable year), whether the bank is required to include an amount in income under paragraphs (a) and (b) of this section for the taxable year. This determination is to be made as of the last day prescribed for payment of the installment, based on the portion of the taxable year that precedes and includes that day. That is, the determination is to be made as if the last day prescribed for payment were the last day of the taxable year.

(5) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Bank R is a bank to which this § 1.585–6 applies. R's disqualification year is its taxable year beginning on January 1, 1987. R is not financially troubled (within the meaning of § 1.585–6(d)(3)) for taxable year 1987 or for any taxable year after 1989, but it is financially troubled for taxable years 1988 and 1989. Since R is not financially troubled for its disqualification year, R must include an amount in income under § 1.585–6 (a) and (b) for that year (taxable year 1987). R may make the election allowed by § 1.585–6(b)(2) for that year. Since R is financially troubled for taxable years 1988 and 1989, pursuant to § 1.585–6(d)(1) R does not include any amount in income under § 1.585–6 (a) and (b) for these years, and it treats taxable years 1990, 1991 and 1992 as the first, second and third taxable years after its disqualification year for purposes of applying § 1.585–6 (a) and (b).

Example 2. Assume the same facts as in Example 1, except that R is financially troubled for taxable year 1987 (its disqualification year). R may make the election allowed by § 1.585–6(d)(2) for 1987 (the disqualification year), for 1990 (the first year after the disqualification year in which R is not financially troubled), or for 1988 or 1989 (the intervening years). R elects to include 60 percent of its net section 481(a) adjustment in income in 1987. Thus the remainder of the adjustment, for purposes of applying the rules of § 1.585–6(b)(2), is 40 percent. R must include in income ⅜ of the remainder in 1990, ⅓ of the remainder in 1991, and ⅛ of the remainder in 1992.

§ 1.585–7 Elective cut-off method of changing from the reserve method of section 585.

(a) *General rule.* Any large bank (as defined in § 1.585–5(b)) that maintained a reserve for bad debts under section 585 for the taxable year immediately preceding its disqualification year (as defined in § 1.585–5(d)(1)) may elect to use the cut-off method set forth in this section. Any such election must be made at the time and in the manner prescribed by § 1.585.8. If a bank makes this election, the bank must maintain its bad debt reserve for its pre-disqualification loans, as prescribed in paragraph (b) of this section, and the bank must include in income any excess balance in this reserve, as required by paragraph (c) of this section. The bank may not deduct, for its disqualification year or any subsequent taxable year, any amount allowed under section 166(a) for pre-disqualification loans (as defined in paragraph (b)(2) of this section) that become worthless in whole or in part, except as allowed by paragraph (b)(1) of this section. However, except as provided in paragraph (d)(3) of this section, the bank may deduct, for its disqualification year or any subsequent taxable year, amounts allowed under section 166(a) for loans that the bank originates or acquires on or after the first day of its disqualification year and that become worthless in whole or in part. If a bank makes the election allowed by this paragraph (a), its change to the specific charge-off method of accounting for bad debts in its disqualification year is not a change in accounting method to which the provisions of section 481 apply.

(b) *Maintaining reserve for pre-disqualification loans*—(1) *In general.* A bank that makes the election allowed by paragraph (a) of this section must maintain its bad debt reserve for its pre-disqualification loans (as defined in paragraph (b)(2) of this section). Except as provided in paragraph (d)(3) of this section, the bank must charge against the reserve the amount of any losses resulting from these loans (including losses resulting from the sale or other disposition of these loans), and the bank must add to the reserve the amount of recoveries with respect to these loans. In general, the reserve must be maintained in the manner provided by former section 166(c) of the Internal Revenue Code and the regulations thereunder. However, after the balance in the reserve is reduced to zero, the bank is to account for any losses and recoveries with respect to outstanding pre-disqualification loans under the specific charge-off method of accounting for bad debts, as if the bank always had accounted for these loans under this method. See paragraph (d)(2) of this section for rules on the obligation to maintain a reserve under this paragraph (b) when a bank transfers loans in a section 381 transaction.

(2) *Definition of pre-disqualification loans.* For purposes of this section, a pre-disqualification loan of a bank is any loan that the bank held on the last day of its taxable year immediately preceding its disqualification year (as defined in § 1.585–5(d)(1)).

(c) *Amount to be included in income when reserve balance exceeds loan balance.* If, as of the close of any taxable year, the balance in a bank's reserve that is maintained under paragraph (b) of this section exceeds the balance of the bank's outstanding pre-disqualification loans, the bank must include in income the amount of the excess for the taxable year. The balance in the reserve is then reduced by the amount of this excess. See paragraph (d) of this section for rules on the application of this paragraph (c) when a bank disposes of loans.

(d) *Effect of disposing of loans*—(1) *In general.* Except as provided in paragraphs (d)(2) and (d)(3) of this section, if a bank that makes the election allowed by paragraph (a) of this section sells or otherwise disposes of any of its outstanding pre-disqualification loans, the bank is to reduce the balance of its outstanding pre-disqualification loans by the amount of the loans disposed of, for purposes of applying paragraph (c) of this section.

(2) *Section 381 transactions.* If a bank that makes the election allowed by paragraph (a) of this section transfers outstanding pre-disqualification loans to another corporation in a transaction to which section 381(a) applies, the acquiring corporation steps into the shoes of the transferor with respect to using the cut-off method of change, unless the acquiring corporation is not a large bank (within the meaning of § 1.585–5(b)) and uses a reserve method of accounting for bad debts attributable to the pre-disqualification loans received in the transaction. If an acquiring corporation steps into the transferor's shoes with respect to using the cut-off method, the transferor's bad debt reserve immediately before the section 381(a) transaction carries over to the acquiring corporation, and this corporation must complete the cut-off method begun by the transferor. For purposes of completing the transferor's cut-off method, the acquiring corporations' balance of outstanding pre-disqualification loans immediately after the section 381(a) transaction is the balance of these loans that it receives in the transaction, and the acquiring corporation assumes all of the transferor's rights and obligations under this section. See § 1.381(c)(4)–1.

(3) *Dispositions intended to change the status of pre-disqualification loans.* This paragraph (d)(3) applies if a bank that makes the election allowed by paragraph (a) of this section sells, exchanges, or otherwise disposes of a significant amount of its pre-disqualification loans (as defined in paragraph (b)(2) of this section) and the transaction has as one of its principal purposes the avoidance of the provisions of this section by increasing the amount of loans for which deductions are allowable under the specific charge-off method. If this paragraph (d)(3) applies, the District Director may disregard the disposition for purposes of paragraphs (b)(1) and (d)(1) of this section or treat the replacement loans as pre-disqualification loans. If loans are so treated as pre-disqualification loans, no deductions are allowable under the specific charge-off method for the loans, except as provided in paragraph (b)(1) of this section, and the disposition that causes the loans to be so treated may be disregarded for purposes of paragraphs (b)(1) and (d)(1) of this section. For purposes of paragraph (d)(3) if a bank sells pre-disqualification loans and uses the proceeds of the sale to originate new loans, this paragraph (d)(3) does not apply to the transaction.

(e) *Examples.* The following examples illustrate the principles of this section:

Example 1. Bank M is a bank that properly elects to use the cut-off method set forth in this § 1.585–7. M's disqualification year is its taxable year beginning on January 1, 1987. On December 31, 1986, M had outstanding loans of $700 million (pre-disqualification loans), and the balance in its bad debt reserve was $10 million. M must maintain its reserve for its pre-disqualification loans in accordance with § 1.585–7(b), and it may not deduct any addition to this reserve for taxable year 1987 or any later year. For these years, M may deduct amounts allowed under section 166(a) for loans that it originates or acquires after December 31, 1986, and that become worthless in whole or in part.

Example 2. Assume the same facts as in Example 1. Also assume that in 1987 M collects $150 million of its pre-disqualification loans, M determines that $2 million of its pre-disqualification loans are worthless, and M recovers $1 million of pre-disqualification loans that it had previously charged against the reserve as worthless. On December 31, 1987, the balance in M's bad debt reserve is $9 million ($10 million − $2 million + $1 million), and the balance of its outstanding pre-disqualification loans is $548 million ($700 million − $150 million − $2 million).

Example 3. Assume the same facts as in Examples 1 and 2. Also assume that on December 31, 1990, the balance in M's bad debt reserve is $5 million and the balance of its outstanding pre-disqualification loans is $25 million. In 1991 M collects $21 million of its outstanding pre-disqualification loans and determines that $1million of its outstanding pre-disqualification loans are worthless. Thus, on December 31, 1991, the balance in M's bad debt reserve is $4 million ($5 million − $1 million), and the balance of its outstanding pre-disqualification loans is $3 million ($25 million − $21 million − $1 million). Accordingly, M must include $1 million ($4 million − $3 million) in income in taxable year 1991, pursuant to § 1.585–7(c). On January 1, 1992, the balance in M's reserve is $3 million ($ million − $1 million).

Example 4. Assume the same facts as in Examples 1 through 3. Also assume that in 1992 M transfers substantially all of its assets to another corporation (N) in a transaction to which section 381(a) applies, and N is treated as a large bank under § 1.585–5(b)(3) for taxable years ending after the date of the transaction. Pursuant to § 1.585–7(d)(2), N step into M's shoes with respect to using the cut-off method. M's bad debt reserve immediately before the section 381(a) transaction carries over to N, and N must complete the cut-off procedure begun by M. For this purpose, N's balance of outstanding pre-disqualification loans immediately after the section 381(a) transaction is the balance of these loan that it receives from M.

§ 1.585–8 Rules for making and revoking elections under §§ 1.585–6 and 1.585–7.

(a) *Time of making elections*—(1) *In general.* Any election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) must be on or before the later of—

(i) [*Insert date that is 60 days after this regulation is published as a final regulation in the* **Federal Register**], or

(ii) The due date (taking extensions into account) of the electing bank's original tax return for its disqualification year (as defined in § 1.585–5(d)(1)) or, for elections under § 1.585–6(d)(2), the year for which the election is made.

(2) *No extension of time for payment.* Payments of tax due must be made in accordance with Chapter 62 of the Internal Revenue Code. However, if an election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) is made or revoked on or before [*Insert date that is 60 days after this regulation is published as a final regulation in the* **Federal Register**] and the making or revoking of the election results in an underpayment of estimated tax (within the meaning of section 6655(a)) with respect to an installment of estimated tax due on or before the date the election was so made or revoked, no addition to tax will be imposed under section 6655(a) with respect to the amount of the underpayment attributable to the making or revoking of the election.

(b) *Manner of making elections*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, an electing bank must make any election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) by attaching a statement to its tax return (or amended return) for its

disqualification year or, for elections under § 1.585–6(d)(2), the year for which the election is made. This statement must contain the following information:

(i) The name, address and taxpayer identification number of the electing bank;

(ii) The nature of the election being made (*i.e.*, whether the election is to include in income more than 10 percent of the bank's net section 481(a) adjustment under § 1.585–6 (b)(2) or (d)(2) or to use the cut-off method under § 1.585–7); and

(iii) If the election is under § 1.585–6 (b)(2) or (d)(2), the percentage being elected.

(2) *Certain tax returns filed before [Insert date that this regulation is published as a final regulation in the* **Federal Register***].* **A bank is deemed to** have made an election under § 1.585–6 (b)(2) or (d)(2) if the bank evidences its intent to make an election under section 585(c)(3)(A)(iii)(I) or section 585(c)(3)(B)(ii) for its disqualification year (or, for elections under § 1.585–6(d)(2), the election year), by designating a specific recapture amount on its tax return or amended return for this year (or attaching a statement in accordance with § 5h.5(a)(3)(i)), and this return is filed before [*Insert date that this regulation is published as a final regulation in the* **Federal Register**]. A bank is deemed to have made an election under § 1.585–7(a) if the bank evidences its intent to make an election under section 585(c)(4) for its disqualification year by attaching a statement in accordance with § 5h.5(a)(3)(i) to its tax return or amended return for this year, and this return is filed before [*Insert date that this regulation is published as a final regulation in the* **Federal Register**].

(c) *Revocation of elections*—(1) *On or before final date for making election.* An election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) may be revoked without the consent of the Commissioner on or before the final date prescribed by paragraph (a)(1) of this section for making the election. To do so, the bank that made the election must file an amended tax return for its disqualification year (or, for elections under § 1.585–6(d)(2), the year for which the election was made) and attach a statement that—

(i) Includes the bank's name, address and taxpayer identification number;

(ii) Identifies and withdraws the previous election; and

(iii) If the bank is making a new election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a), contains the information described in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

(2) *After final date for making election.* An election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) may be revoked only with the consent of the Commissioner after the final date prescribed by paragraph (a)(1) of this section for making the election. The Commissioner will grant this consent only in extraordinary circumstances, such as circumstances that would justify granting an extension of time under § 1.9100–1 for making an election. See Revenue Procedure 79–63, 1979–2 C.B. 578, for factors considered in applying § 1.9100–1.

(d) *Elections by banks that are members of parent-subsidiary controlled groups.* In the case of a bank that is a member of a parent-subsidiary controlled group (as defined in § 1.585–5(d)(2)), any election under § 1.585–6(b)(2), § 1.585–6(d)(2) or § 1.585–7(a) with respect to the bank is to be made separately by the bank. An election made by one member of such a group is not binding on any other member of the group.

PART 5h—[AMENDED]

Paragraph 6. The authority for Part 5h is amended by removing the following citations: "585(c)(3)(A)(iii)(I), 585(c)(4),".

§ 5h.5 [Amended]

Par. 7. Section 5h.5 is amended as follows:

1. The table in paragraph (a)(1) is amended by removing each line, from each column, that relates to section 901(a) of the Act and to section 585(c)(3)(A)(iii)(I) or 585(c)(4) of the Code.

2. Paragraph (a)(4)(ii) is amended by removing "901(a) (Code sections 585(c)(3)(B)(ii) and 585(c)(4)),".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–29011 Filed 12–11–90; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–598, RM–7506]

Radio Broadcasting Services; Mountain Home, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Mountain Home Radio Station, licensee of Station DPFM(FM), Mountain Home Arkansas, seeking the substitution of Channel 288C2 for Channel 288A and modification of its license accordingly. Coordinates for this proposal are 36–20–55 and 92–24–01.

DATES: Comments must be filed on or before January 28, 1991; and reply comments on or before February 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lawrence J. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100—17th Street, NW., Suite 900, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–598, adopted November 15, 190 and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (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* contact.

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.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29123 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-592, RM-7074]

Radio Broadcasting Services; Oak Grove and Bastrop, LA

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: The Communication requests comments on a petition by 96.7 FM Radio, Inc., licensee of Station KWCL(FM), Oak Grove, Louisiana, requesting substitution of Channel 244C2 for Channel 244C3 at Oak Grove and the modification of its license to specify operation on the higher channel. In order to accommodate this request, petitioner also requests that Channel 248A be substituted for proposed Channel 247A at Bastrop, Louisiana. The coordinates for Channel 244C2 at Oak Grove are 32–41–25 and 91–36–41, with a site restriction of 28.4 kilometers (17.6 miles), at petitioner's request site. The coordinates for Channel 248A at Bastrop are 32–46–48 and 91–54–48.

DATES: Comments must be filed on or before January 28, 1991 and reply comments on or before February 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve petitioner's counsel, as follows: Denise B. Moline, Esq., McCabe & Allen, P.O. Box 2126, Manassas Park, Virginia 22111.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–592, adopted October 31, 1990 and released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (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 this 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.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29006 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–594, RM–7250]

Radio Broadcasting Services; Oakdale, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Oakdale Limited Partnership, licensee of Station KICR–FM, Oakdale, Louisiana, seeking the substitution of Channel 254C1 for Channel 254C2 and modification of its license accordingly. Coordinates for this proposal are 30–57–47 and 92–35–02.

DATES: Comments must be filed on or before January 28, 1991 and reply comments on or before February 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bruce A. Eisen, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901—15th Street, NW., suite 1100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–594, adopted November 8, 1990, and released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (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* contact.

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.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29008 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–593, RM–7538]

Radio Broadcasting Services; Boyne City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Biederman Investments, Inc., proposing the substitution of Channel 228C2 for Channel 228A at Boyne City, Michigan, and modification of the license for Station WCLX(FM) to specify the higher class channel. Canadian concurrence will be requested for this allotment at coordinates 45–10–44 and 85–05–42.

DATES: Comments must be filed on or before January 28, 1991, and reply comments on or before February 12, 1991.

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: Dennis J. Kelly, Cordon and Kelly, Second Floor, 1920 N Street, NW., Washington, DC 20036, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–593, adopted November 8, 1990, and

released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commision's copy contractors, International Transcription Service, (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.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29007 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–595, RM–7539]

Radio Broadcasting Services; North East, Pennsylvania, and Olean, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Rambaldo Communications, Inc., seeking the substitution of Channel 265B1 for Channel 265A at North East, Pennsylvania, and the modification of the license of Station WRKT–FM to specify operation on the higher power channel. To accommodate the allotment at North East, Rambaldo Communications also requests the substitution of Channel 268A for Channel 265A at Olean, New York, and the modification of Station WMXO's license to specify the alternate Class A channel. Channel 265B1 can be allotted to North East in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 2.9 kilometers (1.8 miles) east to avoid a short-spacing to Stations WZPR, Channel 262B, Meadville, Pennsylvania, and WHOT–FM, Channel 266B, Youngstown, Ohio. The coordinates for Channel 265B1 at North East are North Latitude 42–12–30 and West Longitude 79–48–00. Channel 268A can be allotted to Olean in compliance with the Commission's minimum distance separation requirements and can be used at Station WMXO's licensed transmitter site. The coordinates for Channel 268A at Olean are North Lattitude 42–06–24 and West Longitude 78–23–28. Canadian concurrence is required since North East and Olean are each located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 28, 1991, and reply comments on or before February 12, 1991.

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: Joel Bernstein, Esq., Fletcher, Herald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036–2679 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–595, adopted November 16, 1990, and released December 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (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.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29009 Filed 12–11–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–597, RM–7357]

Radio Broadcasting Services; Ingram, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Richman Phipps requesting the allotment of Channel 296A to Ingram, Texas, as that community's first local broadcast service. Since Ingram is located with 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been requested. The coordinates for Channel 296A are 30–05–10 and 99–15–27.

DATES: Comments must be filed on or before January 28, 1991, and reply comments on or before February 12, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richman Phipps, 836C Sidney Baker, Kerrville, Texas 78028 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–597, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (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.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-29124 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-1-M

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47 CFR Part 73

[MM Docket No. 90-596, RM-7454]

Radio Broadcasting Services; Dayton, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Peanut Whistle Broadcasting ("petitioner"), permittee of Station KZHR(FM), Channel 223A, Dayton, Washington, seeking the substitution of Channel 223C1 for 223A at Dayton, Washington, and modification of its construction permit to specify operation on the higher class channel. The coordinates for the proposed allotment are 46-19-14 and 117-58-46. Since Dayton is located with 320 kilometers (200 miles) of the Canadian border, we have requested the concurrence of the Canadian government in this allotment.

DATES: Comments must be filed on or before January 28, 1991 and reply comments on or before February 12, 1991.

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: Jeffrey D. Southmayd, Esq., Southmayd, Simpson & Miller, P.C., 1233 20th Street, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-596, adopted November 15, 1990, and released December 7, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (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 permissable *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.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-29125 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

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.

ACTION

Foster Grandparent Program and Senior Companion Program, Income Eligibility Levels

AGENCY: ACTION.

ACTION: SSI-adjusted income eligibility levels for the Foster Grandparent and Senior Companion Program.

SUMMARY: This Notice adjusts the 1990 income eligibility levels for the Foster Grandparent and Senior Companion Programs published in the **Federal Register**, March 20, 1990 (55 FR 54).

This adjustment is based on the 1990 state supplementations to Supplemental Security Income (SSI) disseminated by the Social Security Administration in June 1990. The revised income eligibility level for each state adopts the higher amount of either: (a) 125% of the Department of Health and Human Services (DHHS) Poverty Income Guidelines, or (b) 100% of the DHHS Guidelines plus the current amount of each state supplementation to SSI. Amounts are rounded to the next highest multiple of $5.00.

Persons whose income met the eligibility levels published on March 20, 1990, shall remain eligible under the conditions provided in current policy. The adjusted eligibility levels in this Notice shall apply to persons enrolling in the Programs on or after the effective date.

Schedules of Income Eligibility Level: Foster Grandparent Program and Senior Companion Program.

FOR THE FOLLOWING SSI-ADJUSTED STATES

State	One	Two	Three	Four	Five	Six	Seven	Eight
AK	$11,815	$16,330	$19,010	$21,690	$24,370	$27,050	$29,730	$32,410
CA	10,025	17,110	19,250	21,390	23,530	25,670	27,810	29,950
CO	7,850	12,130	14,270	16,410	18,550	21,225	23,900	26,575
CT	10,675	14,720	16,860	19,000	21,140	23,280	25,420	27,560
MA	7,850	10,840	13,200	15,875	18,550	21,225	23,900	26,575

(For household units with more than eight members, add $2,680 in Alaska, add $2,140 in California and Connecticut, and add $2,675 in Colorado and Massachusetts for each additional member.)

The following income eligibility levels reflecting 125% of the DHHS Poverty Income Guidelines were published in the March 20, 1990 **Federal Register** and remain in effect. The levels apply to all states, the District of Columbia, Puerto Rico, and the Virgin Islands (except Alaska, California, Colorado, Connecticut, and Massachusetts.

HOUSEHOLD UNITS OF

States	One	Two	Three
All	$7,850	$10,525	$13,200
Hawaii	9,040	12,115	15,190

(For household units with more than three members, add $2,675 in "All" states and $3,075 in Hawaii for each additional member.)

EFFECTIVE DATES: December 12, 1990.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program 1100 Vermont Avenue, NW., Suite 6100—Washington, DC 20525 or telephone (202) 634–9349.

SUPPLEMENTARY INFORMATION: ACTION programs are authorized pursuant to section 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended Public Law 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guidelines published by DHHS pursuant to sections 652 and 673 (2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty income guidelines to be adjusted for Consumer Price Index changes.

Signed in Washington, DC on December 4, 1990.

Jane A. Kenny,

Director.

[FR Doc. 90–29090 Filed 12–11–90; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Housing Preservation Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which require the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide public agencies, private nonprofit organizations, and other eligible entities notice of these dates.

DATES: FmHA hereby announces that it will begin receiving preapplications on December 17, 1990. The closing date for acceptance by FmHA of preapplications is March 18, 1991. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before the closing date.

ADDRESSES: Submit preapplications to FmHA field offices; applicants must contact their State FmHA Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris, Senior Loan Officer, Multi-family Housing Processing

Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1660 (this is not a toll free number.)

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entites.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.443–Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V; 49 FR 29112, June 24, 1983). Applicants are also referred to 7 CFR part 1944, §§ 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the Housing Preservation Grant program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although, based on FY 1989 and FY 1990 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for 1 year proposal. For FY 1991, $23,000,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, Methodology and Formulas for Allocation of Loan and Grant Funds.

Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: December 5, 1990.

Leigh Nalley,

Acting Administrator, Farmers Home Administration.

[FR Doc. 90–29024 Filed 12–11–90; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Environmental Impact Statement and Land and Resource Management Plan; Six Rivers National Forest; Del Norte, Humboldt, Siskiyou, and Trinity Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to revise a Draft Environmental Impact Statement.

SUMMARY: The Six Rivers National Forest is withdrawing its existing Draft Environmental Impact Statement (EIS) and Land and Resource Management Plan (LRMP) and will reissue a new draft EIS and LRMP. This action is the result of three major changes affecting the Forest: (1) The June 22, 1990 listing of the northern spotted owl as threatened by the U.S. Fish and Wildlife Service; (2) The Secretary's announcement published in the Oct. 3, 1990 **Federal Register** of the decision to vacate the Spotted Owl Habitat Area (SOHA) network requirement and require that the Forest not be inconsistent with the Interagency Scientific Committee (ISC) recommendations; and (3) The Nov. 16, 1990 Presidental signature on legislation creating the Smith River National Recreation Area with the Six Rivers National Forest. The agency invites written comments and suggestions on the scope of the analysis in addition to that already received as a result of previous public participation activities.

DATES: Comments concerning the scope of the analysis must be received on or before January 11, 1991.

ADDRESSES: Send written comments and suggestions concerning the scope of the analysis to Forest Supervisor, Six Rivers National Forest, 500 5th Street, Eureka, California 95501.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Gail Grifantini, Forest Planner, phone (707) 442–1721.

SUPPLEMENTARY INFORMATION: An Environmental Impact Statement (EIS) and Land and Resource Management Plan (LRMP) are required by section 6. of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600–1614). The Draft EIS will identify and present a range alternatives for management of the Six Rivers National Forest for the next ten years, including: a "no action" alternative and one alternative which will display a program reflective of the 1990 RPA program. Other alternatives will be designed to reflect different management issues from public scoping. The LRMP will present the preferred alternative for management of the Six Rivers, including specific management direction and standards and guidelines. The Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

Public participation will be expecially imporant at several points during the analysis. The first point is during the scoping process (40 CRF 1501.7). As discussed above, public comment will be used to develop alternatives for the Draft EIS. The scoping process will include:

1. Identifying potential issues in addition to those (listed below) developed in the previous DEIS:

a. Timber Harvest Levels.
b. Management of Blue Creek.
c. Fisheries Habitat Improvement Needs.
d. Use of Herbicides.
e. Native American Cultural Activities.
f. Recreation Uses.
g. Relationship of Activities on Private Land.
h. Soil Productivity.
i. Water Quality.
j. Wildlife.
k. Smith River Watershed.

2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues.
4. Identifying potential environmental effects of the plan and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December, 1991. At the time, EPA will publish a notice of availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register.** Public comment on the Draft EIS will be used if necessary to make changes in a Final EIS.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022(9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and

objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Comments will be analyzed and considered by the Forest Service in preparing the Final Environmental Impact Statement and Land and Resource Management Plan. The Final EIS is scheduled to be completed by September 1992. In the Final EIS the Forest Service is required to respond to the comments, responses, environmental consequences discussed in the DEIS and Plan, and applicable laws, regulation, and policies in making a decision regarding this Plan. The responsible official will document the decision and reasons for the decision; in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Dated: November 30, 1990.

James L. Davis, Jr.,

Forest Supervisor.

[FR Doc. 90-29085 Filed 12-11-90; 8:45 am]

BILLING CODE 3410-11-M

Grand Targhee Resort Master Development Plan, Targhee National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Targhee National Forest will prepare an environmental impact statement which will analyze a proposal by Grand Targhee Ski Resort for a new Master Development Plan. The concept plan proposes further development of the existing resort to a four-season ski resort facility of a regional-destination scale of development. The resort's proposed Master Plan concept outlines significant additional development of resort facilities within the existing permit area. A slight increase in the permit area is also proposed to allow development of private, residential lots on land which would be acquired by land exchange.

DATE: Comments concerning the scope of the analysis should be received in writing by February 15, 1991.

ADDRESSES: Send written comments to: James L. Caswell, Forest Supervisor; Targhee National Forest; PO Box 208; St. Anthony, Idaho, 83445.

FOR FURTHER INFORMATION CONTACT: Lynn Ballard, Project Coordinator; Teton Basin Ranger District; PO Box 777; Driggs, Idaho, 83422; (208-354-2431).

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement will analyze a proposal by Grand Targhee Resort, Inc. for a new, conceptual Master Development Plan to replace the current plan which was approved in 1973. The conceptual Development Plan recently submitted by Grand Targhee describes proposed, additional development of the existing facilities to create a regional-destination, four-season ski resort. The concept Plan would allow development of a total of eight ski lifts; parking; and convention and support/lodging facilities for 6,490 skiers-at-one-time (SAOT). The present capacity of the resort is approximately 2,000 SAOT. The Master Plan proposal recommends phased development (4 additional phases) within the financial capability of the resort over the next 5-10 year period, or possibly longer.

The analysis will address the scope of development (size in permitted area, facilities, and number of SAOT) and required permit terms and tenure. The analysis would also address a variety of issues and alternative development concepts which would include the potential of land exchange for portions of the existing base area lands for the resort. An alternative which reflects the present operation will also be considered.

Public meetings will be held throughout the analysis, with initial public scoping meetings to be held in Jackson, Wyoming; Driggs, Idaho; and Idaho Falls, Idaho in January, 1991. A public scoping statement will be released in mid-December, 1990. The scoping statement will provide information on preliminary issues and alternatives identified.

A proposed schedule of approximate dates of public meetings and key steps in the analysis process will be made available with the initial public scoping statement. Several public meetings will also be conducted throughout the analysis process. Federal, State, and local officials will be asked to participate in a joint review process for the analysis. Copies of the Executive Summary of the concept Master Plan and the entire proposed Master Development Plan will also be made available at the beginning of public scoping.

The responsible federal agency is the Forest Service, USDA. The responsible official is James L. Caswell, Forest Supervisor; Targhee National Forest. Comments on this proposed action and analysis are encouraged and should be submitted to James Caswell, Forest Supervisor at the address previously stated. To be considered, comments must be received by February 15, 1991.

The estimated publication date for the Draft Environmental Impact Statement is October 1, 1991 and the estimated completion and publication date for the Final Environmental Impact Statement is May 1, 1992.

The comment period on the draft environmental impact statement will be 60 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period (on the DEIS) so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: December 5, 1990.

Robert G. Williams,

Acting Forest Supervisor.

[FR Doc. 90-29088 Filed 12-11-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Tomhannock Reservoir Watershed, NY

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tomhannock Reservoir Watershed, Rensselear County, New York.

FOR FURTHER INFORMATION CONTACT: Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, room 771, Syracuse, New York 13260, telephone (315) 423-5521.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The project concerns a plan for accelerated conservation treatment of farmland in the Tomhannock Reservoir Lake Watershed. Conservation practices will be implemented on an estimated 4,000 acres of farmland and 27 livestock barnyards. The planned practices include crop residue management, contour stripcropping, intensive rotational grazing systems, diversions, waterways, and waste management systems that address manure management, barnyard water management, and milking center waste management.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until January 11, 1991.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Dated: December 3, 1990.

Paul A. Dodd,

State Conservationist.

[FR Doc. 90-29013 Filed 12-11-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than December 31, 1990, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping Duty Proceedings	Period
BRAZIL: Certain Carbon Steel Butt-Weld Pipe (A-351-602)	12/01/89-11/30/90
CANADA: Elemental Sulphur (A-122-047)	12/01/89-11/30/90
HONG KONG: Photo Albums and Filler Pages (A-582-501)	12/01/89-11/30/90
ITALY: Clear Sheet Glass (A-475-025)	12/01/89-11/30/90
JAPAN: Certain Small Business Telephone Systems and Subassemblies Thereof (A-588-809)	08/03/89-11/30/90
JAPAN: Cellular Mobile Telephones and Subassemblies (A-588-405)	12/01/89-11/30/90
JAPAN: Certain Electric Motors of 150-500 HP (A-588-091)	12/01/89-11/30/90
JAPAN: Drafting Machines and Parts Thereof (A-588-811)	08/25/89-11/30/90
JAPAN: Polychloroprene Rubber (A-588-046)	12/01/89-11/30/90
JAPAN: Steel Wire Strand for Prestressed Concrete (A-588-068)	12/01/89-11/30/90
JAPAN: Tuners (of the type used in consumer electronic products) (A-488-014)	12/01/89-11/30/90
MEXICO: Porcelain-On-Steel Cooking Ware (A-201-504)	12/01/89-11/30/90
NETHERLANDS: Animal Glue and Inedible Gelatin (A-421-060)	12/01/89-11/30/90
NEW ZEALAND: Low-Fuming Brazing Copper Rod and Wire (A-614-502)	12/01/89-11/30/90
SWEDEN: Animal Glue and Inedible Gelatin (A-401-061)	12/01/89-11/30/90
SWEDEN: Certain Carton-Closing Staples and Staple Machines (A-401-004)	12/01/89-11/30/90
SWEDEN: Seamless Stainless Steel Hollow Products (A-401-603)	12/01/89-11/30/90
TAIWAN: Certain Small Business Telephone Systems and Subassemblies Thereof (A-583-806)	07/26/89-11/30/90
TAIWAN: Certain Carbon Steel Butt-Weld Pipe Fittings (A-583-605)	12/01/89-11/30/90
TAIWAN: Porcelain-On-Steel Cooking Ware (A-583-508)	12/01/89-11/30/90
THE PEOPLE'S REPUBLIC OF CHINA: Porcelain-On-Steel Cooking Ware (A-570-506)	12/01/89-11/30/90
THE REPUBLIC OF KOREA: Photo Albums and Filler Pages (A-580-501)	12/01/89-11/30/90
VENEZUELA: Aluminum Sulfate (A-307-801)	08/14/89-11/30/90
WEST GERMANY: Animal Glue and Inedible Gelatin (A-428-062)	12/01/89-11/30/90
YUGOSLAVIA: Animal Glue and Inedible Gelatin (A-479-063)	12/01/89-11/30/90

Countervailing Duty Proceeding	Period
MEXICO: Litharage and Red Lead (C-201-005)	01/01/89-12/31/89
MEXICO: Porcelain-On-Steel Cooking Ware (C-201-505)	01/01/90-12/31/90
VENEZUELA: Aluminum Sulfate (C-307-802)	10/25/89-12/31/89

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with § 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by December 31, 1990.

If the Department does not receive by December 31, 1990 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: December 6, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-29119 Filed 12-11-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-805]

Preliminary Determination of Sales at Less Than Fair Value: Sodium Thiosulfate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of sodium thiosulfate from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We have notified the International Trade Commission (ITC) of our determination and have directed the Customs Service to suspend liquidation of all entries of sodium thiosulfate from the PRC, as described in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is February 18, 1991. However, we may expedite this determination.

EFFECTIVE DATE: December 12, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Shawn Thompson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-8830 or (202) 377-1776, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of sodium thiosulfate from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is February 18, 1991. However, we may expedite this determination.

Case History

We initiated this investigation under the name "Certain Sulfur Chemicals from the People's Republic of China" (55 FR 32116 August 7, 1990). At that time, we also initiated investigations on imports of the same product from the Federal Republic of Germany, the United Kingdom, and Turkey. The scope of investigation, defined in the notices of initiation, included both sodium thiosulfate and sodium metabisulfite.

On August 29, 1990, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from the Federal Republic of Germany, the United Kingdom and the PRC of sodium thiosulfate that are alleged to be sold in the United States at less than fair value (55 FR 35373). The ITC also determined that there is no reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Turkey of sodium thiosulfate that are alleged to be sold in the United States at less than fair value. In addition, the ITC determined that there is no reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from the Federal Republic of Germany, the United Kingdom, Turkey, and the PRC of sodium metabisulfite that are alleged to be sold in the United States at less than fair value.

As a result, the investigations of sodium metabisulfite from the Federal Republic of Germany, the United Kingdom, Turkey, and the PRC, and the investigation of sodium thiosulfate from Turkey were terminated, and the remaining investigations were renamed "Sodium Thiosulfate from the Federal Republic of Germany, the United Kingdom, and the People's Republic of China."

On September 7, 1990, the Department's questionnaire was presented to the Embassy of the PRC (the Embassy). The Embassy stated that it forwarded this questionnaire to the China Chamber of Commerce of Metals, Minerals, and Chemicals Importers and Exporters, the trade association representing the exporters of the subject merchandise.

Because no response had been received to section A of the questionnaire by the September 21, 1990, deadline, a meeting was held with Embassy officials on September 27, 1990, at which the Department requested that the Embassy contact the trade association in the PRC again to see if (1) The respondent had been identified and (2) a response would be submitted.

On October 5, 1990, the Department sent a letter to the Embassy reminding it that the deadline for submission of a response to sections C and D of the questionnaire was October 9, 1990, and affording the Embassy an opportunity to request an extension of that deadline. No extension was requested.

On October 17, 1990, the Department faxed a letter to the trade association identified by the Embassy asking if a response to the questionnaire would be submitted. The Department informed the association that if no reply was received by October 22, 1990, the Department would assume that no response would be forthcoming.

On October 27, 1990, the trade association, rather than filing a response to our questionnaire of behalf of its members, submitted only limited information concerning volume and value of sodium thiosulfate exports from the PRC for the years 1987 through 1989. The trade association gave no indication at that time that it had not received the Department's questionnaire. Therefore, on November 2, 1990, the Department faxed a letter to the trade association

asking whether a response to the Department's questionnaire would be submitted. The letter indicated that if no reply was received by November 6, 1990, the Department would assume that a response would not be forthcoming.

On November 3, 1990, the trade association informed the Department that it had not received the copy of the questionnaire provided to the Embassy and requested an additional copy. The trade association also requested an additional unspecified amount of time in which to submit its response.

On November 8, 1990, the Department denied the trade association's request for additional time to respond to the questionnaire. (See the "Best Information Available" section of this notice for further discussion.)

Scope of Investigation

The products covered by this investigation are all grades of sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial waste water. The chemical composition of sodium thisosulfate is $Na_2S_2O_3$. Sodium thiosulfate is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 2832.30.1000. The HTS subheading is provided for convenience and customs purposes. The written description remains dispositive.

Period of Investigation

The period of investigation is February 1, 1990, through July 31, 1990.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for sales of the subject merchandise in this investigation. In deciding whether to use best information available, section 776(c) provides that the Department may take into account whether the respondent is able to produce information requested in a timely manner and in the form required. In this case, exporters of sodium thiosulfate from the PRC have not done so.

During the course of this investigation, the Department encountered serious problems in obtaining the price and production data needed for its analysis. These problems were due to the fact that neither the Department nor the PRC Embassy in Washington, DC, was able to identify the universe of potential respondents in the PRC. However, the PRC Embassy in Washington did inform the Department that it had transmitted the questionnaire to the trade association representing the exporters of the subject merchandise. No response was received by the deadlines specified in the questionnaire, not was an extension of time requested until almost a month after the deadline had passed for the submission of a complete response.

The only information received in the context of this investigation was information from the trade association consisting of limited aggregate data on exports to the United States and total exports to all markets for the years 1987 through 1989. Although the trade association finally indicated on November 3, 1990, that it would respond to the questionnaire, it stated that it would need additional time to do so because it had not received the questionnaire.

On November 8, 1990, the Department denied the trade association's request for additional time. Due to the fact that the statutory deadline for the preliminary determination in this case is December 17, 1990, allowing the trade association additional time to submit a complete response would not have given the Department sufficient time to analyze the response, identify deficiencies, and collect the surrogate data necessary to value the factors of production before the preliminary determination.

In addition, we do not consider the trade association's claim that it did not receive the questionnaire to be adequate justification for extending the deadline for submission of a response. As we stated in our letter dated November 8, 1990, we consider the date that the questionnaire was presented to the Embassy to be the official date of receipt. Given the difficulty that we experienced in identifying potential respondents, and given the Embassy's statement that it forwarded the questionnaire to the appropriate trade association, in this case we hold the Embassy responsible for the transmission of the questionnaire to the proper producers/exporters of sodium thiosulfate.

Moreover, we have no assurance that a response from the trade association could represent a complete response to the questionnaire.

Consequently, we are basing our preliminary determination in this investigation on best information available. As best information available, we used the only margin listed in the petition for sodium thiosulfate for the period of investigation.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from the PRC. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class of kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Because no responses were received in this investigation, we have relied upon best information available for determining whether there have been massive imports of sodium thiosulfate. As best information available, we used the Commerce Department's import statistics for sodium thiosulfate from the PRC for each month in the second and third quarters of 1990.

Pursuant to § 353.16(g) of the Department's regulations, in making critical circumstances determinations the Department normally considers the period beginning on the date the proceeding begins and ending at least three months later. The Department considers this period because it is the period immediately prior to a preliminary determination in which exporters of the subject merchandise could take advantage of their knowledge of the dumping investigation to increase exports to the United States without being subject to antidumping duties. (See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 FR 12552, April 15, 1988.) For purposes of this preliminary determination, however, we are using as our comparison period the two months following the month of the filing of the petition (i.e., August and September 1990) because: (1) We recognize that, due to the lag between export and import, the import statistics for July reflect exports made prior to the date on which the proceeding began (i.e., July 9, 1990) and (2) we only have available two months of import data.

Assuming that additional data becomes available by the time of our final determination, we will reexamine our analysis using a three-month comparison period.

Based on our analysis of the available monthly Commerce Department import statistics, we have preliminarily found that there is no reasonable basis to believe or suspect that imports of sodium thiosulfate have been massive over a relatively short period of time. Although the Commerce Department statistics show an aggregate increase in the volume and value of imports during August and September when compared to the volume and value of imports in the preceding period of equal duration (i.e., June and July), this increase is wholly attributable to a drop in imports in July. An examination of the August/September statistics in the context of the import statistics for the second and third quarters of 1990 shows that the level of imports remained constant throughout the period, with the exception of the decrease of imports in July. Therefore, we find that the requirements of section 733(e)(1)(B) have not been met with respect to sodium thiosulfate from the PRC.

Since we do not find that there have been massive imports of sodium thiosulfate from the PRC, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of sodium thiosulfate from the PRC.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of sodium thiosulfate from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to 25.57 percent (the estimated preliminary dumping margin) on all entries of sodium thiosulfate from the PRC. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 4, 1991, and rebuttal briefs no later than January 9, 1991. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10 a.m. on January 11, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: December 5, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-29118 Filed 12-11-90; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 90-00014]

Export Trade Certificate of Review; American Textile Export Co., Inc.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 90-00014.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to American Textile Export Company, Inc. ("AMTEC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-12) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Products of the textile industry, including but not limited to, spun yarn (SIC 2281), textured filament yarn (SIC 2282), thread (SIC 2284), cordage and twine (SIC 2298), and dyed yarn (SIC 2269).

Export Trade Facilitation Services (as They Relate to the Export of Products)

Technical service; international market research; marketing and trade promotion; trade show participation; insurance, legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in Addition to Applicant)

Artee Industries, Inc.; The Borden Manufacturing Co.; Fashion Spun (Brodnax); Carolina Mills, Inc.; Cheraw Yarn Mills, Inc.; Cross Mills, Inc.; Dixie Yarns, Inc.; Dominion Yarn Corporation; Doran Textiles, Inc.; Elk Yarn Mills; Glen Raven Mills, Inc.; Graniteville Trading Company; Grover Industries; Hadley-Peoples Mfg. Co.; Harriet & Henderson Yards, Inc.; Jones Companies, Ltd; The Kent Manufacturing Co.; Kindley Yarns, Inc.; LaFar Industries; Little Cotton Manufacturing Co.; North Carolina Spinning Mills; Parkdale Mills, Inc.; Pioneer Yarn Mills, Inc.; SCT Yarns, Inc.; Shuford Mills, Inc.; Spray Cotton Mills; R. L. Stowe Mills, Inc.; Stowe-Pharr Mills; Swift Spinning Mills; Thomaston Mills; Trio Manufacturing Co.; Tultex Yarns; United Merchants Sales; Vintage Yarns; Waverly Mills, Inc.; Wehadkee Yarn Mills; and Wiscassett Mills Company.

Export Trade Activities and Methods of Operation

1. AMTEC and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Provide and/or jointly negotiate for and purchase from Suppliers Export Trade Facilitation Services for Members;

f. Solicit non-Members to sell their Products or offer their Export Trade Facilitation Services through the certified activities of AMTEC and/or its Members;

g. Coordinate with respect to the servicing of Products in Export Markets;

h. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product requirements of specific export customers or Export Markets.

2. AMTEC and/or its Members may enter into agreements wherein AMTEC and/or one or more Members agree to act in certain countries or Export Markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or Export Market. In such agreements, Members may agree that they will export for sale in the relevant country or Export Market only through AMTEC acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. AMTEC and/or its Members when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its Services on non-discriminatory terms to those Members that are parties to the exclusive arrangements and which request such services.

3. AMTEC and/or its Members may exchange and discuss the following types of information:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, sources, ability to supply products in quantities sufficient to meet an export sales opportunity, and delivery dates of Products available from Members for export, provided however, that exchanges of information and discussions as to Product quantity, source, export prices, ability to supply products in quantities sufficient to meet an export sales opportunity, and delivery dates must be on a transaction-by-transaction basis only and shall relate solely to Products intended for or available for export and involve only those Members who are participating or have a genuine interest in participating in such transaction;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by AMTEC and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about AMTEC or its Members' export operations, including without limitation sales and distribution networks established by AMTEC or its Members in Export Markets, and prior export sales by Members (including export price information).

4. AMTEC may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by AMTEC itself, or by agreement with Members or other parties.

5. AMTEC and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. AMTEC and/or its Members may make available to non-Members the Export Trade Facilitation Services, or participation in the other activities described in paragraphs one through five above, to non-Members.

7. AMTEC and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. An *Export Intermediary* means a person who acts as a distributor, representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells Products and/or Export Trade Facilitation Services, whether a Member or non-Member.

Abbreviated Amendment Procedure

New Members may be incorporated in the Certificate through an abbreviated amendment procedure. An abbreviated amendment shall consist of a written notification to the Secretary of Commerce and the Attorney General identifying such proposed Member or Members and certifying for each such proposed Member so identified its sales of individual Products in its prior fiscal year. Notice of the proposed Members so identified shall be published in the **Federal Register**. However, AMTEC may withdraw one or more individual proposed Members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these proposed Members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such proposed Members effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 5, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-29079 Filed 12-11-90; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 7, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States and India, establishes import limits for the 1991 agreement year.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Information regarding the 1991 Correlation will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 7, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of the following restraint limits:

Category	12-Mon. restraint limit
Levels in Group I:	
218	7,989,477 square meters.
219	39,833,642 square meters.
313	21,376,883 square meters.
314	4,979,206 square meters.
315	8,363,070 square meters.
335	209,155 dozen.
336/636	527,451 dozen.
338/339/340	1,416,923 dozen.
341	3,101,114 dozen of which not more than dozen 1,860,668 shall be in blouses made from fabrics with two or more colors in the warp and/or filling in Category 341-Y.[1]
342	479,741 dozen.
347/348	343,638 dozen.
363	26,215,920 numbers.
369pt.[2]	8,473,266 kilograms of which not more than 822,926 kilograms shall be in Category 369-D [3] and not more than 452,394 kilograms shall be in Category 369-S.[4]

Category	12-Mon. restraint limit
Group II:	
200, 201, 220–229, 237, 239, 300/301, 317, 326, 330–334, 345, 349–352, 359–362, 600–607, 611–635, 638–652, 659, 665–O [5], 666–670 and 831–859, as a group.	113,524,578 square meters equivalent.
Sublevels within Group II:	
237	112,843 dozen.
300/301	3,288,391 kilograms.
640	157,895 dozen.
641	934,147 dozen.
642	283,874 dozen.
647/648	401,126 dozen

[1] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.
[2] Category 369pt.: all HTS numbers except 5702.10.9020, 5702.49.1010 and 5702.99.1010 (rugs exempt from the Bilateral Agreement).
[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
[4] Category 369–S: only HTS number 6307.10.2005.
[5] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2010, 5702.92.0010 and 5703.20.1000 (rugs exempt from the Bilateral Agreement).

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established during that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and India.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–29117 Filed 12–11–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of committee: Military Personal Property Symposium.

Date: January 17, 1991.

Place: Best Western Old Colony Inn, 625 First Street, Alexandria, Virginia.

Time: 0930–1600.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, at telephone number 756–1600, between the hours of 0800–1630. Topics to be discussed should be received on or before 12 December 1990.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–29019 12–11–90; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 382–008 California]

Southern California Edison Co.; Availability of Environmental Assessment

December 6, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of Exhibit R for the Borel Hydroelectric Project to allow Southern California Edison Company (licensee) to fund construction of a recreation area at Sandy Flat. Sandy Flat is approximately one quarter mile from the Borel powerhouse, near the Kern River in Kern County, California. The proposed facilities are to be located entirely on U.S. Forest Service lands. The proposal will allow the licensee to meet its obligations for recreational development under article 34 of the Borel Project license. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29028 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–1–001]

Alabama-Tennessee Natural Gas Co., Proposed PGA Rate Adjustment

December 6, 1990

Take notice that on November 30, 1990, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Twenty Third Revised Sheet No. 4
First Revised Alternate Twenty Third Revised Sheet No. 4
Second Revised Twenty Third Revised Sheet No. 4
Second Revised Alternate Twenty Third Revised Sheet No. 4

The tariff sheets are proposed to become effective January 1, 1991. Alabama-Tennessee states that the purpose of the instant filing is to correct the current surcharge and to reflect the possible implementation of a volumetric surcharge by Tennessee Gas Pipeline Company.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29029 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-48-000]

ANR Pipeline Company; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that ANR Pipeline Company ("ANR") on November 30, 1990, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of Thirty-Fifth Revised Sheet No. 18, to be effective January 1, 1991.

Thirty-Fifth Revised Sheet No. 18 reflects a net increase of $0.0016 per dekatherm ("dth") in the gas cost component of the commodity rate of ANR's CD-1/MC-1, SGS-1 and OS-1 Rate Schedules. This change is a result of an increase in the GRI Adjustment to $0.0142 per dth, as approved by the Commission in its Opinion No. 355, issued at Docket No. RP90-120-000 on October 1, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29030 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-39-003]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on November 29, 1990 ANR Pipeline Company ("ANR") tendered for filing with the Federal Energy Regulatory Commission ("Commission") Second Substitute Fifth Revised Sheet No. 570 under Rate Schedule X-64 of Original Volume No. 2 of its FERC Gas Tariff to be effective for refund purposes for the period January 1, 1989 through December 31, 1989.

ANR states that this compliance filing is being made to reduce the rate of return and depreciation under Rate Schedule X-64, to the approved rate of return underlying the settlement agreement in ANR's Docket No. RP86-169, and depreciation expense based on the High Island Offshore System's (HIOS) remaining book life utilizing the final depreciation rate approved in HIOS' Docket No. RP89-37, in compliance with the Commission's Letter Order dated January 29, 1990 in Docket RP89-39-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29031 Filed 12-11-90; 8:45am]

BILLING CODE 6717-01-M

[Docket No. RP90-53-001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on November 29, 1990 ANR Pipeline Company ("ANR") tendered for filing with the Federal Energy Regulatory Commission ("Commission") Substitute Sixth Revised Sheet No. 570, under Rate Schedule X-64, of Original Volume No. 2 of its FERC Gas Tariff to be effective for refund and billing purposes for the period January 1, 1990 through December 31, 1990.

ANR states that this compliance filing is being made to reduce the depreciation rate, underlying Rate Schedule X-64, based on the High Island Offshore System's (HIOS) remaining book life underlying the final depreciation rate approved in HIOS' Docket No. RP89-37-000, in compliance with the Commission's Letter Order dated December 29, 1989 in Docket No. RP90-53-000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29032 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-159-003 et al.]

Blue Dolphin Pipeline Co.; Filing of Pipeline Refund Report

December 6, 1990

Take notice that Blue Dolphin Pipeline Company (Blue Dolphin) on November 5, 1990 submitted for filing a Refund Report for the period October 4, 1986 through September 4, 1990 in compliance with the Commission's Order Approving Uncontested Settlement issued August 2, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before December 13, 1990. Protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29033 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-6-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1990

Take notice that Columbia Gas Transmission Corporation (Columbia) on November 30, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1991:

Seventh Revised Sheet No. 26
Seventh Revised Sheet No. 26A
Seventh Revised Sheet No. 26B
Seventh Revised Sheet No. 26C

Columbia states that the aforementioned tariff sheets are being filed to reflect an increase in the Gas Research Institute (GRI) funding unit to 1.42¢ per Dth as authorized by Opinion No. 355, issued by the Federal Energy Regulatory Commission (Commission) on October 1, 1990, in Docket No. RP90-120-000. Ordering Paragraph (B) of such Opinion approves the GRI funding requirement for the year 1991 and provides that members of GRI shall collect from their applicable customers a general R&D funding unit of 1.42¢ per Dth during 1991 for payment to GRI.

Columbia states that copies of the filing have been served on the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29034 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on November 30, 1990, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1991:

Third Revised Sheet No. 21

This revised tariff sheet is submitted to reflect the Gas Research Institute (GRI) funding unit of 1.42¢ per Dth as authorized by Opinion No. 355 issued by the Federal Energy Regulatory Commission (Commission) on October 1, 1990, in Docket No. RP90-120-000. Ordering Paragraph (B) of the Commission's Opinion approves the GRI funding requirement for the year 1991 and provides that members of GRI shall collect from their applicable customers, a general R&D funding unit of 1.42¢ per Dth during 1991 for payment to GRI.

Columbia Gulf states that copies of the filing have been served on the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. 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 Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29035 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ91-2-33-000 and TM91-3-33-000]

El Paso Natural Gas Co.; Proposed Change in Rates

December 5, 1990.

Take notice that on November 30, 1990, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, a notice of:

(i) A Quarterly Adjustment in Rates for jurisdictional gas service rendered to sales customers served by El Paso's interstate gas transmission system under rate schedules affected by and subject to section 19, Purchased Gas Cost Adjustment Provision ("PGA"), of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, Second Revised Volume No. 1; and

(iii) An increase in the Gas Research Institute ("GRI") funding unit adjustment component of El Paso's rates for certain sales and transportation services subject to sections 20 and 18, Gas Research Institute General Research, Development and Demonstration Funding Unit Adjustment Provision, contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, Second Revised Volume No. 1 and First Revised Volume No. 1-A, respectively.

El Paso requests that the tendered tariff sheets be accepted for filing and permitted to become effective January 1, 1991.

El Paso states that it has tendered certain tariff sheets in compliance with its PGA provisions which reflect a net decrease of $0.0115 per dth in the gas cost component of its jurisdictional sales rates below the rates reflected in El Paso's last Quarterly Adjustment in Rates at Docket No. TQ91-1-33-000, effective October 1, 1990.

By Opinion No. 355, issued October 1, 1990 at Docket No. RP90-120-000, the Commission approved the GRI's application for advance approval of its 1991 research and development program and related five- (5) year plan for 1991-1995. In so doing, the Commission approved the GRI's 1991 funding requirement which is to be raised through a funding unit of 1.42 cents per dth. Accordingly, El Paso states that the tendered tariff sheets, when accepted for filing and permitted to become effective, will increase the GRI funding unit adjustment component of its rates for certain sales and transportation services from the currently effective 1.26 cents per dth to 1.42 cents per dth as approved by the Commission in Opinion No. 355.

El Paso notes that copies of the filing were served upon all of El Paso's interstate pipeline system sales and transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestant 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29036 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-24-000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that Equitrans, Inc. (Equitrans), on November 30, 1990, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective January 1, 1991.

Original Volume No. 1

Twenty-Second Revised Sheet No. 10
Seventh Revised Sheet No. 23

Original Volume No. 3

Seventh Revised Sheet No. 4
Seventh Revised Sheet No. 8

Pursuant to Opinion No. 355 in Docket No. RP90-120-000 issued on October 1, 1990, the Commission has authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 1991 GRI unit surcharge approved by the Commission is $.0142 per dekatherm (Dth).

Pursuant to § 154.51 of the Commission's Regulation, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective January 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29037 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-015]

Florida Gas Transmission Co.; Compliance Filing

December 6, 1990.

Take notice that Florida Gas Transmission Company (FGT) on November 30, 1990 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

Effective December 1, 1990

Second Revised Sheet No. 8C

Statement of Purpose, Nature and Reason for Filing

FGT states that on June 15, 1990 the Federal Energy Regulatory Commission issued the "Order Approving and Rejecting Settlements, Granting Abandonments and Issuing Certificates" ("Order") in RP89-50 *et al.* which accepted, subject to certain modifications, FGT's October 17, 1989 stipulation and Agreement that resolved issues from thirty dockets including a service restructuring and the implementation of open access transportation. As part of the October 17 Stipulation and Agreement, FGT provided for the conversion of sales service to transportation service under section 16A of the General Terms and Conditions ("section 16A"). In accordance with section 16A, customers have provided FGT with the appropriate notice of conversion including a designation of their D-2 levels reflecting the conversions. Because of the elections made pursuant to section 16A, FGT is filing the attached Sheet No. 8C to reflect the conversions.

Accordingly, Second Revised Sheet No. 8C has been modified to reflect customers' first year conversions to Rate Schedule FTS-1 which have occurred since November 1, 1990.

FGT respectfully requests waiver of any and all Commission rules, regulations and orders that may be necessary so as to permit the tariff sheet described above to become effective as stated above.

FGT notes a copy of this filing was mailed to all holders on FGT's FERC Gas Tariff, Second Revised Volume No. 1 and interested state commissions. A copy of the instant filing is also available for inspection at FGT's offices in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29038 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-51-001, TQ91-2-51-000, and TM91-2-51-000]

Great Lakes Gas Transmission Co. Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

December 5, 1990

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on November 30, 1990 tendered for filing the following tariff sheets to its FERC Gas Tariff:

Item 1:

First Revised Volume No. 1

Substitute Thirty-First Revised Sheet No. 57(i)
Substitute Thirty-First Revised Sheet No. 57(ii)
Substitute Seventeenth Revised Sheet No. 57(v)

Item 2:

First Revised Volume No. 1

Thirty-Second Revised Sheet No. 57(i)
Thirty-Second Revised Sheet No. 57(ii)
Eighteenth Revised Sheet No. 57(v)

Item 3:

First Revised Volume No. 1

Thirty-Third Revised Sheet No. 57(i)
Thirty-Third Revised Sheet No. 57(ii)
Nineteenth Revised Sheet No. 57(v)

The tariff sheets in Item 1 were filed to reflect the appropriate current purchased gas cost adjustment for Great Lakes' quarterly PGA for the period November 1, 1990 through January 31, 1991.

The tariff sheets in Item 2 were filed to reflect revised current PGA rates for

the months of November 1990 through January 1991. The tariff sheets were filed as an out-of-cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements are the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

The tariff sheets in Item 3 were filed to reflect the Gas Research Institute's 1991 Research and Development Program and GRI funding unit of 1.46 cents (Mcf) approved pursuant to the Commission's Opinion No. 355 issued on October 1, 1990. These tariff sheets are proposed to be effective January 1, 1991.

Great Lakes requested waiver of the notice requirements so as to permit the tariff sheets in Item 1 and Item 2 to become effective November 1, 1990, as described, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis. Great Lakes requested that the tariff sheets in Item 3 become effective January 1, 1991, in order to implement the revised GRI funding unit rate.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 12, 1990. Protest 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29039 Filed 12-11-90; 8:45am]

BILLING CODE 6717-01-M

[Docket No. PR91-6-000]

KansOk Partnership; Petition for Rate Approval

December 6, 1990

Take notice that on November 30, 1990, KansOk Partnership filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable the following maximum rates for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978. KansOk proposes a firm reservation charge of $2.33 per MMBtu and a firm commodity charge of $0.2108 per MMBtu and a maximum interruptible rate of $0.2373 per MMBtu for transportation on its East Leg and a maximum interruptible rate of $0.1554 per MMBtu for transportation on its West Leg.

KansOk's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and that it owns and operates approximately 114 miles of pipeline solely within the state of Oklahoma. The petition also states that the KansOk system is made up of two geographically discrete systems. KansOk proposes to offer firm service on its East Leg which includes 14 miles of 8-inch pipeline and 44 miles of 12-inch pipeline. The West Leg is comprised of 56 miles of 8-inch pipeline with no compression and KansOk does not propose to offer firm transportation on this leg. KansOk states that concurrent with the filing of this petition it is conducting an open season until December 12, 1990 for NGPA section 311(a)(2) firm transportation on its East Leg.

Pursuant to 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 26, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29040 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

December 6, 1990

Take notice that K N Energy, Inc. ("K N") on December 4, 1990, tendered for filing proposed changes in its FERC Gas Tariff. The proposed changes will adjust K N's commodity rates charged its jurisdictional customers pursuant to the Gas Research Institute charge adjustment provision (section 21) of K N's FERC Gas Tariff, Original Volume No. 1-B. Such adjustment is to track the 0.16¢ per Mcf increase in the GRI rate, effective January 1, 1991, per Opinion No. 335 issued on October 1, 1990. K N states that copies of the filing were served upon K N jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before December 13, 1990, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of 1.10) under the Regulations of the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29041 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-5-000]

Midwestern Gas Transmission Company; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

December 5, 1990.

Take notice that on November 30, 1990, Midwestern Gas Transmission Company (Midwestern) filed Twentieth Revised Sheet No. 5 (Primary) and Twentieth Revised Sheet No. 5 (Alternate) and Fifteenth Revised Sheet No. 6 (Primary) and Fifteenth Revised Sheet No. 6 (Alternate) to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1991.

Midwestern states that the purpose of this filing is to reflect a quarterly PGA rate adjustment to its sales rates for the period January 1 through March 31, 1991. The current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 (Primary) consist of a $(.194) per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a $.52 per

dekatherm adjustment applicable to the D–1 component. The current Purchased Gas Cost Rate Adjustments reflected on Revised Sheet Nos. 5 and 6 (Alternate) consist of a $.0834 per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, and a $(.08) per dekatherm adjustment applicable to the D–1 component. The adjustments to Midwestern's Gas Rates reflect the changes in the rates charged by Tennessee Gas Pipeline Company in Docket No. TA91–1–9. Midwestern seeks waiver of the Commission's Regulations to the extent necessary for acceptance of this filing effective January 1, 1991.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 12, 1990. 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 petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29042 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–86–000]

MIGC, Inc.; Informal Settlement Conference

December 6, 1990.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on Thursday, December 13, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, room 3400–C, 825 North Capitol Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c) (1990), or any participant, as defined by 18 CFR 385.102(b) (1990), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulation (18 CFR 385.214) (1990).

For additional information, contact Robert L. Woods (202) 208–0583 or Anja Clark at (202) 208–2034.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29043 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91–1–16–002]

National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on November 30, 1990, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below which are proposed to become effective January 1, 1990.

Substitute Fortieth Revised Sheet No. 4
First Alternate Substitute Fortieth Revised Sheet No. 4
Second Alternate Substitute Fortieth Revised Sheet No. 4
Third Alternate Substitute Fortieth Revised Sheet No. 4

The purpose of this filing is to reflect an update to the Current Adjustment shown in National's Annual Purchased Gas Cost Adjustment ("PGA") filed on October 31, 1990, Docket TA91–1–16–000 as permitted at § 154.305(c)(4) of the Commission Regulations. In addition, National states that its proposed Surcharge Adjustment reflects elimination of the storage revaluation adjustment used to calculate the carrying charges on its Account No. 191 balance.

National's primary filing reflects a current adjustment of 10.15 cents per dekatherm to the commodity rate and $0.33 to the demand rate and assumes the Commission will deny Tennessee's "as billed" treatment and reject the volumetric surcharge.

On the First Alternate sheet, National reflects a current adjustment of 19.40 cents per dt to the commodity rate and $0.33 to the demand rate and assumes the Commission will deny "as billed" treatment but permit the volumetric surcharge.

On the Second Alternate sheet, National reflects a current adjustment of 6.22 cents per dt to the commodity rate and $0.47 to the demand rate and assumes "as billed" treatment and denial of the volumetric surcharge.

The Third Alternate sheet reflects a current adjustment of 9.63 cents per dt to the commodity rate and $0.47 to the demand rate and assumes approval of both the "as billed" treatment and the volumetric surcharge.

National states that its alternate tariff sheets are due to the alternate tariff sheets filed by Tennessee in the proceedings at Docket Nos. TA91–1–9–000 and RP91–29–000.

These adjustments are calculated based upon a comparison with the rates included in National's previous quarterly filing in Docket No. TQ91–1–16–001 filed October 5, 1990.

In addition, National further states that copies of this filing were served on National's jurisdictional customers and on the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211) (1990). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29044 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–4–26–000]

Natural Gas Pipeline Co. of America; Changes in Rates

December 5, 1990.

Take notice that on November 30, 1990, Natural Gas Pipeline Company of America (Natural) tendered for filing tariff sheets to be a part of its FERC Gas Tariff, to be effective January 1, 1991.

Natural states that the revised tariff sheets reflect the reduced GRI surcharge related to the Gas Research Institute's 1991 Research and Development Program as approved by Commission Opinion No. 355 (Docket No. RP90–120–000) issued October 1, 1990. The rate authorized by the October 1 order is 1.42¢ per Dekatherm.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective January 1, 1991.

Natural notes that a copy of the filing is being mailed to Natural's jurisdiction customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29045 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-32-001]

Northern Border Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on November 29, 1990, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Substitute Tenth Revised Sheet No. 157
Substitute Eighth Revised Sheet No. 158
Substitute First Revised Sheet No. 159

On November 21, 1990, Northern Border filed in Docket No. RP91-32-000 to revise certain tariff sheets. The issue date and effective date were inadvertently omitted from those tariff sheets and are hereby resubmitted to correct that oversight.

As before, Northern Border proposes to (1) Revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT-1 as called for by Northern Border's tariff every six months, (2) revise the form but not the substance of the calculation of the Minimum Revenue Credit as it appears in the tariff, and (3) revise the computation of the debt repayment obligation to be consistent with the new loan financing secured earlier this year.

Substitute Tenth Revised Sheet No. 157 and Substitute Eighth Revised Sheet No. 158 reflect the revised Maximum Rate and Minimum Revenue Credit effective January 1, 1991 through June 30, 1991 in accordance with Northern Border's tariff provisions under Rate Schedule IT-1. Northern Border proposes to decrease the Maximum Rate from 4.908 cents per 100 Dekatherm-Miles to 4.778 cents per 100 Dekatherm-Miles and decrease the Minimum Revenue Credit from 2.956 cents per 100 Dekatherm-Miles to 2.831 cents per 100 Dekatherm-Miles. These revisions do not produce any change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Substitute Eighth Revised Sheet No. 158 has also been changed to correct the presentation of the calculation of the Minimum Revenue Credit as shown in section 3.33. During the conversion of the tariff sheet into ASCII format, certain underscoring meant to designate division, was lost. To avoid this problem in the future, a ÷ symbol will be used in place of the underscore.

Substitute First Revised Sheet No. 159 has been changed to reflect a revision in the debt repayment obligation as a result of new debt financing secured earlier this year. Under Northern Border's old loan agreement, the debt repayment obligation was determined by multiplying 65.22857% times the total depreciaiton and deferred taxes for the month. Under the new loan agreement, Northern Border's debt repayment obligation is calculated by multiplying 65% times the total monthly depreciation and deferred taxes. Section 3.33 has been revised to reflect the change in the percentage.

Northern Border has requested that these revised tariff sheets be effective January 1, 1991. Copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29046 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

Northern Natural Gas Co. Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

[Docket Nos. RP88-259-039, RP90-124-005, CP89-1227-008 and RP89-136-022]

December 5, 1990.

Take notice that on November 30, 1990, Northern Natural Gas Company, Division of Enron Corp., (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets:

Eighty-eighth Revised Sheet No. 4B
Fifty-sixth Revised Sheet No. 4B.1
First Revised Fourteenth Sheet No. 4G
First Revised Seventeenth Sheet No. 4G.2
Fifth Revised Sheet No. 4G.3
Ninth Revised Sheet No. 4H
First Revised Sheet No. 52D
Second Revised Sheet No. 52D.1
Second Revised Sheet No. 52F.1
Original Sheet No. 74K
Original Sheet No. 74L
Original Sheet No. 74M
Original Sheet No. 74N
Original Sheet No. 74O
Ninety-fifth Revised Sheet No. 1C
Original Sheet No. 1W
Original Sheet No. 1X
Original Sheet No. 1Y
Original Sheet No. 1Z
Original Sheet No. 1Z.1

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order Accepting Settlement With Modifications dated November 19, 1990, in this proceeding. An effective date of December 1, 1990 has been requested for this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 12, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29047 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

December 5, 1990.

Take notice that on November 30, 1990, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, Second Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending March 31, 1991.

The current PGA adjustment for which notice is given herein, aggregates to an increase of 15.47¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the first quarter of 1991 would increase sales revenues by approximately $2,755,052. The instant filing also provides for an increase in the demand components of Northwest's gas sales rates to reflect changes to the estimates of Canadian demand rates and to reflect a revised Canadian exchange rate factor. The current PGA adjustment is reflected on Sheet Nos. 10 and 11 below, while all other tariff sheets listed herein are filed to reflect the revised GRI surcharge of 1.42¢ per MMBtu effective January 1, 1991.

Northwest hereby tenders the following tariff sheets to be effective January 1, 1991:

Second Revised Volume No. 1

Second Revised Sheet No. 10
Second Revised Sheet No. 11

First Revised Volume No. 1-A

First Revised Sheet No. 201

Original Volume No. 2

Tenth Revised Sheet No. 2.2

Northwest notes that a copy of the filing is being served upon each person designated in the official service list compiled by the Secretary in Docket No. TA90-1-37 and upon all jurisdictional sales customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29048 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-41-002]

Paiute Pipeline Co.; Compliance Filing

December 6, 1990.

Take notice that on November 30, 1990, Paiute Pipeline Company (Paiute) tendered for filing Second Substitute Sixteenth Revised Sheet No. 10 applicable to its FERC Gas Tariff, Original Volume No. 1, in order to comply with the Commission's order issued October 31, 1990 in Docket No. TA91-1-41-000.

Paiute states that the Commission's October 31, 1990 order accepted for filing, effective November 1, 1990, Sixteenth Revised Sheet No. 10 reflecting Paiute's annual purchased gas cost adjustment (PGA) rate change, subject to certain conditions. Paiute states that it was directed to file a corrected tariff sheet and a revised FERC Form No. 542 and to provide additional information concerning specific matters identified in the order.

In response to the Commission's order, Paiute has filed Second Substitute Sixteenth Revised Sheet No. 10, as well as a revised FERC Form No. 542 and the requested supplemental information. Paiute indiciates that the revisions and corrections made to its original PGA filing in this proceeding in response to the Commission's order result in reducing the annual surcharge adjustment rate of $(0.1689) per dekatherm set forth in its original filing to $(0.2359) per dekatherm.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29049 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-8-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that on November 30, 1990 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2:

FERC Gas Tariff, Original Volume No. 1

Eighty-Second Revised Sheet No. 3-A
Fifty-Ninth Revised Sheet No. 3-B
Sixth Revised Sheet No. 3-B.1
Eleventh Revised Sheet No. 3-F
Sixth Revised Sheet No. 3-G
Fourth Revised Sheet No. 3-H
Fourth Revised Sheet No. 3-I

FERC Gas Tariff, Original Volume No. 2

Fourteenth Revised Sheet No. 2731
Twelfth Revised Sheet No. 2827
Twelfth Revised Sheet No. 2850
Tenth Revised Sheet No. 3010

Panhandle states that such filing reflects a rate adjustment pursuant to Opinion No. 355 issued October 1, 1990 in Docket No. RP90-120-000. Ordering Paragraph (B) of that Opinion provides that jurisdictional members of Gas Research Institute (GRI), such as Panhandle, may file a general R&D cost adjustment to be effective January 1, 1991. This adjustment will permit the collection of 1.42 cents per Dt of Program Funding Services for payment to GRI.

Panhandle states that copies of its filing have been served on all affected customers subject to the tariff sheets an applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. Protests will be considered by the Commission in detemrining 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29050 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-1-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

December 6, 1990.

Take notice that on December 3, 1990, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed a Fourth Revised Sheet No. 4C to its FERC Gas Tariff and FERC Form No. 542-PGA pursuant to 18 CFR 154.308.

Ringwood states that copies of the filing were served upon Ringwood jurisdictional customers and interested state agencies.

Ringwood's Quarterly PGA filing reflects an estimated $1.6812 per Mcf cost of gas, a current adjustment of zero per Mcf; and cumulative adjustment of $.1734 per Mcf; a credit surcharge adjustment of $.0012 per Mcf and a total sales rate of $1.9930 per Mcf.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 13, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29051 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-9-000]

Tennessee Gas Pipeline Co.; Tariff Filing

December 5, 1990.

Take notice that on November 30, 1990, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to be effective December 1, 1990:

Item A:

Third Revised Volume No. 1

Substitute First Revised Sheet No. 22

Item B:

Original Volume No. 2

Second Substitute Twenty-First Revised Sheet No. 5

Second Substitute Twentieth Revised Sheet No. 6

The purpose of the filing is to reflect an out-of-cycle PGA rate adjustment to Tennessee's current Gas Rate and certain transportation rate schedules whose fuel rates track the Gas Rate (Item B). Due to an increase in spot prices above those reflected in Tennessee's quarterly filing in Docket No. TQ-91-1-9, Tennessee is increasing its Current Average Purchased Gas Cost Rate (sales WACOG) $.2296 to $2.8803 per dth.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29052 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-5-000]

Texas-Ohio Pipeline, Inc.; Petition for Rate Approval

December 6, 1990.

Take notice that on November 30, 1990, and amended December 4, 1990, Texas-Ohio Pipeline, Inc. filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum firm reservation charge of $1.4465 per MMBtu per month and a firm commodity charge of $0.0125 per MMBtu and a maximum interruptible rate of $0.0601 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Texas-Ohio's petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and operates solely within the state of Kentucky. The pipeline is located five miles northeast of Lancaster, Garrard County, Kentucky and it currently provides service to a local distribution company and an end-user in Kentucky.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 26, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29053 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-17-000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

December 5, 1990

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 30, 1990, tendered for filing as part of its FERC Gas Tariffs, Fifth Revised Volume No. 1 and Original Volume No. 2, six copies of the following tariff sheets:

Fifth Revised Volume No. 1

Twenty-sixth Revised Sheet No. 50.1
Twenty-sixth Revised Sheet No. 50.2
Seventeenth Revised Sheet No. 51
Second Revised Sheet No. 51.1
Second Revised Sheet No. 51.2
First Revised Sheet No. 51.3

Original Volume No. 2

First Revised Sheet No. 1J
First Revised Sheet No. 1K
First Revised Sheet No. 1L

Texas Eastern states that the above listed tariff sheets are being filed pursuant to section 25 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1, to include in Texas Eastern's rates the current GRI surcharge of 1.42 cents per dekatherm approved by the Commission in Opinion No. 355 issued on October 1, 1990 in Docket No. RP90-120-000.

The proposed effective date of the tariff sheets listed above is January 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Copies of this filing have also been mailed to all Rate Schedule FT-1 and IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29054 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-17-000; TM91-2-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on November 30, 1990 tendered for filing as part of its FERC Gas Tariff, six copies each of the tariff sheets:

Fifth Revised Volume No. 1

Twenty-Seventh Revised Sheet No. 50.1
Twenty-Seventh Revised Sheet No. 50.2
Nineteenth Revised Sheet No. 50A.1
Nineteenth Revised Sheet No. 50B.1
Nineteenth Revised Sheet No. 50C.1
Nineteenth Revised Sheet No. 50D.1
Eighteenth Revised Sheet No. 51
Third Revised Sheet No. 51.1
Third Revised Sheet No. 51.2
Second Revised Sheet No. 51.3
Eleventh Revised Sheet No. 51A
Second Revised Sheet No. 51A.1
Eleventh Revised Sheet No. 51B
Second Revised Sheet No. 51B.1
Eleventh Revised Sheet No. 51C
Second Revised Sheet No. 51C.1
Eleventh Revised Sheet No. 51D
Second Revised Sheet No. 51D.1

Original Volume No. 2

Second Revised Sheet No. 1J
Second Revised Sheet No. 1K

Texas Eastern states that the above tariff sheets are being issued pursuant to section 23, Purchased Gas Cost Adjustment, and section 26, Electric Power Cost (EPC) Adjustment, contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff. This filing constitutes Texas Eastern's Regular Annual PGA filing to be effective February 1, 1991 pursuant to 18 CFR 154.305.

Texas Eastern states that the PGA changes proposed in this filing consist of Current Adjustments and Surcharge Adjustments as follows for the components of Texas Eastern's sales rates:

Rate component	Current adjustment	Surcharge adjustment
Demand	$0.008/dth	$(0.231)/dth.
Commodity	($0.0836)/dth	$0.0387/dth.

Texas Eastern states that these Current Adjustments represent the change in Texas Eastern's projected quarterly cost of purchased gas from Texas Eastern's out-of-cycle PGA filing of November 20, 1990 in Docket No. TQ91-2-17. The Surcharge Adjustments are designed to amortize the Current Deferral Subaccount Balance in Account 191 as of September 30, 1990 over the 12-month period beginning on February 1, 1991.

Texas Eastern also states that this filing constitutes Texas Eastern's semiannual adjustment to reflect changes in electric power costs pursuant to Section 26. These changes in rates for Sales and Transportation services are based upon the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1991 and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of October 31, 1990.

Texas Eastern states that the projected cost of gas included in this filing contains no cost of purchased gas from Texas Gas Transmission Corporation (Texas Gas). In accordance with Order No. 490 (Docket No. RM87-16-000) Texas Eastern has exercised its option as a purchaser of natural gas to abandon its gas purchase agreement dated October 17, 1962 with Texas Gas. The projected cost of gas in the instant filing includes amounts attributable to the impact of the resolution of certain gas purchase contract pricing disputes which have been under litigation. In addition to the prospective impact included in the projected cost of gas, there is also included in the calculation of the commodity surcharge approximately $20 million representing amounts attributable to gas taken during the deferral period, October, 1989 through September, 1990.

Texas Eastern also states that its underlying rates during the applicable deferral period are based upon Texas Eastern's May 31, 1989 Stipulation and Agreement in Docket No. RP88-67, *et al.* The storage working capital allowance included in such underlying rates has been calculated in accordance with the North Penn methodology. By order issued November 1, 1990 in National Fuel Gas Supply Corporation's Docket No. RP88-136-000, *et al.* (mimeo at page 44) the Commission stated that the PGA regulations do not require a pipeline company to adjust its storage pricing to a rolling weighted average pricing if the pipeline properly applies the North Penn methodology. Accordingly, Texas Eastern has included no storage revaluation adjustment for the purposes of computing the PGA carrying charges during the deferral period.

The proposed effective date of the above tariff sheets is February 1, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 26, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29055 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000, and RP90-119-001 (Phase I/ Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

December 6, 1990.

Take notice that, at the request of Texas Eastern Transmission Corporation, a conference will be convened in this proceeding on December 19 and 20, 1990, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of several issues remaining in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations [18 CFR 385.214].

For additional information, contact Dennis H. Melvin (202) 208-0042 or Arnold H. Meltz (202) 208-0737.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29056 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-58-000]

Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that on November 30, 1990, Texas Gas Pipe Line Corporation (TGPL) tendered a final Purchased Gas Adjustment filing in abbreviated form.

Specifically, the filing consisted of historical data for the fifteen (15) month period July, 1989 through September, 1990 when natural gas deliveries ceased. The Commission by order issued October 30, 1990 granted TGPL's request to abandon its facilities predicated on the termination of all jurisdictional services to its two customers. The subject order directed TGPL, *inter alia*, to refund the balance in Account No. 191 within 120 days of the effective date of the abandonment.

TGPL states copies of its abbreviated filing were served upon its former customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest should be filed on or before December 26, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29057 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-104-004]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that on November 28, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing changes to its FERC Gas Tariff, Original Volume No. 1, Original Volume No. 2, and Original Volume No. 2-A. This filing is being made to move the tariff sheets listed below into effect on November 1, 1990, in compliance with the Commission's Order issued May 31, 1990, in Docket No. RP90-104 at 51 FERC Para. 61,251.

Original Volume No. 1

Second Substitute Twenty-ninth Revised Sheet No. 10
Second Substitute Twenty-ninth Revised Sheet No. 10A
Second Substitute Tenth Revised Sheet No. 11
Second Substitute Original Sheet No. 11A
Second Substitute Original Sheet No. 11B
Thirtieth Revised Sheet No. 10
Thirtieth Revised Sheet No. 10A
Eleventh Revised Sheet No. 11
First Revised Sheet No. 11A
First Revised Sheet No. 11B
Substitute Fourth Revised Sheet No. 107
Substitute Third Revised Sheet No. 168
Substitute Third Revised Sheet No. 178
Substitute Third Revised Sheet No. 179
Substitute Third Revised Sheet No. 180
Substitute Third Revised Sheet No. 181
Substitute Third Revised Sheet No. 182
Substitute Third Revised Sheet No. 183
Second Substitute Fourth Revised Sheet No. 184
Substitute Second Revised Sheet No. 185

Original Volume No. 2

Substitute Eleventh Revised Sheet No. 82
Second Substitute Twenty-seventh Revised Sheet No. 333
Substitute Twelfth Revised Sheet No. 547
Second Substitute Fourteenth Revised Sheet No. 982
Second Substitute Twelfth Revised Sheet No. 1005
Sixth Revised Sheet No. 1085

Original Volume No. 2-A

Substitute Original Sheet No. 10
Substitute Original Sheet No. 10A
Substitute Original Sheet No. 11
Substitute Original Sheet No. 12
Substitute Original Sheet No. 13
Substitute Original Sheet No. 14
Substitute Original Sheet No. 197
Substitute Original Sheet No. 208

Texas Gas requests an effective date of November 1, 1990, for the proposed Tariff Sheets. Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 12, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29058 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on November 30, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Thirty-third Revised Sheet No. 10
Thirty-third Revised Sheet No. 10A
Fourteenth Revised Sheet No. 11
Fourth Revised Sheet No. 11A
Fourth Revised Sheet No. 11B

Texas Gas states that these tariff sheets reflect changes in projected purchased gas costs and the unrecovered purchased gas cost surcharge pursuant to the Annual PGA provision of the Purchased Gas

Adjustment clause of its FERC Gas Tariff and are proposed to be effective February 1, 1991. Texas Gas further states that the proposed tariff sheets reflect a commodity rate increase of $.0975 per MMBtu, a D–1 demand rate increase of $.02 per MMBtu, and a D–2 demand rate increase of $.0003 per MMBtu from the rates set forth in the quarterly PGA filed September 28, 1990 (Docket No. TQ91–1–18).

Texas Gas notes that copies of the filing were served on Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or motions should be filed on or before December 26, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–22059 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–192–002]

Texas Gas Transmission Corp.; Tariff Filing

December 6, 1990.

Take notice that on November 30, 1990, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the tariff sheets listed below, to be effective November 1, 1990:

FERC Gas Tariff, First Revised Volume No. 2–A

Substitute Original Sheet Nos. 22–36
Original Sheet Nos. 37–38
Substitute Original Sheet Nos. 47–59
Original Sheet Nos. 60–61
Substitute Original Sheet Nos. 90–92
Substitute Original Sheet No. 101

This filing is being made in compliance with the Commission's October 26, 1990, "Order Accepting and Suspending Tariff Sheets, Subject to Refund and Conditions, and Consolidating Proceedings for Hearing" at 53 FERC Para. 61,110 (1990). Texas Gas submits this filing resolves all issues in and is in full compliance with the October 26 order. The referenced docket contained a revised Volume No. 2–A tariff, which contains the conditions under which Texas Gas performs transportation service under its Rate Schedule FT and IT.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211 (1990)). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29060 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–68–029]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

December 6, 1990.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on November 29, 1990 the following revised tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Tariff Sheet	Proposed effective date
Revised Substitute Sixth Revised Sheet No. 20.1–A.	October 1, 1990.
Revised Substitute Sixth Revised Sheet No. 20.3–A.	October 1, 1990.
Substitute Seventh Revised Sheet No. 20.1–A.	October 12, 1990.
Substitute Seventh Revised Sheet No. 20.3–A.	October 12, 1990.

Transco states that the purpose of the instant filing is to eliminate, effective October 1, 1990, the rate reference to the FERC Account No. 191 commodity surcharge contained in the Rate Schedule FT rate sheet, which surcharge applied to all quantities delivered under the limited term Rate Schedule FT service agreements during the period November 1, 1989 through September 30, 1990.

Transco states that copies of the instant filing are being mailed to all parties to Docket Nos. RP88–68 *et al.*

In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 13, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29061 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–3–42–000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that Transwestern Pipeline Company (Transwestern) on November 30, 1990 tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective January 1, 1991

82nd Revised Sheet No. 5
46th Revised Sheet No. 6
13th Revised Sheet No. 37

Reason For Filing

The above referenced tariff sheets are being filed to adjust Transwestern's Gas Research Institute (GRI) Surcharge rate pursuant to section 21 of the General Terms and Conditions in Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The adjustment of the GRI Surcharge is determined each fiscal

year pursuant to the Commission's Opinion No. 355 at Docket No. RP90–120–000. The GRI Surcharge of $0.142/dth as determined by Commission order dated October 1, 1990, reflects an increase of $0.0016/dth from the currently effective GRI Surcharge of $0.0126/dth. Transwestern herein respectfully requests that the revised GRI Surcharge as set forth on the above referenced tariff sheets become effective January 1, 1991.

Transwestern states the copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29062 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–4–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that on November 30, 1990 Trunkline Gas Company (Trunkline) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2:

FERC Gas Tariff, Original Volume No. 1

Eighty-First Revised Sheet No. 3–A
Twelfth Revised Sheet No. 3–A.3
Twelfth Revised Sheet No. 3–A.4

FERC Gas Tariff, Original Volume No. 2

Thirteenth Revised Sheet No. 3725
Twelfth Revised Sheet No. 3881
Twelfth Revised Sheet No. 3920
Eleventh Revised Sheet No. 3989

Trunkline states that such filing reflects a rate adjustment pursuant to Opinion No. 355 issued October 1, 1990 in Docket No. RP90–120–000. Ordering Paragraph (B) of that Opinion provides that jurisdictional members of Gas Research Institute (GRI), such as Trunkline, may file a general R&D cost adjustment to be effective January 1, 1991. This adjustment will permit the collection of 1.42 cents per Dt of Program Funding Services for payment to GRI.

Trunkline states that copies of its filing have been served on all affected customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29063 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–11–000, Docket No. TM91–2–11–000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

December 5, 1990.

Take Notice that on November 30, 1990, United Gas Pipe Line Company (United) tendered for filing the following revised tariff sheets with a proposed effective date of January 1, 1991:

Second Revised Volume No. 1

Ninth Revised Sheet No. 4
Ninth Revised Sheet No. 4A
Ninth Revised Sheet No. 4B
Seventh Revised Sheet No. 4D
Ninth Revised Sheet No. 4I

The above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations to reflect changes in United's purchased gas adjustment as provided in section 19 of United's FERC Gas Tariff, Second Revised Volume No. 1.

United states that it has filed tariff sheets to reflect an increase of 8.79 cents per Mcf to $2.1437 per Mcf in gas commodity costs compared to the gas commodity cost level filed in Docket No. TA91–1–11–001.

United also states that the above mentioned tariff sheets include the current GRI surcharge of 1.46 cents per Mcf (1.42 cents per Dth) as approved by the Commission in Opinion No. 355 issued on October 1, 1990 in Docket No. RP90–120–000.

United states that the revised tariff sheets supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions or protests should be filed on or before December 12, 1990.

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 proceedings. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–29064 Filed 12–11–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–1–35–000]

West Texas Gas, Inc.; Filing

December 5, 1990.

Take notice that on November 30, 1990, West Texas Gas, Inc. ("WTG") filed Twenty-Second Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective January 1, 1991. Twenty-Second Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's quarterly PGA filing submitted in accordance with the Commission's purchased gas adjustments regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 214 (1990). All such motions or protests should be filed on or before

December 12, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29065 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-43-000 and TM91-3-43-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 5, 1990.

Take notice that Williams Natural Gas Company (WNG) on November 30, 1990, tendered for filing and acceptance a complete First Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date is January 1, 1991.

WNG states that the purpose of this filing is to resubmit its tariff on electronic media pursuant to Order Nos. 493, *et seq.*, to reflect the revised GRI surcharge to be effective January 1, 1991 and to make certain tariff revisions to provide additional flexibility to WNG's customers and to improve administrative efficiency.

WNG states that copies of this filing have been served on all jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protect with the Federal Energy Regulatory Commission 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 12, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29066 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-2-49-000]

Williston Basin Interstate Pipeline Co.; Gas Research Institute Funding Unit Adjustment Filing

December 5, 1990.

Take notice that on November 30, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Thirtieth Revised Sheet No. 10

Original Volume No. 1-A

Twenty-third Revised Sheet No. 11
Twenty-ninth Revised Sheet No. 12

Original Volume No. 1-B

Eighteenth Revised Sheet No. 10
Eighteenth Revised Sheet No. 11

Original Volume No. 2

Twenty-fourth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is January 1, 1991.

Williston Basin states that the instant filing reflects the inclusion of the Gas Research Institute funding unit of 1.42 cents per Dkt as authorized by the Commission in its "Opinion No. 355; Opinion Approving Gas Research Institute's 1991 Research, Development, and Demonstration Program and Related Five-Year Plan for 1991-1995," issued on October 1, 1990 in Docket No. RP90-120-000.

Williston Basin further states that the instant filing reflects the rate revisions contained in the Company's November 13, 1990 compliance filing in Docket Nos. TQ91-1-49-000, 001 and TM91-1-49-001 and does not incorporate any rate revisions which may be made in compliance with the Commission's November 23, 1990 Order in Docket No. RP90-2-001.

Any person desiring to be heard or to protest said tariff application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules 211 and 214. All such petitions or protest should be filed on or before December 12, 1990. 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 in any hearing therein must file a petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-29067 Filed 12-11-90; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

December 6, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB number: 3060-0440.

Title: Fee Processing Form.

Form Number: FCC Form 155.

Action: Extension.

Respondents: Individuals or households, and businesses or other for-profit (including small businesses)

Frequency of response: On occasion.

Estimated annual burden: 620,000 responses; 10 minutes (.166) average burden per response; 102,920 hours total annual burden.

Needs and uses: FCC 155 is required of applicants to obtain certain licenses or other authorization from the FCC. The form accompanies payment of fees and requests data used in the accounting, verification, control and audit of fee collections and for the efficient processing of collections by a lockbox bank. The data will be used by the Commission's lockbox bank to verify that the amount remitted by the payee for Commission services or licenses is correct, as stated on the FCC Form 155

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-29126 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

Nugget Broadcasting Co. et al.; Applications

1. The Commission has before it the following mutually exclusive applications for 6 new FM stations:

Applicant	City/State	File No.	MM Docket No.
	I.		
A. Nugget Broadcasting Company	Dahlonega, GA	BPH-890728MD	90-503
B. Georgia Mountains Communications, Inc.	....do	BPH-890728ME	
C. Kevin C. Croom	....do	BPH-890728MG	
D. GJ Communications	....do	BPH-890731MK	
Issue heading and Applicants			
1. Air Hazard: A, B			
2. Comparative: A, B, C, D			
3. Ultimate: A, B, C, D			
	II.		
A. Kate F. Thomas	Union, MS	BPH-890424MC	90-501
B. Timothy Z. Barber d/b/a/ Double B Broadcasting	....do	BPH-890424MD	
C. Mary L. Hooper and Carolyn B. Tinsley	....do	BPH-890424ME	
D. Lady Bug Broadcasting Company, Inc.	....do	BPH-890424MF	
E. Chunky Creek Radio	....do	BPH-890424MH	
Issue heading and Applicants			
1. Comparative: A, B, C, D, E			
2. Ultimate: A, B, C, D, E			
	III.		
A. Michelle Elaine Hulse, *et al.*	Chandler, IN	BPH-890526MG	90-502
B. Ben L. Umberger	....do	BPH-890530MI	
C. Geyer Broadcasting Co., Inc.	....do	BPH-890530MJ	
Issue heading and Applicant			
1. Air Hazard: A, B, C			
2. Comparative: A, B, C			
3. Ultimate: A, B, C,			
	IV.		
A. Montauk Communications, Limited Partnership	Montauk, NY	BPH-890913MP	90-506
B. Catherine Broadcasting Incorporated	....do	BPH-890921ND	
C. Eileen Farbman	....do	BPH-890921NE	
D. Women Broadcasters, Inc.	....do	BPH-890921NF	
Issue heading and Applicant			
1. Comparative: A, B, C, D			
2. Ultimate: A, B, C, D			
	V.		
A. Danny M. Watson	Greenfield, Ohio	BPH-880601NA	90-508
B. Hometown Broadcasting of Greenfield, Inc.	Greenfield, Ohio	BPH-880602MW	
Issue heading and Applicant			
1. Comparative: A and B			
2. Ultimate: A and B			
	VI.		
A. Dale A. Ganske	Waunakee, WI	BPH-881212MB	90-507
B. WIBU, Inc.	....do	BPH-881214ML	
C. Waunakee Parque Broadcasting Co.	....do	BPH-881215MD	
Issue heading and Applicant			
1. Air Hazard: A, B, C			
2. Comparative: A, B, C			
3. Ultimate: A, B, C			

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding

headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 90-29010 Filed 12-11-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200164-003.

Title: The Port of Oakland/CMB N.V. (Compagnie Maritime Belge)/Norsul Internacional S.A. Terminal Agreement.

Parties: The Port of Oakland CMB N.V. (Compagnie Maritime Belge) Norsul Internacional S.A. (NI).

Synopsis: The Agreement amends the basis agreement to: (1) Add NI as a joint user and evidence Naviera Pacifico C.A.'s withdrawal as a joint user; (2) provide certain options for the user's operation to be transferred to other container terminals; (3) modify the dockage cap and wharfage cap provisions; (4) provide an acreage use factor of 3060 twenty foot equivalent units per acre per year; and (5) reduce the percentage of wharfage payable for certain unitized breakbulk cargo.

Dated: December 7, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-29127 Filed 12-11-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants; Encore Forwarding, Inc., et al.

Notice is hereby given that the following applications have filed with the Federal Maritime Commission applicants 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 Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Encore Forwarding, Inc., Building #75—Suite 240, No. Hangar Rd., JFK Int'l. Airport, Jamaica, NY 11430, Officer: Teresa E. Saccone, President.

Foreign Freight Forwarding Services of Oregon, Inc., 1322 S.E. 14th Ave., Portland, Oregon 97204, Officers: Denise Stone, President, Douglas D. Parks, Vice President/Treasurer, Kathryn M. Parks, Secretary.

Rose International Inc. dba Rose Maritime Container-Line, 128 Bloomfield St., Hoboken, NJ 07030, Officers: Martin Koenig, President, Sascha Eske, Vice President.

Evans International, 2330 West Sherman, Phoenix, AZ 85009, Officer: Charlotte Hardwick, Sole Proprietor.

Andreani Corp., 7331 N.W. 35th St., Miami, FL 33122, Officers: Oscar A. Andreani, President/Director, Miguel Andreani, Director.

KCS Kowatli Car Sales, 1025 N. Hwy. 17-92, Longwood, FL 32750, Officer: Riad Kowatli, Sole Proprietor.

Dated: December 7, 1990.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-29128 Filed 12-11-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bancorp III, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 31, 1990.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bancorp III, Inc., Kansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers Bank of Polo, Polo, Missouri.

Board of Governors of the Federal Reserve System, December 7, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-29075 Filed 12-11-90; 8:45 am]

BILLING CODE 6210-01-M

Lehigh Financial BanCorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The

listed company has also applied under § 225.23(a)(2) of Regulation V (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR § 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair, competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a writted presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 31, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Lehigh Financial BanCorp, Union, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Lehigh National Bank, Union, New Jersey, a *de novo* bank.

In connection with this application, Applicant also proposes to acquire Lehigh Financial Corporation, Union, New Jersey, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-29076 Filed 12-11-90; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 27, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Manufacturers Hanover Corporation, New York, New York; to engage through The CIT Group Holdings, Inc., New York, New York, in acquiring certain commercial finance assets of Fidelcor Business Credit Corporation, Commercial Capital Corporation and Comwest Capital Corporation and thereby engage in making, acquiring, and servicing loans and other extensions of credit to businesses for its own account and for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-29077 Filed 12-11-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Drug Use and Alcohol Abuse Prevention Demonstration Grants in Community Partnership Program

OFFICE: Office for Substance Abuse Prevention.

ACTION: Request for application.

The Office for Substance Abuse Prevention (OSAP) is reannouncing the grant program: Drug Use and Alcohol Abuse Prevention Demonstration Grants in the Community Partnership Program. Applications for this announcement will be accepted for a single receipt date of April 24, 1991.

Under the authority of section 508(b)(10)(A) of the Public Health Service Act, OSAP will accept applications from local governments, or local nonprofit private entities acting on behalf of a larger community coalition to demonstrate approaches for communities to plan and implement comprehensive long-term strategies for the prevention of substance abuse using public-private sector partnerships. The focus of this program is developing effective, board based community coalitions involving health, human service, law enforcement, education and housing organizations, as well as family/parent/youth groups and the business, community and neighborhood sectors. Approximately $22 million will be available to support approximately 65 grants at an average award amount of $300,000. The Catalog of Federal Domestic Assistance number for this program is 93.194.

Application kits which include the complete Request for Applications and

guidance for submission are available from:

National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20852, (301) 468–2600.

For additional information regarding the program and/or application procedures, contact:

Division of Community Prevention & Training, Office for Substance Abuse Prevention, ADAMHA, Rockwall II Building, 9th Floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0369.

Richard Kopanda,

Deputy Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–29094 Filed 12–11–90; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 90P–0380]

Eggnog Deviating From Identify Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Marcus Dairy, Inc., to market test a product designated as "lite eggnog" that deviates from the U.S. standard of identify for eggnog (21 CFR 131.170). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Shellee A. Davis, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0343.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identify promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Marcus Dairy, Inc., 3 Sugar Hollow Rd., Danbury, CT 06810.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identify for eggnog in 21 CFR 131.170 in that: (1) The fat content of the product is reduced from 6 percent to 1 percent, and (2) sufficient vitamin A palmitate is added in a suitable carrier to ensure that a 4-fluid-ounce (118.5-milliliter) serving of the product contains 10 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer the consumer a product that is nutritionally equivalent to eggnog but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "lite eggnog." The principal display panel of the label must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ less calories" and "75% less fat than regular eggnog".

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 12,000 quarts (11,356 liters) of the test product. The product will be manufactured at Marcus Dairy, Inc., Three Sugar Hollow Rd., Danbury, CT 06810, and distributed in Connecticut and New York.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than March 12, 1991.

Dated: December 3, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–29080 Filed 12–11–90; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Statement of Organization, Functions and Delegations of Authority

Part F. of the statement of organization, functions and delegations of authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 49, No. 228, pp. 46501–46502, dated Monday, November 26, 1984) is amended to reflect a change within the Office of the Associate Administrator, Office of Budget and Administration, Division of Medicare Operations Support (DMOS). The change reorganizes the division and subordinate components within DMOS. Specifically, DMOS is combining the personnel and functions of the existing Adjustment, Enrollment, Premium Modules into two sections, Transaction Sections I and II within the Transaction Branch. A new Operations Analysis and Support Branch is established to assume activities previously performed in the Correspondence Analysis Staff and the Transaction Analysis Staff.

The Specific Amendments to Part F. Are Described Below

- Section FH.20.A.3.c., Division of Medicare Operations Support (FHA53) is deleted in its entirety and replaced with the following new section FH.20.A.3.c., Division of Medicare Operations Support (FHA53):

c. Division of Medicare Operations Support (FHA53).

- Oversees clerical operations and manages work requests from the Bureau of Data Management and Strategy to resolve data errors.
- Oversees receipt, resolution and response to correspondence concerning Health Insurance questions from a wide variety of sources including beneficiaries, Congressional Offices, Social Security Administration (SSA) Offices, States, the Railroad Retirement Board (RRB) and others.
- Directs review of Part B payment records and reconciliation related to Medicare billing exceptions and a multitude of exceptions created between SSA, HCFA and RRB exchange of data.
- Provides clerical support to process accretions and deletions for State Buy-In and third party beneficiaries; ensures investigation of Medicare premium problem cases.
- Directs the processing of applications for enrollment of individuals to receive Supplemental Medical Insurance benefits.
- Coordinates the planning, design and implementation of major work processes involving outside division and office components. Resolves problems related to Medicare insurance with other HCFA components, regional offices and SSA components.

Dated: November 21, 1990.

Robert A. Streimer,

Associate Administrator for Management, Health Care Financing Administration.

[FR Doc. 90–29097 Filed 12–11–90; 8:45 am]

BILLING CODE 4120–03–M

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Amendment of an Existing System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to amend our system of records entitled, "Payments for Interns and Residents," HHS/HCFA/BPO No. 09–70–0524. The amendment will expand the information contained in the system to include the information on interns and residents required in 42 CFR 413.86 (Direct Graduate Medical Education Payments). We have provided information about this amendment in the "Supplementary Information" section below.

DATES: HCFA filed an amended system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 7, 1990. This proposed amendment will become effective February 11, 1991, unless HCFA receives comments which would necessitate further changes to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room 108, Security Office Park, 7008 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Jeffrey Miller, Acting Chief, Legislative Planning and Special Projects Branch, Office of Financial Operations, Division of Provider Audits, Bureau of Program Operations, Health Care Financing Administration, Room 1–C–7, Meadows East Building, P.O. Box 26679, 6325 Security Boulevard, Baltimore, Maryland 21207.

SUPPLEMENTARY INFORMATION: In 1985, HCFA established a new system of records under the authority of section 1886(d)(5)(B) of the Social Security Act (the Act) as amended by section 2307(b) of Public Law 98–369 (The Deficit Reduction Act of 1984). This system was established to ensure that interns and residents are not counted by the Medicare program as more than one full-time equivalent employee in the calculation of Medicare payments for indirect medical education costs under the prospective payment system. The information contained in the system is obtained from an annual report submitted by hospitals to their intermediaries in accordance with regulations at 42 CFR 412.118. This information includes the names and social security numbers of the interns and residents in approved teaching programs that worked at the hospital on September 1. In addition, the hospitals are required to report each intern's or resident's speciality, and the unit or department of the hospital where they worked. Notice of this system, "Payments for Interns and Residents", HHS/HCFA/BPO, No. 09–70–0524, was published in the Federal Register on February 15, 1985 (50 FR 6395).

On September 29, 1989, regulations at 42 CFR 413.86 were issued to implement section 1886(h) of the Act ("Payments for Direct Graduate Medical Education Costs"). Section 1886(h) of the Act requires that Medicare program payments to hospitals for direct graduate medical education costs be determined by multiplying a prospectively calculated per resident amount times the number of full-time equivalent interns and residents, in approved teaching programs, that worked at the hospital during the cost reporting period. (Section 1886(h) of the Act is effective for cost reporting periods beginning on or after July 1, 1985).

In order for HCFA to determine the number of full-time equivalent interns and residents that worked at each hospital in accordance with section 1886(h) of the Act, 42 CFR 413.86 requires hospitals to furnish specific information to their intermediary on each intern and resident that worked at the facility. Some of this information, such as the name and social security number of the interns and residents and their specialty, is the same information collected in the Payments for Interns and Residents system.

To facilitate the collection of all of the intern and resident data required by 42 CFR 413.86, and to determine the number of full-time equivalent interns and residents at each hospital for direct graduate medical education, HCFA proposes to add the data required by 42 CFR 413.86 into the Payments for Interns and Residents system. This modification will expand the data requirements of the annual reports submitted by hospitals for indirect medical education to include data on interns and residents assigned to all areas of the hospital complex, or other freestanding providers, and nonprovider settings for the entire academic year.

The following changes are being made to the system in addition to the added data requirements:

- The "Name" of the system will be changed to "Intern and Resident Information System" to depict more accurately the comprehensive nature of the data collected.
- The "Routine Uses" for which the information contained in the system may be used will be expanded to include individuals or organizations for research, demonstrations, evaluations, etc., pursuant to conditions established by HCFA. This modification is being made to make the data available in conformity with data contained in other HCFA systems.
- The name and address of the "System Manager" will be changed to provide the current name and location.

The first annual report will cover all interns and residents assigned to the hospitals for the academic year beginning July 1, 1990, and ending June 30, 1991.

The Privacy Act permits us to disclose information without the consent of the individual for "routine uses", that is, disclosures for purposes that are compatible with the purpose for which we collected the information. The proposed amendment to the routine uses of the system meet the compatibility criteria since the information is collected for administering the Medicare program for which we are responsible. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 4, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09–70–0524

SYSTEM NAME:

Intern and Resident Information System, HHS/HCFA/BPO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration 6325 Security Boulevard, Baltimore, Maryland 21207 (Contact system manager for location of computerized records.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Interns and residents in programs approved under 42 CFR 413.85, working in all areas of the hospital complex, or

other freestanding providers, as well as nonprovider settings on or after July 1, 1987.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain each intern's or resident's name, social security number, name of medical, osteopathic, dental or podiatric school graduated and date of graduation, type of residency program and medical specialty, number of years completed in all types of residency programs, foreign medical graduate status or certification status, name of the entity (e.g., hospital, university, corporation) paying salary, the portion of time spent working in either the inpatient or outpatient areas of the hospital, the dates assigned to the hospital and any hospital-based providers, the dates assigned to other hospitals and any nonprovider settings for the academic year, and whether or not the assignments are full or part time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1886(h) of the Social Security Act, 42 U.S.C. section 1395 ww(h).

PURPOSE OF THE SYSTEM:

To ensure that no intern or resident is counted as more than one full-time equivalent employee in the calculation of payments for indirect medical education, and to determine the number of full-time equivalent interns and residents needed to calculate payments for direct graduate medical education.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Disclosure may be made:

1. To providers and suppliers of services (and their authorized billing agents) directly or dealing through fiscal intermediaries or carriers, for administration of provisions of Title XVIII.

2. To third-party contacts where necessary to establish or verify information provided on or by interns and residents.

3. To a contractor when the Department contracts with a private firm for the purpose of collating, compiling, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor, and the contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

5. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

a. HHS or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity (when the Department of Justice (or HHS where it is authorized to do so) has agreed to represent the employee); or

d. The United States or any agency thereof (when HHS determines that the litigation is likely to affect HHS or any of its components), is a party to litigation or has interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

6. An individual or organization for research, demonstration, or evaluation, if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the effect or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) Demonstrates a reasonable probability that the objective for the use would be accomplished.

c. Requires the recipient to:

(1) Establish reasonable administrative, technical, and physcial safeguards to prevent unauthorized use or disclosure of the record; and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law.

d. Secures a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer diskette and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by the intern's or resident's name and social security number.

SAFEGUARDS:

Unauthorized personnel are denied access to the records area. For computerized records, safeguards established in accordance with guidelines in the DHHS ADP Systems Manual, Part 6, "Automated Information System Security," (e.g., security codes, use of passwords) will be used, limiting access to unauthorized personnel.

RETENTION AND DISPOSAL:

Records are maintained in a secure storage area with identifiers. Disposal occurs three years from the last action on the hospital's cost report, and should be coordinated with disposal of the reports.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Bureau of Program Operations, Health Care Financing Administration, Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager at the address indicated above and specify name and social security number.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:

Contact the System Manager named above, and reasonably identify the

record and specify the information to be contested. State the reason for contesting the information (e.g., why it is inaccurate, irrelevant, incomplete, or not current).

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system include data collected from interns and residents as transmitted by the providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90–29086 Filed 12–11–90; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Kaloko-Honokohau National Historical Park; Intent to Prepare an Environmental Impact Statement

SUMMARY: Under the provisions of section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is undertaking the preparation of an environmental impact statement to assess the impacts of proposals and alternatives that will be developed in a general management plan for Kaloko-Honokohau National Historical Park, Island of Hawaii.

Authorized in 1978, Kaloko-Honokohau now has a land base sufficient for the National Park Service to manage resources and provide for visitor use. Management of park resources, the nature and location of development, visitor use, and other important issues are to be dealt with through the development of a general management plan. Plan preparation will be guided by findings and recommendations contained in the 1974 study, *The Spirit of Kaloko-Honokohau.*

The responsible official is Stanley Albright, Regional Director, Western Region, National Park Service. The draft plan and environmental impact statement are expected to be released and available for public review in fall 1991. The final plan and environmental statement and Record of Decision are expected to be completed by spring 1992.

The Superintendent, Kaloko-Honokohau National Historical Park, will be scheduling public meetings to receive scoping comments on plan/environmental statement issues and alternatives. These meetings are expected to take place in mid-January 1991 and advance notice of these meetings will be provided by the Superintendent. More detailed information will be included in these notifications. Persons wishing to otherwise comment on the scoping of the plan and environmental statement or receive additional information should address such comments or inquiries to the Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani St. 14, Kailua, Kona, HI 96740. Comments should be received no later than February 28, 1991.

Dated: November 29, 1990.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 90–29020 Filed 12–11–90; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 1, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 27, 1990.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Jefferson County

Corwina Park, O'Fallon Park, Pence Park (Denver Mountain Parks MPS), Roughly, area SE of jct. of Kittredge & Myers Gulch Rds., Evergreen vicinity, 90001708

GEORGIA

Troup County

Hawkes Children's Library of West Point, 100 W. 8th St., West Point, 90001990

IOWA

Jackson County

Spring Side, Jct. of US 52 and Ensign Rd., Bellevue vicinity, 90001955

KENTUCKY

Larue County

Atherton, Aaron, House (Larue County MPS), US 31E S of Athertonville, Hodgenville vicinity, 90001962

Beeler, Dorsey, House (Larue County MPS), Edlin Rd. E of Lyons, Hodgenville vicinity, 90001963

Brown House (Larue County MPS), KY 462 W of Gleanings, Hodgenville vicinity, 90001964

Burch, Walter, House (Larue County MPS), Spaulding Rd., Hodgenville vicinity, 90001965

Carter, Nicholas, House (Larue County MPS), Carter Brothers Rd., Hodgenville vicinity, 90001966

Ferrill, Edward S., House (Larue County MPS), KY 470 N of jct. with KY 61, Buffalo vicinity, 90001967

Goodin, Albert, House (Larue County MPS), KY 64 NE of Tonieville, Hodgenville vicinity, 90001968

Hodgenville Women's Club (Larue County MPS), Public Square, Hodgenville vicinity, 90001969

Kirkpatrick Joseph, Springhouse (Larue County MPS), US 31E W of jct. with Co Rd. 1832, Hodgenville vicinity, 90001970

Larue County Jail (Larue County MPS), E High Ave. S of jct. with US 31E, Hodgenville vicinity, 90001971

Lincoln, Abraham, Stateu (Larue County MPS), Public Square, Hodgenville, 90001972

Lincoln, Nancy, Inn (Larue County MPS), US 31E, Lincoln Memorial National Historic Park, Hodgenville vicinity, 90001973

McClain Hotel (Larue County MPS), KY 470 S of jct. with KY 61, Buffalo vicinity, 90001974

Miller, William, House (Larue County MPS), 211 W. Water St., Hodgenville vicinity, 90001975

Miller-Blanton House (Larue County MPS), Blanton Rd. E of Athertonville, New Haven vicinity, 90001976

Nolynn Baptist Church (Larue County MPS), KY 22 SE of jct. with McCubbin-Harned Rd., Hodgenville vicinity, 90001977

Patterson, Thomas, House (Larue County MPS), KY 84 W of Mathers Mill, Hodgenville vicinity, 90001978

Phillips, William, House (Larue County MPS), KY 84 E of jct. with Co. Rd. 1517, Hodgenville vicinity, 90001979

Saunders-Boyd House (Larue County MPS), 118 Forrest Ave., Hodgenville vicinity, 90001980

School #20 (Larue County MPS), Stack Rd., Hodgenville vicinity, 90001981

School #24 (Larue County MPS), McCubbin-Harned Rd. N of jct. with KY 222, Hodgenville vicinity, 90001982

Smith, David H., House (Larue County MPS), 223 Greensburg Ave., Hodgenville vicinity, 90001983

Thomas, R.H., House (Larue County MPS), Brooks Rd. W of jct. with KY 470, Hodegenville vicinity, 90001984

Tonieville Store (Larue County MPS), Tonieville-Glendale Rd., N of jct. with KY 61, Hodgenville vicinity, 90001985

Walters, Thomas, House (Larue County MPS), US 31E N of Magnolia, Hodgenville vicinity, 90001986

MARYLAND

Harford County

Best Endeavor, 1612 Calvary Rd., Churchville vicinity, 90001993

Washington County

Huckleberry Hall, Charles Mill Rd. W of jct. with MD 64, Leitersburg vicinity, 90001994

MASSACHUSETTS

Suffolk County

Sears Roebuck and Company Mail Order Store, 309 Park Dr. and 201 Brookline Ave., Boston, 90001992

MICHIGAN

Ionia County

VanderHeyden, William H., House, 926 W. Main St., Ionia, 90001959

Kalamazoo County

Kendall, Silas W., House, 7540 W. MIchigan Ave., Oshtemo Township, Kalamazoo vicinity, 90001958

Kent County

Grand Rapids Savings Bank Building, 60 Monroe Center, MW, Grand Rapids, 90001956

Washtenaw County

Bell-Spalding House, 2117 Washtenaw Ave., Ann Arbor, 90001957

NORTH CAROLINA

Rowan County

Phifer, John, Farm, Jct. of Phifer Rd. and SR 1978, Cleveland vicinity, 90001991

Warren County

Watson, John, House, Petway Burwell Rd., ¼ mi. W of NC 401, Warrenton vicinity, 90001954

TEXAS

Hudspeth County

Archeological Site No. 41 HZ 1 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002015
Archeological Site No. 41 HZ 7 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002016
Archeological Site No. 41 HZ 181 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002017
Archeological Site No. 41 HZ 182 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002018
Archeological Site No. 41 HZ 183 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002019
Archeological Site No. 41 HZ 184 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002020
Archeological Site No. 41 HZ 190 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002021
Archeological Site No. 41 HZ 200 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002022
Archeological Site No. 41 HZ 220 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002023
Archeological Site No. 41 HZ 227 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002024
Archeological Site No. 41 HZ 228 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002025
Archeological Site No. 41 HZ 283 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002026
Archeological Site No. 41 HZ 284 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002027
Archeological Site No. 41 HZ 285 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002028
Archeological Site No. 41 HZ 286 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002029
Archeological Site No. 41 HZ 287 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002030
Archeological Site No. 41 HZ 288 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002031
Archeological Site No. 41 HZ 289 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002032
Archeological Site No. 41 HZ 290 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002033
Archeological Site No. 41 HZ 291 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002034
Archeological Site No. 41 HZ 292 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002035
Archeological Site No. 41 HZ 293 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002036
Archeological Site No. 41 HZ 294 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002037
Archeological Site No. 41 HZ 295 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002038
Archeological Site No. 41 HZ 296 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002039
Archeological Site No. 41 HZ 297 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002040
Archeological Site No. 41 HZ 298 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002041
Archeological Site No. 41 HZ 299 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002042
Archeological Site No. 41 HZ 300 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002043
Archeological Site No. 41 HZ 301 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002044
Archeological Site No. 41 HZ 302 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002045
Archeological Site No. 41 HZ 303 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002046
Archeological Site No. 41 HZ 304–305 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002047
Archeological Site No. 41 HZ 306 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002048
Archeological Site No. 41 HZ 307 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002049
Archeological Site No. 41 HZ 308 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002050
Archeological Site No. 41 HZ 309 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002051
Archeological Site No. 41 HZ 311 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002052
Archeological Site No. 41 HZ 312 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002053
Archeological Site No. 41 HZ 313 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002054
Archeological Site No. 41 HZ 339 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002055
Archeological Site No. 41 HZ 340 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002056
Archeological Site No. 41 HZ 409 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002057
Archeological Site No. 41 HZ 410 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002058
Archeological Site No. 41 HZ 411 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002059
Archeological Site No. 41 HZ 412 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002060
Archeological Site No. 41 HZ 413 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002061
Archeological Site No. 41 HZ 414 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002062
Archeological Site No. 41 HZ 415 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002063
Archeological Site No. 41 HZ 416 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002064
Archeological Site No. 41 HZ 417 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002065
Archeological Site No. 41 HZ 418 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002066
Archeological Site No. 41 HZ 419 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002067
Archeological Site No. 41 HZ 420 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002068
Archeological Site No. 41 HZ 421 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002069
Archeological Site No. 41 HZ 422 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002070
Archeological Site No. 41 HZ 423 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002071
Archeological Site No. 41 HZ 424 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002072
Archeological Site No. 41 HZ 425 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002073
Archeological Site No. 41 HZ 426 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002074
Archeological Site No. 41 HZ 427 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002075
Archeological Site No. 41 HZ 428 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002076

Archeological Site No. 41 HZ 429 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002077
Archeological Site No. 41 HZ 430 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002078
Archeological Site No. 41 HZ 431 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002079
Archeological Site No. 41 HZ 432 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002080
Archeological Site No. 41 HZ 433 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002081
Archeological Site No. 41 HZ 434 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002082
Archeological Site No. 41 HZ 435 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002083
Archeological Site No. 41 HZ 436 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002084
Archeological Site No. 41 HZ 437 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002085
Archeological Site No. 41 HZ 438 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002086
Archeological Site No. 41 HZ 439 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002087
Archeological Site No. 41 HZ 440 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002088
Archeological Site No. 41 HZ 441 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002089
Archeological Site No. 41 HZ 442 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002090
Archeological Site No. 41 HZ 443 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002091
Archeological Site No. 41 HZ 445 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002093
Archeological Site No. 41 HZ 448 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002094
Archeological Site No. 41 HZ 464 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002095
Archeological Site No. 41 HZ 465 (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002096
Indian Hot Springs Health Resort Historic District (Indian Hot Springs MPS), Address Restricted, Sierra Blanca vicinity, 90002092

VIRGINIA

Albemarle County

Casa Maria, VA 691 S of jct. with US 250, Greenwood vicinity, 90001999
Gallison Hall, 24 Farmington Dr., Charlottesville vicinity, 90002013
Mount Fair, Jct. of VA 673 and VA 810, Browns Cove vicinity, 90001997
Walker House, VA 627 S of jct. with VA 726, Warren vicinity, 90002001

Clarke County

Scaleby, Co. Rd. 723 S of jct. with US 340, Boyce vicinity, 90002000

Cumberland County

Morven, VA 45, ½ mi. S of Cartersville, Cartersville vicinity, 90002014

Franklin County

Greer House, 206 E. Court St., Rocky Mount, 90002011

King George County

Woodlawn Historic and Archeological District, Between VA 625 and the Rappahannock R., E of US 301, Port Conway, 90002012

Loudoun County

Much Haddam, US 50 W of jct. with VA 626, Middleburg, 90001988

Louisa County

Louisa County Courthouse, Jct. of Main St. and VA 208, Louisa, 90001998

Montgomery County

Cambria Historic District (Montgomery County MPS), 500–600 blocks Depot St., 500–600 block Montgomery St., 900–1000 blocks Cambria St., and railroad depots, Christiansburg, 90002002
East Main Street Historic District (Montgomery County MPS), E. Main St. from Roanoke and Pepper Sts. to the old high school and Park St. from E. Main to Lester St., Christiansburg, 9002008
Lafayette Historic District (Montgomery County MPS), Roughly, High St. from Main to Washington Sts., Main from High to Water Sts. and Church St. from Main to Washington, Lafayette, 90002005
Piedmont Camp Meeting Grounds Historic District (Montgomery County MPS), Jct. of VA 637 and VA 602, Piedmont, 90002003
Prices Fork Historic District (Montgomery County MPS), Prices Fork Rd. from VA 737 roughly to VA 654, Prices Fork, 90002004
Riner Historic District (Montgomery County MPS), Roughly, E and S of jct. of Main St. and Franklin Sts., Riner, 90002006
Shawsville Historic District (Montgomery County MPS), Main St. E and W of jct. with VA 637, Shawsville, 90002009
South Franklin Street Historic District (Montgomery County MPS), 100–308 S. Franklin St., Christiansburg, 90002007

Powhatan County

Paxton, 3032 Genito Rd., Powhatan vicinity, 90001987

Rappahannock County

Caledonia Farm, Jct. of VA 628 and VA 606, Flint Hall, 90001996
Miller, John W., House, Jct. of VA 707 and VA 604, Boston vicinity, 90002010

Richmond County

Grove Mount, Jct. of VA 635 and VA 624, Warsaw vicinity, 90001995

WEST VIRGINIA

Mingo County

Price, R.T., House, 2405 W. Third Ave., Williamson, 90001989

WISCONSIN

Columbia County

Chadbourn, F.A., House, 314 S. Charles St., Columbus, 90001961

Door County

Whitefish Dunes—Bay View Site, Address Restricted, Sevastopol, 90001960

The following property was listed under Caroline County, Marvland. in th> list dated 11/30/90:

MAINE

Kennebec County

Maine Archeological Survey Site 53.36 Address Restricted, Winslow vicinity, 90001901

The following property was listed under Marlboro County, South Carolina, in the list dated 12/4/90:

NORTH CAROLINA

Franklin County

Franklinton Depot 201 E. Mason St. Franklinton, 90001941

[FR Doc. 90–29015 Filed 12–11–90; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[332–292]

California Pesticide Residue Initiative: Probable Effects on U.S. International Trade in Agricultural Food Products

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

EFFECTIVE DATE: November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen Burket (202–252–1318), or David Ingersoll (202–252–1309), Office of Industries. Hearing-impaired persons can obtain information by contacting our TDD terminal on (202–252–1810).

SUPPLEMENTARY INFORMATION: On May 29, 1990, at the request of the United States Trade Representative (USTR), the Commission instituted investigation No. 332–292, California Pesticide Residue Initiative: Probable Effects on U.S. International Trade in Agricultural Food Products. The USTR requested that the Commission provide an interim report on the results of its investigation not later than September 30, 1990, and a final report not later than December 31, 1990. Notice of institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of June 7, 1990 (55 FR 23307).

The Commission's interim report was submitted in confidence to the USTR on September 28, 1990. The initiative, the California Environmental Protection Act of 1990, was on the California ballot on November 6, 1990, and did not pass.

On November 26, 1990, the Commission received a letter from Ambassador Carla A. Hills, the United States Trade Representative, stating that "We have concluded that we do not need further information on this subject at this time. Therefore, in the interest of conserving the Commission's resources, the investigation may be terminated at this time. A final report will not be needed."

Issued: December 3, 1990.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-29114 Filed 12-11-90; 8:45 am]

BILLING CODE 7020-02-M

[332-226]

Quarterly Report on the Status of the Steel Industry

AGENCY: United States International Trade Commission.

ACTION: Change in publication frequency of reports on the status of the steel industry.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Mascola (202-252-1428), Minerals and Metals Division, U.S. International Trade Commission, Washington, DC 20436.

Background

In response to a letter on November 9, 1990, from the Chairman, Committee on Ways and Means, U.S. House of Representatives, the Commission approved a change in the frequency of publication of the reports on the status of the steel industry (investigation No. 332-226) from monthly to quarterly.

To reflect this change, the report's title will be changed to "Quarterly Report on the Status of the Steel Industry." The report will contain the same annual information, and year-to-date cumulative data for the current and past year. Under the quarterly publication schedule, reports will be published in March, June, September, and December during 1991, and in March and June during 1992.

The Committee has noted that if at any time it determines that monthly publication is again required, it will make a request to that effect to the Commission in writing.

Notice of the institution of the investigation and of the initial series of reports was published in the **Federal Register** on April 23, 1986 (51 FR 15390). Notice of continuation of the investigation was published in the **Federal Register** on January 4, 1990 (55 FR 372).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810.

Issued: November 30, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-29115 Filed 12-11-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31778]

Dallas Area Rapid Transit; Control Exemption, Dallas Area Rapid Transit Property Acquisition Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.* Dallas Area Rapid Transit's continuance in control of Dallas Area Rapid Transit Property Acquisition Corporation, subject to standard labor protective conditions.

DATES: The exemption will be effective December 15, 1990. Petitions for reconsideration must be filed by January 2, 1991.

ADDRESSES: Send pleadings referring to Finance Docket No. 31778 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) DART's representatives:
Lonnie E. Blaydes, Jr., Dallas Area Rapid Transit, 601 Pacific Area, Dallas, TX 75202
Peter A. Gilbertson, Kevin M. Sheys, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., Suite 800, 1350 New York Avenue NW., Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of that decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: December 6, 1990.

By the Commission, Chairman, Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-29196 Filed 12-11-90; 8:45 am]

BILLING CODE 7035-01-M

[No. 37063 [1]]

Increased Rates in Coal, L&N RR

October 31, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of reasons for denying a petition to begin a rulemaking proceeding.

SUMMARY: On July 25, 1990 Southern Electric System, a group of six southern electric power companies, included a request for rulemaking with an appeal about a discovery ruling in this coal rate reasonableness proceeding. In the appeal decision we are denying the request to begin a rulemaking proceeding. We are publishing our reasons for the denial as required by 49 U.S.C. 10326(a).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar; (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Petitioner asked us to begin a rulemaking proceeding for the purpose of adopting discovery rules that will not allow disclosure of shipper-specific revenue information without the consent of the shipper, claiming that 49 U.S.C. 11910(a) mandates such an approach. However, section 11910(a) must be read in conjunction with 49 U.S.C. 11165 and 11166(a), which, respectively, authorize the release of cost data and authorize the ICC to obtain expense and revenue information for regulatory purposes. Petitioners contend that authorization to release "cost data" does not include release of revenue information. The last sentence of section 11166(a), however, reflects Congressional recognition that both expense and revenue information can be necessary for determining railroad costs in regulatory proceedings. Moreover, the constrained market pricing standards adopted in *Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985); aff'd *Consolidated Rail Corp. v. U.S.*, 812 F.2d 1444 (3rd Cir. 1987),

[1] Includes that portion of Ex Parte No. 357, *Increased Freight Rates and Charges, Nationwide—8 Percent*, involving a requested 13-percent increase on coal rates on L&N and its connections. Also embraces No. 38025S, *The Dayton Power and Light Company v. Louisville and Nashville Railroad Company.*

include a form of railroad costing in regulatory proceedings, known as stand-alone costing methodology, that requires use of both expense and revenue data.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: November 30, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–29108 Filed 12–11–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Training and Education Grants for Improving Employee Understanding of MSDS's

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

ACTION: Notice of grant program.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awarded five grants in fiscal year 1990 to nonprofit organizations to demonstrate training and education approaches to improving the technical literacy of employees so that they may more readily understand the scientific terminology of material safety data sheets and/or to develop methods for simplifying some of the information contained in MSDS's.

This notice announces the availability of funds for additional grants, describes the scope and objectives of the program, and provides information about obtaining a grant application. Applications should not be submitted without first obtaining the detailed grant application package mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Applications must be received by February 8, 1991.

ADDRESSES: Grant applications must be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

Material safety data sheets (MSDS's) are technical bulletins or summaries of information regarding hazardous chemicals. The information contained in MSDS's includes chemical identity, hazards, and recommended protective measures. Under OSHA's hazard communication standard (29 CFR 1910.1200, 29 CFR 1915.99, 29 CFR 1917.28, 29 CFR 1918.90, and 29 CFR 1926.59), these documents are to be made available to employers obtaining products containing hazardous chemicals, exposed employees, and designated representatives of employees, such as physicians providing medical treatment related to exposure. In addition to their role in workplace hazard communication, MSDS's are also being used by emergency response personnel and other members of the community under laws administered by the Environmental Protection Agency, the Superfund Amendment and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*). Since MSDS's are being used for multiple purposes, much of the information is presented in technical, scientific or legal terminology. There are indications that some employees and other members of the community have difficulty using some of the information because of the technical or legal language.

Program Description

This notice announces a second round of demonstration grants being funded by OSHA to address improving the technical literacy of employees through education so that employees may more readily understand the scientific terminology of MSDS's and to make the technical aspects of MSDS's more understandable by employees.

Grant recipients will develop an education program to improve the ability of employees to comprehend technical information on MSDS's or to develop methods for simplifying some of the information contained in MSDS's. The program may involve providing training to employees or developing educational aids to assist employees or a combination of both. It may also involve reorganization or rewriting sections of the MSDS's so that information important to employees can be more readily identified and understood. Among the approaches grant applicants may propose are:

1. Redesigning required training to ensure that employees can access and understand appropriate information;

2. Developing supplemental materials for employees to consult when using MSDS's, such as glossaries to define terms;

3. Including a summary of important information in lay language on the MSDS; and

4. Reorganizing or rewriting MSDS's so that they are more readily understood by employees.

Grant recipients will develop criteria to determine what information the employee needs to understand the MSDS and how much of that information is being adequately conveyed. The criteria will be used to measure program effectiveness through objective means, such as pre-tests and post-tests.

Grant recipients will be expected to pilot test their programs and to refine them during the grant period. Copies of final curriculums, training aids, tests, and other educational materials or simplified MSDS information will be provided to OSHA at the end of the grant period. The materials will be in the public domain and it is anticipated that they will also be made available to members of the community upon request. Grant recipients will prepare a final report on their programs, including a description of how technical literacy was improved based upon test scores or other objective data and a description of how the program increased employee awareness of hazards in the workplace.

This program is subject to matching share requirements. Grant recipients will be expected to provide a minimum of 20% of the total grant budget. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

The grant program will be administered in compliance with 41 CFR part 29–70 and OMB Circulars A–110 and A–122. All applicants will be required to certify to a drug-free workplace in accordance with 20 CFR part 98 and to comply with the New Restrictions on Lobbying published at 29 CFR part 93.

Eligible Applicants

Any organization which is a joint labor-management safety and health trust fund is eligible to apply. Joint labor-management trust funds are those organizations described in title III section 302(c) (5)–(9) of the Taft Hartley Act (29 U.S.C. 186(c) (5)–(9)). Joint labor-management safety and health trust funds are otherwise eligible trust funds which have as their primary function the prevention of occupational injuries and illnesses.

Unallowable Activities

The following activities are prohibited under this grant program.

1. Program activities which do not address improving employee understanding of technical aspects of MSDS's or simplifying some of the information contained in MSDS's.
2. Program activities involving workplaces largely precluded from enforcement actions under section 4(b)(1) of the Occupational Safety and Health Act.
3. Activities for the benefit of State, county or municipal employees.
4. Production, publication or reproduction of training and educational materials or modified MSDS's which have not been approved by OSHA.

Review Procedures and Criteria

Applications for grants solicited in this notice will be reviewed on a competitive basis by the Assistant Secretary for Occupational Safety and Health with assistance and advice from technical staff.

The following factors, which are not ranked in order of importance, will be considered in evaluating grant applications.

1. Program Design

a. Potential impact of the program as evidenced by: i. The applicability of the program to a broad segment of the workforce,

ii. The number of employees to be reached by the program and

iii. The number of workplaces in which these employees are employed.

b. Soundness of the program as evidenced by: i. The plan to develop an educational program to improve the technical literacy of employees as it relates to understanding information on MSDS's or to develop methods for simplifying some of the information contained in MSDS's, including the description of its component parts;

ii. The plan to field test the program with employees; and

iii. Plans for program evaluation for effectiveness in achieving its objectives.

c. The use of innovative approaches to achieve program goals

2. Program Experience

a. Prior occupational safety and health experience of the organization.

b. Previous and current training or education programs conducted by the organization.

c. Technical and professional expertise of present or proposed project staff in relation to the proposed training and/or educational aids development.

3. Administrative

a. Managerial expertise of the applicant as evidenced by the variety and complexity of current and/or recent programs it has administered.

b. Financial management capability of the applicant as evidenced by a recent report from an independent audit firm or a recent report from another independent organization qualified to render judgment concerning the soundness of the applicant's financial practices.

c. Evidence of the applicant's nonprofit status, preferably from the IRS, and of its status as a joint labor-management safety and health trust fund, preferably from its articles of incorporation.

d. The completeness of the application, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The reasonableness of the budget in relation to the proposed program activities.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The compliance of the budget with applicable Federal cost principles and with OSHA requirements contained in the grant application instructions.

Availability of Funds

There is approximately $440,000 available for this program in fiscal year 1991. Grants will be awarded for a twelve-month period.

Application Procedures

Those organizations meeting the eligibility requirements that are interested in developing programs to improve the technical literacy of employees so that they may more readily understand the scientific terminology of MSDS's may request a grant application package from the OSHA Office of Training and Education, Division of Training Educational Programs, 1555 Times Drive, Des Plaines, IL 60018.

All applications must be received no later than 4:30 p.m. local time, February 8, 1991.

Notification of Selection

Following review and selection, those organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will also be notified in writing to that effect. Notice of selection as a potential grant recipient will not constitute approval of the grant application as submitted. Prior to the actual grant award, representatives of the potential grant receipent and OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 6th day of December 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

Appendix

To assist potential applicants, OSHA has assembled the following questions and answers.

Q. Can we get an extension of the deadline?

A. No. Waivers for individual applications cannot be granted, regardless of the circumstances. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and must apply to all applications.

Q. Will you help us prepare our application?

A. No. We will answer specific questions about application requirements and evaluation criteria and any other subjects which will help potential applicants understand the application package.

Q. How long should an application narrative be?

A. There is no specified length. Generally 10 to 15 pages is sufficient. However, the most important thing to remember when completing the narrative is to address all items requested in the application package and to provide enough description of proposed program activities so that reviewers have a thorough understanding of the proposal.

Q. How many copies of the application should I submit?

A. Submit one original and three copies. Please do not bind them.

Q. When will I find out if I am going to be funded?

A. You can expect to receive notification about two months after the application closing date.

Q. Can I obtain copies of the reviewers' comments?

A. Copies of reviewers' comments will be mailed to unsuccessful applicants upon written request.

Q. Can we budget for the lost time wages of employees participating in the educational program?

A. No. OSHA does not fund lost time wages in its grant programs.

Q. You request a copy of a recent audit but our organization has not had an audit. What do I submit?

A. Explain in the narrative when you expect an audit to be conducted. Submit a copy of your most recent IRS tax return for a nonprofit organization instead.

[FR Doc. 90-29023 Filed 12-11-90; 8:45 am]
BILLING CODE 7500-01-M

Wage and Hour Division

[[Administrative Order No. 660]: Amendment]

Special Industry Committee for All Industries in American Samoa; Appointment; Convention; Hearing

1. Pursuant to sections 5 and 6(a)(3) of the Fair Labor Standards Act (FLSA) of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR, 1949-53 Comp., p. 1004) and 29 CFR part 511, I hereby appoint special Industry Committee No. 19 for American Samoa.

2. Pursuant to sections 5, 6(a)(3) and 8 of FLSA, as amended (29 U.S.C. 205, 206(a)(3), and 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and 29 CFR part 511, I hereby:

(a) Convene the above-appointed industry committee;

(b) Refer to the industry committee the question of the minimum rate or rates for all industries in American Samoa to be paid under section 6(a)(3) of FLSA, as amended; and,

(c) Give notice of the hearing to be held by the committee at the time and place indicated.

The industry committee shall investigate conditions in such industries, and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and function under FLSA.

The committee shall meet in executive session to commence its investigation at 9 a.m. and begin its public hearing at 11 a.m. on January 14, 1991, in Pago Pago, American Samoa. The hearing for Industry Committee No. 19 was originally scheduled to commence on June 4, 1990, but was postponed by the Department after consideration of motions and requests for postponement submitted by the American Samoa Government, representatives of various businesses and members of Congress.

3. The rate or rates recommended by the committee shall not exceed the rates prescribed by section 6(a) or 6(b) of FLSA, as amended by the Fair Labor Standards Amendments of 1989, of $3.80 an hour effective April 1, 1990, and $4.25 an hour effective April 1, 1991.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industry that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment is such industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa; except that the committee shall recommend the minimum wage rates prescribed in section 6(a) or 6(b) unless there is evidence in the record that establishes that the industry, or a predominant portion thereof, is unable to pay that wage due to such economic and competitive conditions.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in such industry than may be determined for other employees in such industry, the committee shall recommend such reasonable classifications within such industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR part 511.10, that will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following:

(a) Competitive conditions as affected by transportation, living, and production costs;

(b) Wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and,

(c) Wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. Prior to the hearing, the Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information that has been assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Upon request, the Wage and Hour Division will mail copies to interested persons. To facilitate mailing, such persons should make advance written request to the Wage and Hour Division. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The procedure of this industry committee will be governed by the provisions of title 29, Code of Federal Regulations, part 511. Copies of this part of the regulations will be available at the Office of the Governor, Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file six copies of a prehearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each prehearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than January 4, 1991. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed at Washington, DC, this 6th day of December 1990.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 90-29082 Filed 12-11-90; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-103)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Informal Executive Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 49723, Notice Number 90-102, November 30, 1990.

PREVIOUSLY ANNOUNCED DATES, TIMES AND ADDRESS OF MEETING: December 14, 1990, 9 a.m. to 4 p.m.; National Federation of International Business, Staff Room, 600 Maryland Avenue, SW., suite 700, Washington, DC 20024.

CHANGES IN THE MEETING: Date changed to December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

Dated: December 6, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-29083 Filed 12-11-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 18 and 23, 1990, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued to the following individuals on December 3, 1990.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 90-29018 Filed 12-11-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[License No. SNM-42; Docket No. 70-27]

Finding of No Significant Impact and Opportunity for a Hearing Amendment of Special Nuclear Material; Babcock & Wilcox Naval Nuclear Fuel Division; Lynchburg, VA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the amendment of Special Nuclear Material License No. SNM-42 for the operation of a supercompactor for Babcock & Wilcox, Naval Nuclear Fuel Division (NNFD) located in Lynchburg, Virginia.

Summary of the Environmental Assessment

Identification of the Proposed Action: The proposed action is amendment of NNFD's license to authorize operation of a supercompactor for the purpose of reducing the volume of low-level waste that is sent to burial. The facility will only process waste generated at the NNFD. The compacted 55-galllon drums, called pucks, will be placed in overpacks. The overpacks will then be shipped to a licensed burial facility. In 1989, NNFD sent 45,750 ft^3 or 6,100 55-gallon containers to disposal sites. This amount is not expected to increase by more than 20 percent in the next few years.

The drums will be delivered by conveyor to the in-feed air lock. The inner door of the in-feed chamber is then opened admitting drums to the controlled area cell where four holes are punched in the sides of each drum, two at the top and two at the bottom. Any liquid in the drum will drain out through the holes or be squeezed out during compaction. The liquid would be collected in catch pans and then transferred to bottles for removal from the supercompactor facility. These liquids will be disposed of through the hot drain system to the Waste Treatment Facility (WTF) or further processed for uranium recovery.

The drum would then be moved to the press where a press mold is lowered over the drum. The main press ram then crushes the drum against a fixed bottom platen. The mold is raised with the ram still down, thereby stripping the compacted drum or puck from the mold. When the ram is raised, the puck is pushed off the bottom platen onto the six-position out-feed table where the thickness of the puck is measured. The pucks are lifted off the out-feed table, rotated, and lowered through an exit port into the appropriate overpack by a robot arm. The number of pucks fitting into the overpack is determined by the puck thickness and the amount of U-235. The loaded overpack is then moved to a machine which swages a top on the overpack. The overpack is then ready for offsite shipment.

The piercing operation, the main press, and the out-feed table are housed in a separate enclosure (compactor cell). This enclosure is constructed of steel walls with viewing windows. The supercompactor is controlled by an operator housed in a control room that is adjacent to but separated from the compactor cell. The operator may view the operations in the compactor cell through the viewing windows. The operator controls the supercompactor through a computer console which provides status information from all the system sensors, allowing him to move the system through its sequence in a step-by-step mode.

Air quality will be monitored in the cell and around the cell exits to determine contamination levels. The cell is kept at a negative pressure relative to the surrounding area by a 1,000 cfm exhaust system which discharges through a pre-filter and a HEPA (High Efficiency Particulate Air) filter into the exhaust stack.

The Need For The Proposed Action: With the lack of new low-level waste disposal sites and an increasing volume of wastes being generated, the need for waste volume minimization and reduction is apparent. Supercompacting of the waste will extend the operational lifetime of the existing commercial disposal sites and will help to reduce the number of waste shipments to waste disposal sites.

Environmental Impacts of the Proposed Action: There should not be any liquid effluents from the compactor operation because the waste should be dry. However, NNFD has addressed the possibility that some of the drums may contain small amounts of liquid. The drum will be punctured at the bottom to allow any liquid contained in the waste to be expelled during compaction. The liquids would be collected in a collection pan and then transferred to

bottles. The bottles are removed from the facility, and the liquid would either be returned to recovery for further processing or sent to the waste treatment facility. NNFD has very conservatively assumed that 0.01 percent of the volume of each container would be released as liquid. If the liquid was sent to waste treatment, it would go through normal treatment where NNFD estimates that approximately 95 percent of the uranium should be removed. Using these conservative assumptions, the increase in liquids to be processed by the WTF would be about 155 liters; this compares to 1.92E8 liters processed by the WTF in 1989. The increase in the radiological content of the effluent would increase by less than 0.1 percent. This small increase in effluents would not cause significant impact to the environment.

The source of airborne radioactive material would be entrainment of the material in the air that is expelled from a container during compaction. NNFD has conservatively assumed that 0.01 percent of the volume of each container is released to the cell atmosphere and pulled into the ventilation system. The ventilation system discharges through a pre-filter and a HEPA filter and then into the exhaust stack. The prefilters have a 60 percent efficiency, and the HEPAs have a 99.9 percent efficiency for 0.3 micron or larger particles. Based on these assumptions, the release for 1 year would be: 1.1E–1 microcuries U–234, 2.3E–3 microcuries U–235, 9.0E–6 microcuries U–236, and a 4.2E–6 microcuries U–238. This is a small fraction of the releases from all other NNFD operations (less than 0.02 percent). Offsite radiological doses due to airborne effluents from the supercompactor operations (assuming worst cause conditions) would be about 0.1 millirem per year to the lung and 1.2E–2 mrem whole body for a hypothetical individual at the site boundary (400 meters SSW). The dose to the nearest resident would be 1.8E–2 mrem to the lung and 2.1E–3 mrem whole body, again assuming worst case conditions. The actual dose would be expected to be much less. According to NNFD, the whole body dose (site boundary) resulting from the release from all NNFD operations in 1989 was estimated to be 2.1 mrem. The additional dose resulting from operations of the supercompactor does not significantly increase the dose from NNFD operations. The total dose is a small fraction of the dose limit (500 mrem/yr) for unrestricted areas specified in 10 CFR 20.105(a) of the Commission's regulations, and it is also a small fraction of the limits for release of radionuclides specified by the Environmental Protection Agency in its regulation, 40 CFR part 61, subpart I (25 mrem/yr for whole body, 75 mrem/yr for body organs). (Note that 40 CFR part 61, subpart I, published in the **Federal Register** on March 7, 1989, on page 9652 has not become effective.) Using the NNFD 1989 dose for the site boundary, the cumulative whole body dose to the nearest resident (including the dose due to operations at the Research Lab and the Commercial plant) would be 2.1 mrem. The cumulative dose from the three facilities are well below the 25 mrem permitted by 10 CFR part 20, § 20.105(c), which incorporates the provisions of EPA's standards in 40 CFR part 190 (the Commercial plant is subject to 40 CFR 190). Therefore, the staff concludes there is no adverse impact to the maximally exposed individual from the release of radioactivity due to operations of the plant.

NNFD has not committed in the license condition portion of the application that the stack from the supercompactor building will be sampled. This stack should be continuously sampled and added to the air monitoring program contained in section IV, chapter 4, of the license application.

NNFD has postulated three types of accidents in the supercompactor building which could result in the release of radioactive material. These accidents were a criticality, fire, and an explosion. None of these scenarios would result in potential releases greater than that which would result from a similar accident that occurred from current operations. The supercompactor cell will be provided with a wet pipe automatic sprinkler system. Automatic fire detection will also be provided throughout the building to provide early warning in the event of a fire.

Conclusion: Potential exposures are well within acceptable limits, and the staff concludes that there will be no significant impact associated with operation of the supercompactor. The staff recommends that the supercompactor building stack be continuously sampled when the supercompactor is operating.

Alternatives to the Proposed Action: The principal alternative would be to take no action or deny the use of the compactor. By taking no action, the benefit of extending the operational lifetime of existing disposal sites would be lost. Also, the savings in the number of shipments to disposal sites would be lost.

Agencies and Persons Consulted: In performing this assessment, the staff utilized the amendment application dated September 19, 1990. The staff also contacted the Commonwealth of Virginia, Department of Air Pollution Control, in connection with the preparation of this environmental assessment.

Finding of No Significant Impact: The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM–42. On the basis of this assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above document related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 492–3358 or by writing to the Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**, be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Babcock & Wilcox Company, Naval Nuclear Fuel Division, P.O. Box 785, Lynchburg, VA 24505–0785); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings." These requirements, which the requester must describe in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request of hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 4th day of December 1990.

For the Nuclear Regulatory Commission.

John P. Roberts,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 90-29089 Filed 12-11-90; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 16, 1990, through November 30, 1990. The last biweekly notice was published on November 28, 1990 (55 FR 49444).

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By Jaunary 11, 1991, 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 petition for leave to intervene. Requests for a hearing and petitions 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, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (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 fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to 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 amendments 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 involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** 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, D.C. 20555, and to the 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 factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 8, 1990

Description of amendment request: The proposed amendment upgrades the Safety Limit Minimum Critical Power Ratio and revises the Operating Limit Minimum Critical Power Ratio of the technical specifications.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

Determination of No Significant Hazards Considerations

The Code of Federal Regulations (10 CFR 50.91) requires licensees requesting an amendment to provide an analysis, using the standards in 10 CFR 50.92, that determines whether a significant hazard consideration exists. The following analysis is provided in accordance with 10 CFR 50.91 and 10 CFR 50.92 for the proposed amendment to Pilgrim's Minimum Critical Power Ratio.

1. Upgraded Safety Limit MCPR

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to the Safety Limit MCPR does not change plant equipment, operating procedures, or governing design criteria used to protect the plant against the initiation of any analyzed accident or used to mitigate the consequences of any analyzed accident.

B. The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed because the proposed change does not change plant equipment, operating procedures, or governing design criteria and the change to the Safety Limit MCPR provides the same level of protection as the existing Safety Limit MCPR against fuel cladding failure during an abnormal operational transient. The proposed Safety Limit MCPR therefore provides equal assurance against a release of radioactive material in excess of 10 CFR 20 limits during abnormal operational transients and a new event sequence leading to an accident is not created.

C. The following design requirement ensures an adequate safety margin is maintained:

Abnormal operational transients caused by a single operator error or equipment malfunction shall be limited such that, considering uncertainties in manufacturing and monitoring the core operating state, more than 99.9% of the fuel rods would be expected to avoid boiling transition.

The proposed change does not involve a significant reduction in the margin of safety because this design requirement, which governs fuel cladding integrity and maintains the defense-in-depth philosophy, has not changed.

2. Revised Operating Limited MCPR

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change to the Operating Limit MCPR does not change plant equipment, operating procedures, or governing design criteria used to protect the plant against the initiation of any analyzed

accident or used to mitigate the consequences of any analyzed accident.

B. The proposed change does not create the probability of a new or different kind of accident from any accident previously evaluated because the proposed changes do not change plant equipment, operating procedures, or governing design criteria and the changes to Operating Limit MCPRs provide the same level of assurance that the Safety Limit MCPR will not be exceeded during an abnormal operational transients and a new event sequence leading to an accident has not been created.

C. The proposed change does not involve a significant reduction in the margin of safety because the conservative Operating Limit MCPR ensures the most limiting transient will not violate the Safety Limit MCPR.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199

NRC Acting Project Director: Curtis J. Cowgill, III

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 30, 1988, as supplemented May 30, 1990 and June 4, 1990

Description of amendments request: These amendments propose a change to Technical Specification 4.0.2 and its associated bases, based on the guidance provided in Generic Letter 89-14, "Line-Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." The current Byron and Braidwood Technical Specification 4.0.2 allows a surveillance interval to be extended by up to 25 percent of the interval. However, the combined interval for any three consecutive surveillances cannot exceed 3.25 times the original surveillance interval. This Technical Specification change request proposes to remove the 3.25 limitation for consecutive surveillances. The revised specification would allow a maximum of 25 percent extension for each surveillance period. The intent of this change is not to increase the time between the performance of surveillances. Rather, the purpose of this change is to allow for more operational flexibility when scheduling surveillances.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards consideration using the Commission's standards.

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident analyses assume that required equipment will be operable in the event of an accident. Surveillances are performed to verify the ability of the equipment to operate as designed. Deletion of the 3.25 criteria will allow additional flexibility in the scheduling of surveillances so that they may be conducted at times when plant conditions are conducive to their performance. No change is being proposed in the surveillance frequency, and therefore, this change will have no impact on the probability of an occurrence.

The B/B UFSAR Chapter 15 analyses assume that equipment required by the proposed Specifications be capable of performing when required. The proposed change does not alter the operability requirements of any equipment. As stated in NRC Generic Letter 89-14, the most probably result of any particular surveillance is the verification of continued operability, as opposed to the detection of inoperable equipment. Additionally,

the 3.25 limitation being deleted was not considered in the evaluation of the probability of consequences of accidents considered in the B/B UFSAR.

There is a slight possibility of inoperable equipment remaining undetected for slightly longer period the time than currently allowed, but this possibility arises only if the current 1.25 allowable extension is routinely utilized. The base frequency of the surveillances remains unchanged, and every effort is made to perform these surveillances as close as possible to the due date.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no new equipment being introduced, and installed equipment is not being operated in a new or different manner. No specific attributes verified during the conduct of the surveillances are being changed or deleted.

C. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will allow the surveillances to be performed when plant conditions are conducive to their completion. The current allowable extension of up to 25% per surveillance interval remains unchanged. The proposed changed will allow the scheduling flexibility necessary to prevent a unit shutdown for the purpose of performing a surveillance. This increased scheduling flexibility will result in a net safety benefit.

Based on the above, Commonwealth Edison concludes that this change will not increase the probability or consequences of a previously analyzed accident, introduce the possibility of an accident not previously evaluated, or decrease the margin of safety. Therefore, this change does not involve a significant hazards consideration.

The staff has reviewed the amendment request and the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: October 31, 1990

Description of amendment request: The request is for the extension of surveillance intervals for the Reactor Protection System and Engineered Safety Features Actuation System analog channel operational tests from monthly to quarterly, and to allow routine analog channel testing in a bypassed instead of a tripped condition. These changes are among those proposed by the Westinghouse Owners Group and approved by NRC's Safety Evaluations of February 21, 1985, and February 22, 1989.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated:

Implementation of the proposed changes is expected to result in an acceptable increase in total Reactor Protection System and Engineered Safety Features yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS. The increase also results in a small increase in Core Damage Frequency (CDF) due to unavailability of the ESF signals.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips (0.5 fewer inadvertent reactor trips per unit per year) occurring during testing of RPS instrumentation. This reduction is primarily attributable to testing in bypass and less frequent surveillance testing. This reduction of inadvertent core melt probability is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes affects the probability of failure of the RPS and ESF, but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

2. Create the possibility of a new or different kind of accident from any previously evaluated:

The proposed changes do not result in a change in the manner in which the RPS and ESF provide plant protection. No change is being made which alters the functioning of the RPS or ESF (other than in a test mode). Rather, the likelihood or probability of the RPS or ESF functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident nor involve a reduction in the margin of safety as defined in the Safety Analysis Report.

The proposed changes do not involve hardware changes, except those necessary to implement testing in bypass. Some existing instrumentation is designed to be tested in bypass, and the current Technical Specifications do not prohibit testing in bypass. Testing in bypass is also recognized by IEEE Standards. Therefore, testing in bypass does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes do not alter the functioning of the RPS or ESF, and so the possibility of a new or different kind of accident from any previously evaluated has not been created.

3. Involve a significant reduction in margin of safety:

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience at two Westinghouse plants with extended surveillance intervals has shown the initial uncertainty assumptions to be valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

a. 0.5 fewer inadvertent reactor trips per unit per year. This is due to less frequent testing and testing in bypass, which minimizes the time spent in a partial trip condition.

b. Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrument testing.

Conclusions

The foregoing analysis demonstrates that the proposed amendment to the Indian Point 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new and different kind of accident and does not involve a significant reduction in a margin of safety. Additionally, fewer inadvertent reactor trips are expected, and operator effectiveness is expected to improve. Based upon the preceding analysis, Con Edison [Consolidated Edison Company of New York] concludes that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. The staff also notes that these changes were among those proposed on a generic basis by the Westinghouse Owners Group and approved by the staff's Safety Evaluations of February 21, 1985, and February 22, 1989. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 22, 1990

Description of amendment request: The proposed amendment would revise the Palisades Plant Technical Specification 4.14, "Augmented Inservice Inspection Program for Steam Generators," to become consistent with the inspection program described in Standard Technical Specifications. This change would delete the augmented inservice inspection requirements associated with the present steam generators, which are being replaced during the present outage, and revise Technical Specification 4.14 to permit an augmented inservice inspection of the new steam generators.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application and determined that a significant hazards consideration does not exist because operation of the Palisades Plant in accordance with these changes would:

1. not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed augmented inservice inspection program will continue to provide assurance that the steam generators are capable of performing their design function as a Primary Coolant System (PCS) boundary under both normal operating and postulated accident conditions and that the release limits of 10 CFR Part 100 will not be exceeded. Under the proposed change, the current inservice inspection program will be replaced by a program that is consistent with the Standard Technical Specifications.

The same principal provisions from the existing inservice inspection program are also reflected in the proposed inservice inspection program. Therefore, the reliability and integrity of those portions of the PCS boundary associated with the steam generator tubes will not be degraded. Additionally, the proposed inspection program will direct tube repairs under conditions that are no less conservative than those stated in the existing specification. Consequently, the probability or consequences of an accident will not be increased following implementation of the revised inspection program.

2. not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the assumptions used in existing accident analyses and embodies each of the principal attributes of the current Technical Specifications program for inservice inspection of steam generators. The tube plugging limits and principal attributes contained in the proposed Technical Specifications inspection program are no less restrictive than those in the existing inservice inspection program, and assurance of steam generator tube integrity will continue to be provided through a periodic and formalized inspection program. Therefore, a new or different kind of accident is not created by the proposed change.

3. not involve a significant reduction in the margin of safety.

The margin of safety relative to this change request involves the reliability and integrity of the PCS under normal and accident conditions. The proposed change will not adversely affect the ability of the steam generator tubes to withstand the design pressure, temperature, and seismic effects that are expected under either normal or postulated accident operating conditions, nor will the change result in a condition that could exceed the release limits of 10 CFR Part 100. The margin of safety associated with the structural integrity of those portions of the PCS that are associated with the steam generator tubes will be maintained following implementation of the proposed change through our continued use of Technical Specifications limits on primary-to-secondary leakage and a formalized inservice inspection program. Consequently, there is no decrease in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert Pierson.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: August 7, 1990

Description of amendments request: The proposed amendments would change Unit 1 and Unit 2 surveillance requirements for pumps and valves to be consistent with the approved Inservice Testing (IST) Program for pumps and valves at D. C. Cook Units 1 and 2. Specifically, the proposed changes requested are as follows:

RHR Pumps

The licensee is proposing to delete the phrase "at least once per 31 days on a STAGGERD TEST BASIS" from T/S 4.5.2.f to allow testing of the RHR pumps on a quarterly basis as endorsed by the ASME Code.

SI Pumps

The licensee is proposing to delete the phrase "at least once per 31 days on a STAGGERD TEST BASIS" from Unit 1 T/S 4.5.2.f to allow testing of the SI pumps on a quarterly basis as endorsed by the ASME Code.

CCPs

The licensee is proposing to delete the phrase "at least once per 31 days" from T/S 4.1.2.3.1 and the phrase "at least once per 31 days on a STAGGERD TEST BASIS" from T/S 4.1.2.4 and 4.5.2.f to allow testing of the CCPs on a quarterly basis as endorsed by the AMSE Code.

CTS Pumps

The licensee is proposing to delete the phrase "at least once per 31 days on a STAGGERED TEST BASIS" from T/S 4.6.2.1.b to allow testing of the CTS pumps on a quarterly basis as endorsed by the AMSE Code.

ESW Pumps

The licensee is proposing to change T/S 4.7.4.1.c to state "By verifying pump performance pursuant to Specification 4.0.5" to allow testing of the ESW pumps on a quarterly basis as endorsed by the ASME Code.

CCW Pumps

The licensee is proposing to change T/S 4.7.3.1.c to state "By verifying pumps performance pursuant to Specification 4.0.5" to allow testing of the CCW pumps on a quarterly basis as endorsed by the ASME Code.

BAT Pumps

The licensee is proposing to replace the existing provisions of T/S 4.1.2.5 and 4.1.2.6 with a provision referencing Specification 4.0.5. This will allow testing of the BAT pumps on a quarterly basis as endorsed by the ASME Code. Except for the change in testing frequency, this change is consistent with those changes approved for the CCPs, RHR pumps, SI pumps, and CTS pumps in Amendment 98 to the Unit 1 T/Ss.

AFW Pumps

The licensee is proposing to delete the phrases, "At least once per 31 days by:" and "At least once per 18 months during shutdown by:" and add the phrase "when tested pursuant to Specifications 4.0.5 by:" to T/S 4.7.1.2 to allow testing of the AFW pumps on a quarterly basis as endorsed by the ASME Code.

The licensee has performed reliability studies in support of the proposed changes to ensure that no evidence of pump degradation has been experienced for these pumps.

The licensee has also proposed changes to valve cycling requirements. The change proposed in this section are similar to the changes approved for T/Ss 4.5.2, 4.6.2.1, 4.7.3.1, and 4.7.4.1 in Amendment 98 to the Unit 1 T/Ss.

This existing provisions of Specifications 4.1.2.1.a.1, 4.1.2.2.a.1, and 4.6.2.2.a.1 require that each testable power-operated or automatic valve in the subject flow path be cycled through at least one complete cycle of full travel at least once per 7 or once per 31 days. This requirement is redundant to the Valve IST Program and the AMSE Code except that the IST Program and the AMSE Code only require testing on a quarterly, rather than weekly or monthly, basis.

The licensee is proposing to delete these specific requirements and allow the valve cycling for these valves to be done quarterly in accordance with the IST Program, the ASME Code, and Specification 4.0.5.

The existing provisions of Specifications 4.1.2.2.c and 4.6.2.2.c.1 require that each power-operated valve in the flow path that is not testable during plant operation be cycled through at least one complete cycle of full travel at least once per 18 month during shutdown. This requirement is redundant to provisions in the licensee's Valve IST Program, the ASME Code, and Specification 4.0.5. The licensee is proposing to delete the specific requirements from the T/Ss.

The Unit 2 provisions for the boron injection flow paths include a requirement to verify that each automatic valve in the flow path actuates to its correct position on an RWST sequencing signal every 18 months. The licensee has proposed including this requirement in Unit 1 as Specifications 4.1.2.2.c.

The existing provisions of Specification 4.7.1.5 require part-stroke exercising of the steam generator stop valves on a quarterly basis and verifying full closure within 5 seconds while in hot standby with T_{avg} greater than or equal to 541° F during each reactor shutdown except that verification need not be done more often than once per 92 days. The licensee has proposed deleting the specific requirement to allow testing in accordance with Specification 4.0.5.

The licensee is also updating their surveillance program to the standards set out in the 1983 edition of the ASME Code. Specification 4.0.5 requires that they test in accordance with 10 CFR 50.55a; however, some of their T/Ss still reference the 1974 edition of the ASME Code rather than Specification 4.0.5. They are updating their T/Ss by making the following changes.

The existing provisions of Specification 4.4.3 require that each pressurizer code safety valve be demonstrated operable in accordance with the 1974 edition of the ASME Code. The licensee is proposing to update their T/S to the 1983 edition of the code by deleting the current wording and referencing Specification 4.0.5. The Bases for Specification 4.4.3 also reference the 1974 edition of the code and thus a similar change is being proposed for the Bases.

The provisions of Specification 4.4.9.3.3 require that each PORV and the RHR safety valve be demonstrated operable in accordance with the 1974 edition of the ASME Code. The licensee is proposing to update their T/Ss to the 1983 edition of the code by deleting the current wording and referencing Specification 4.0.5. The lift settings and orifice sizes in Table 4.7-1 are not included as part of the ASME Code and the licensee has therefore retained this table and moved its reference to the LCO.

The licensee is also proposing several editorial changes such as writing out what currently appears as mathematical symbols on the submitted T/S pages, e.g., "greater than or equal to" instead of greater than or equal to.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided the following discussion relating to the above three criteria:

Criterion 1

Quarterly testing of the subject Unit 1 pumps is endorsed by the ASME Code and has been approved for Unit 2 and the Westinghouse Standard T/Ss (STS) (NUREG-0452, Rev. 4. In addition, we believe that the results of our reliability study have shown that quarterly testing would not have had a negative impact on trending past degradation and in ensuring pump reliability. Quarterly testing should be sufficient to adequately assess the operational readiness of these pumps during their service life and will actually improve their reliability by eliminating unnecessary cycling. We therefore believe that the proposed changes will not result in a significant increase in the probability or consequences of any accident previously analyzed.

The purpose of the proposed changes to valve cycling requirements is to make our Unit 1 T/Ss more consistent with our Unit 2 T/Ss, the STS, and ASME Code requirements. The requirements of the ASME Code, the Unit 2 T/Ss, and the STS have previously been found acceptable and no relevant Unit 1 specific parameters differ significantly from Unit 2. In addition, we believe that testing these valves more frequently than quarterly does not improve safety but does create more opportunity for the tested valves be inadvertently left in the wrong position. We therefore believe these changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to update from the 1974 Code to the 1983 Code are intended to update certain Unit 1 T/Ss to reference Specification 4.0.5 rather than the 1974 edition of the ASME Code. These changes thereby allow testing of the subject components to be done in accordance with the 1983 edition of the ASME Code as required by 10 CFR 50.55a. The subject Unit 2 T/Ss already reference Specification 4.0.5 and this change therefore makes the Unit 1 T/Ss more consistent with the Unit 2 T/Ss. The 1983 edition of the ASME Code and its application to the subject Unit 2 T/Ss has previously been found acceptable. No relevant Unit 1 specific parameters differ significantly from Unit 2. We therefore believe the proposed changes of this section will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

Extending the surveillance intervals for pump surveillances will not result in a change in plant configuration or operation, and we therefore believe that the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

The proposed changes to valve cycling requirements introduce no new plant configurations or operating conditions and do not create a condition that has not been previously analyzed; therefore, we believe the changes will not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

The proposed changes to update from the 1974 to 1983 edition of the Code introduce no new plant configurations or operating conditions and do not create a condition that has not been previously analyzed; therefore, we believe the changes will not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Criterion 3

Quarterly testing of the subject Unit 1 pumps is endorsed by the ASME Code and has been approved for Unit 2 and the Westinghouse Standard T/Ss (NUREG-0452, Rev. 4). In addition, we believe that the results of our reliability study have shown that quarterly testing would not have had a negative impact on trending past degradation and in ensuring pump reliability. Quarterly testing should be sufficient to adequately assess the operational readiness of these pumps during their service life and will actually improve their reliability by eliminating unnecessary cycling. Therefore, we believe that the proposed changes will not result in a significant reduction in the margin of safety.

Lastly, we not that the Commission has provided guidance concerning the determining of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve a significant hazards consideration. This change is similar to the sixth example, which refers to changes that might result in some increase in the probability of occurrence or consequences of a previously analyzed accident, but the results of which are clearly within limits established as acceptable. We believe these changes are clearly within acceptable limits since they are endorsed by Section XI of the ASME Code, and based on past history, there is no reason to believe that quarterly testing would have a negative impact on pump reliability. In addition, quarterly testing has been approved for Unit 2 and the Westinghouse Standard Technical Specifications (NUREG-0452, Rev. 4) (STS). Based on the above, we believe this change does not involve a significant hazards consideration as defined in 10 CFR 50.92.

Since testing the valves more frequently than quarterly will not improve safety and only create more opportunity for leaving the valves in the wrong position and since the level of safety previously approved for Unit 2 will be maintained, we believe that these changes will not involve a significant reduction in a margin of safety.

The changes to update from the 1974 to 1983 edition of the Code update the Unit 1 T/Ss to the edition of the ASME Code required by the federal regulations and will maintain the level of safety previously approved for Unit 2. Therefore, we believe that these changes will not involve a significant reduction in a margin of safety.

Lastly, we not that the Commission has provided guidance concerning the determining of significant hazards by providing certain examples (48 FR 14870) of amendments considered not likely to involve a significant hazards consideration. This change is similar to the sixth example, which refers to changes that might result in some increase in the probability of occurrence or consequences of a previously analyzed accident, but the results of which are clearly within limits established as acceptable. We believe this changes is clearly within acceptable limits since the 1983 edition of the ASME Code and its application to the subject Unit 2 T/Ss has been previously approved and no relevant Unit 1 parameters differ significantly from Unit 2. Based on the above, we believe this change does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The remaining changes are editorial changes and therefore we believe they will not involve a significant increase in the probability or consequences of a previously analyzed accident, create the possibility of a new or different kind of accident, or involve a significant reduction in a margin of safety.

In addition, we note that the Commission has provided guidance concerning the determining of significant hazards by providing certain examples (48 FR 14870) of amendments not considered likely to involve a significant hazards consideration. This change is similar to the first example, which refers to a change which is purely an administrative change to the technical specifications: for example, a change to achieve consistency throughout the T/Ss, correction of an error, or a change in nomenclature. This change is like this example since it is an editorial change intended to correct an error. Based on the above, we believe this change does not involve a significant hazards consideration as defined in 10 CFR 50.92.

We have reviewed the licensee's discussion of the above three criteria and concur in their finding. Therefore, the staff proposes to determine that the proposed amendments involve no significant hazards considerations.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert Pierson.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: February 26, 1990, as superseded on October 26, 1990.

Description of amendment request: The proposed amendment would revise Nine Mile Point Unit 1 Technical Specifications to remove a restriction that limits the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval. This change is based on the guidance provided in Generic Letter (GL) 89-14, "Line Item Improvements in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals."

The following changes would be made: Section 3.0.2 (a new section) and the associated Bases would address the maximum allowable extension to surveillance intervals in accordance with guidelines provided in GL 89-14. Section 1.15 would be revised to delete the requirements of the 3.25 limit and only retain the definition of surveillance. In addition, the Section entitled "Operability Requirements" would be numbered 3.0.1. A new page, 25a, will be added due to space limitations on page 25.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated. The removal of the 3.25 limit on extending normal and refueling outage (24 months) surveillance intervals does not impact plant design or the operation of plant systems. It is not intended that this provision be routinely used to extend surveillance intervals beyond that specified in Technical Specifications. The provision is intended for use when plant conditions are not suitable for the conduct of surveillances due to safety systems being out-of-service for maintenance or due to other ongoing surveillance activities. In such cases, the safety benefit of extending a surveillance interval up to 25 percent would exceed the risk reduction derived by conforming to the 3.25 limitation. The removal of the "minus 25 percent adjustment" to surveillance intervals does not impact plant design or the operation of plant systems. This is an administrative change which will revise NMP1's definition of "Surveillance" to the guidelines provided in Generic Letter 89-14.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes introduce no new mode of plant operation nor do they require physical modification to the plant.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Surveillance testing performed in accordance with Definition 1.15 and the maximum 25 percent interval extension criteria will continue to ensure adequate system reliability. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. The staff also notes that deletion of the subject restriction (limitation of the combined time interval for three consecutive surveillances to less than 3.25 times the specified interval) has been approved on a generic basis by NRC Generic Letter 89-14. The licensee's proposed amendment is consistent with the guidance provided in Generic Letter 89-14. Therefore, the staff proposes that this proposed change will not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell & Reynolds, 1400 L. Street, N.W., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York

Date of amendment request: March 21, 1990, as amended November 13, 1990.

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.4.6, Pressure/Temperature (P/T) Limits, and associated Bases. These changes are in accordance with Generic Letter (GL) 88-11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials and Its Impact on Plant Operations." This generic letter requested that licensees use the methodology in Regulatory Guide 1.99, Revision 2, to calculate the nil-ductility reference temperature of reactor vessel beltline materials. The reference temperature relates to P/T limits. As anticipated in GL 88-11, the use of Revision 2 methodology requires modification of the P/T limits in Nine Mile Point Unit 2 Technical Specifications. The proposed revision provides up-to-date P/T limits for the operation of the reactor coolant system during heat up, cooldown, criticality, and hydrotest. The revised P/T limits would be valid for 12.8 effective full power years (EFPY). In addition to the changes to Technical Specification 3/4.4.6, the index would be revised to incorporate page changes and added figures.

Basis for proposed no significant hazards consideration determination: The Commission has provided

standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment incorporates the use of Revision 2 to Regulatory Guide 1.99 in calculating updated P-T curves for Nine Mile Point Unit 2. The Regulatory Guide 1.99 model is based on current understanding of radiation induced embrittlement in pressure vessel steels. The net effect of using the new model is to shift the existing P-T curves in a more conservative direction.

Components of the reactor primary coolant system are operated so that no substantial pressure is imposed unless the reactor vessel materials are above nil-ductility transition temperature. The nil-ductility transition temperature increases as a function of the integrated neutron dose. The proposed amendment incorporates (1) calculation of stress intensity factors according to Appendix G of Section III of the ASME [American Society of Mechanical Engineers] Boiler and Pressure Code 1980 Edition with Winter 1982 Addenda, (2) the Regulatory Guide 1.99 (Revision 2) method for extrapolation of the Charpy transition temperature shift, and (3) Appendix G to 10CFR50 approach to preparation of P-T curves.

Operation of Nine Mile Point Unit 2 in accordance with the proposed pressure/temperature operating limits will preclude brittle failure of the reactor vessel material. Safety margins for brittle failure are in accordance with those specified in 10CFR50 Appendix G and Appendix G of the ASME Code.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment incorporates pressure/temperature operating limits based on analysis using Revision 2 to Regulatory Guide 1.99. No modification to the plant is required in order to implement the proposed amendment. Therefore, the proposed limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

Implementation of the proposed pressure/temperature operating limits will ensure station operations are conducted with the reactor vessel materials above nil-ductility transition temperature. Operation in accordance with the proposed pressure/temperature operating limits and proposed surveillance program will preclude brittle failure of the reactor vessel materials, since safety margins specified in 10CFR50 Appendix G and the ASME Code Appendix G will be maintained.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Bishop, Cook, Purcell & Reynolds, 1400 L Street, N. W., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: November 14, 1990

Description of amendment request: The proposed amendment would revise the Administrative Controls section of the facility Technical Specifications to provide for the use, by an individual or group of individuals in a high radiation area, of either an integrating alarming dosimeter or a qualified escort who maintains positive control over activities in the area, as alternatives to use of a device which continuously indicates the radiation dose rate. Also, qualified health physics personnel following approved procedures would be exempted from the requirement for Radiation Work Permit coverage in the performance of their duties. Minor editorial changes would be made for improved consistency with the Standard Technical Specifications (NUREG-0123).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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. Based on the staff's review the proposed amendment will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated. Because it affects only the Administrative Controls requirements relating to radiation protection of onsite plant workers. There are no changes in the design of the facility or in the facility operating, testing or emergency procedures. Safety limits, limiting safety systems settings, operability requirements and allowable outage times for plant systems, structures or components would not be affected by the proposed amendment.

(2) involve the possibility of a new or different kind of accident from any accident previously evaluated because it affects only the Administrative Controls requirements relating to radiation protection of onsite plant workers. There are no changes in the design of the facility or in the facility operating, testing or emergency procedures. Safety limits, limiting safety systems settings, operability requirements and allowable outage times for plant systems, structures or components would not be affected by the proposed amendment.

(3) involve a significant reduction in a margin of safety because it affects only the Administrative Controls requirements relating to radiation protection of onsite plant workers. There are no changes in the design of the facility or in the facility operating, testing or emergency procedures. Safety limits, limiting safety systems settings, operability requirements and allowable outage times for plant systems, structures or components would not be affected by the proposed amendment.

For the reasons stated above, the staff believes the proposed amendment involves no significant hazards consideration determination.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and

Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert C. Pierson.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 2, 1990

Description of amendment request: The proposed amendment would change Technical Specification 6.4 for both Units 1 and 2. The phrase "and Appendix 'A' of 10 CFR 55 and the supplemental requirements specified in Sections A and C of Enclosure 1 of the March 28, 1980 NRC letter to all licensees, and shall include familiarization with relevant industry operational experience" is being deleted. Instead, the phrase "except that the licensed operator initial training and requalification programs shall meet or exceed the requirements of 10 CFR 55 and utilize the guidance in Regulatory Guide 1.8, Rev. 2" is being added.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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; (2) create the possibility of a new or different kind of accident form any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its April 2, 1990 submittal.

I. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. These changes are provided to clarify the training requirements of licensed operators. These changes delete those references superseded by revised rulemaking and incorporate commitments made in our response to the Notice of Violation. Therefore, the proposed change is purely administrative in nature and cannot involve an increase in the probability or consequences of an accident previously evaluated.

II. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. These changes are administrative in nature. See Item I above.

III. Does the proposed change involve a significant reduction in a margin of safety?

No. These changes are administrative in nature. See Item I above.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 27, 1990

Description of amendment request: The proposed amendments would change the Technical Specifications by requiring that the LOCA/False LOCA interlocks be tested every 18 months and by incorporating language which allows the tests to be successfully completed by any series of sequential, overlapping or total channel steps such that the entire channel is tested.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its July 27, 1990 submittal.

The proposed changes do not involve a significant increase in the probability or consequences of accident(s) previously evaluated. The proposed changes ensure the LOCA/False LOCA interlocks are tested, and tested more frequently than presently required. This increases the probability that the diesel generators will not be overloading and that the utilization voltage limitation is not exceeded. In turn reliability of components is increased.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The LOCA/False LOCA test is not being modified rather it will be performed more frequently utilizing more than one surveillance procedure. There are no new test methods or activities which could be postulated to cause a new or different type of accident.

The proposed changes do not involve a reduction in the margin of safety. The margin is actually increased because testing of the interlocks will occur more frequently thereby increasing their reliability.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: August 2, 1990

Description of amendment request: The proposed amendment would change License Condition 2.C.(26) of the Susquehanna SES Unit 1 Operating License (No. NPF-14) and License Condition 2.C.(9) of the Susquehanna SES Unit 2 Operating License (No. NPF-22) by designating these issues as closed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consieration if 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; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following

basis and conclusion provided by the licensee in its August 2, 1990 submittal.

Based on PP&L's documented commitments (References 1 and 2) to comply with the applicable requirements of IE Bulletin 79-26, Revision 1, the closure of the subject license conditions is entirely administrative in nature and therefore, this action will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated;

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.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: September 24, 1990

Description of amendment request: The proposed amendment would change the Technical Specifications in support of the ensuing Cycle 5 reload. Changes to the following Technical Specifications and Bases are requested:

Index

1.0 Definitions

2.0 Safety Limits and Limiting Safety System Settings

B 2.1 Safety Limits

3/4.2.3 Minimum Critical Power Ratio

3/4.4.1 Recirculation System

B 3/4.1 Reactivity Control System

B 3/4.2 Power Distribution Limits B3/4.4.1 Recirculation System

5.3.1 Fuel Assemblies

5.3.2 Control Rod Assemblies

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its September 24, 1990 submittal. References cited below are provided by the licensee in its September 24, 1990 submittal.

The following three questions are addressed for each of the proposed Technical Specification changes:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

3. Does the proposed change involve a significant reduction in a margin of safety?

Specifications 1.0 - Definitions, and 3/4.2.3, Minimum Critical Power Ratio

The changes to these specifications support new MCPR operating limits based on the PP&L reactor analysis methods described in Reload Summary Report Reference 3. The limits calculated for Unit 2 Cycle 5 (U2C5) will be a function of scram speed. Therefore, the format for Specification 3/4.2.3 has changed significantly and the new definition is required.

1. No. The MCPR operating limits for U2C5 were generated with the PP&L reactor analysis methods described in PL-NF-90-001 (See Reload Summary Report Reference 3). The U2C5 MCPR operating limits are presented as MCPR versus Percent of Rated Core Flow and MCPR versus Percent Core Thermal Power. These limits cover the allowed operating range of power and flow. As specified in PL-NF-90-001, six major events were analyzed. These events can be divided into two categories: core-wide transients and local transients. The core-wide transient events analyzed were:

1) Generator Load Rejection Without Bypass (GLRWOB),

2) Feedwater Controller Failure (FWCF),

3) Recirculation Flow Controller Failure - Increasing Flow (RFCF), and

4) Loss of Feedwater Heating (LOFWH)

As discussed in PL-NF-90-001, the other core-wide transients are non-limiting (i.e., would produce lower calculated delta CPRs than one of the four events analyzed). The local transient events analyzed were:

1) Rod Withdrawal Error (RWE), and

2) Fuel Loading Error (FLE).

The fuel loading error evaluation includes analysis for both rotated and mislocated fuel bundles.

Sufficient analyses were performed to define the MCPR operating limits as a function of core power and core flow. Analyses were also performed to determine MCPR operating limits for three plant equipment availability conditions: 1) Turbine Bypass and EOC-RPT operable, 2) Turbine Bypass inoperable, and 3) EOC-RPT inoperable.

Core-Wide Transients

The PP&L RETRAN model and methods described in PL-NF-89-005 and PL-NF-90-001 (See Reload Summary Report References 2 and 3) were used to analyze the GLRWOB, FWCF, and RFCF events. The delta CPRs were evaluated using the XN-3 Critical Power Correlation (See Reload Summary Report Reference 26) and the methodology described in PL-NF-90-001 (See Reload Summary Report Reference 3). The GLRWOB and FWCF events were analyzed in two different ways (as described in PL-NF-90-001):

1) Deterministic analyses using the Technical Specification scram speed (minimum allowed);

2) Statistical Combination of Uncertainty (SCU) analyses at an average scram speed of 4.2 feet/second.

Thus, the Technical Specification MCPR operating limits calculated for U2C5 will be a function of scram speed.

The LOFWH event was conservatively analyzed by PP&L using the steady state core physics methods and process described in Reload Summary Report References 1 and 3, and the LOFWH event results were found to be bounded by results of the other three core-wide transients. The minimum MCPR operating limit required for the U2C5 LOFWH event is 1.17.

Summary Report Tables 3, 4, and 5, respectively.

Local Transients

The fuel loading error (rotated and mislocated bundle) and the Rod Withdrawal Error (RWE) were analyzed using the methodology described in PL-NF-90-001. The results of these analyses apply to all three plant equipment availability conditions previously described, and the results are independent of scram speed. The RWE analysis supports the use of both the Duralife 160C control blades and a Rod Block Monitor setpoint of 108%. The MCPR operating limits that result from the analyses of these events are presented in Reload Summary Report Table 6. These events are non-limiting for U2C5.

Based on the above, the methodology used to develop the new MCPR operating limits for the Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones. The consequences of analyzed events were evaluated in 1. above.

3. No. Based on 1. above, the methodology used to generate the MCPR operating limits for U2C5 is both sufficient and conservative. Furthermore, although the methodology (PL-NF-90-001) is still undergoing NRC review, PP&L believes it meets all pertinent regulatory criteria for use in this application. Therefore, its use will not result in a significant decrease in any margin of safety.

Specification 2.1.2 - Thermal Power, High Pressure and High Flow

1. No. The PP&L Statistical Combination of Uncertainties (SCU) methods are described in

Reload Summary Report Reference 3. When using the SCU methodology, the transient delta CPR and traditional MCPR safety limit analyses are combined through a single unified analysis. As a result, the Thermal Power, High Pressure and High Flow safety limit is not represented as a single MCPR value, but rather as a condition such that at least 99.9% of the fuel rods in the core are expected to avoid boiling transition. As described in Appendix B of Reload Summary Report Reference 3, this combined analysis and compliance with the resulting safety limit condition are supported by "MCPR Safety Limit type" calculations. The "MCPR Safety Limit type" calculations were performed by ANF using the same methods and assumptions as the traditional MCPR Safety Limit analysis.

As shown in Reload Summary Report Table 1, a MCPR value of 1.06 in two loop operation assures that less than 0.1% of the fuel rods are expected to experience boiling transition. The methodology and generic uncertainties used in the "MCPR Safety Limit type" calculations are provided in XN-NF-80-19(P)(A), Volume 4 Revision 1 (Reload Summary Report Reference 6). The uncertainties used for SSES U2C5 "MCPR Safety Limit type" calculations are the same as for U2C4 and are presented in Reload Summary Report Reference 18. The results are presented in Reload Summary Report Table 1.

During U2C5, as in the previous cycle, the ANF 9x9 fuel will be monitored using the XN-3 critical power correlation. ANF has determined that this correlation provides sufficient conservatism to preclude the need for any penalty due to channel bow during U2C5. Susquehanna SES is a C-lattice plant and uses channels for only one fuel bundle lifetime. The conservatism has been evaluated by ANF to be greater than the maximum expected delta CPR (0.02) due to channel bow in C-lattice plants using channels for only one fuel bundle lifetime. Therefore, the monitoring of the MCPR limit is conservative with respect to channel bow and addresses the concerns of NRC Bulletin No. 90-02. The details of the evaluation performed by ANF have been reported generically to the NRC (Reload Summary Report Reference 17).

Based on the above, the methodology used to develop the new safety limit condition for the Technical Specification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The methodology and results described above can only be evaluated for their effect on the consequences of analyzed events; they cannot create new ones. The consequences of analyzed events were evaluated in 1. above.
3. No. Based on 1. above, the methodology used to generate the Thermal Power, High Pressure and High Flow safety limit condition for U2C5 is both sufficient and conservative. Furthermore, although the methodology (PL-NF-90-001) is still undergoing NRC review, PP&L believes it meets all pertinent regulatory criteria for use in this application. Therefore, its use will not result in a significant decrease in any margin of safety.

Specification 3/4.4.1, Recirculation System - Two Loop Operation

The changes to this specification (i.e., Figure 3/4.1.1.1-1) reflect cycle-specific stability analyses.

1. No. COTRAN core stability calculations were performed for Unit 2 Cycle 5 to determine the decay ratios at predetermined power/flow conditions. The resulting decay ratios were used to define operating regions which comply with the interim requirements of NRC Bulletin No. 88-07, Supplement 1 "Power Oscillations in Boiling Water Reactors". As in the previous cycle, Regions B and C of the NRC Bulletin have been combined into a single region (i.e., Region II), and Region A of the NRC Bulletin corresponds to Region I.

Region I has been defined such that the decay ratio for all allowable power/flow conditions outside of the region is less than 0.90. To mitigate or prevent the consequences of instability, entry into this region requires a manual reactor scram. Region I for Unit 2 Cycle 5 is slightly different than Region I for the previous cycle.

Region II has been defined such that the decay ratio for all allowable power/flow conditions outside of the region (excluding Region I) is less than 0.75. For Unit 2 Cycle 5, Region II must be immediately exited if it is inadvertently entered. Similar to Region I, Region II is slightly different than in the previous cycle.

In addition to the region definitions, PP&L has performed stability tests in SSES Unit 2 during initial startup of Cycles 2, 3 and 4 to demonstrate stable reactor operation with ANF 9x9 fuel. The test results for U2C2 (See Reload Summary Report Reference 20) show very low decay ratios with a core containing 324 ANF 9x9 fuel assemblies. Figure 3/4.1.1.1-1 is also referenced by Specification 3/4.4.1.1.2, which governs Single Loop Operation (SLO). The evaluation above applies under SLO conditions as well.

Based on the above, operation within the limits specified by the proposed changes will ensure that the probability and consequences of unstable operation will not significantly increase.

2. No. The methodology described above can only be evaluated for its effect on the consequences of unstable operation; it cannot create new events. The consequences were evaluated in 1. above.
3. No. PP&L believes that the use of Technical Specifications that comply with NRC Bulletin 88-07, Supplement 1, and the tests and analyses described above, will provide assurance that SSES Unit 2 Cycle 5 will comply with General Design Criteria 12, Suppression of Reactor Power Oscillation. This approach is consistent with the SSES Unit 2 Cycle 4 method for addressing core stability (see Reload Summary Report References 4 and 5).

Specification 3/4.4.1, Recirculation System - Single Loop Operation

The changes to this specification are either evaluated above or are editorial in nature. The reference to Specification 2.1.2 is deleted because the new limit (see Evaluation of Specification 2.1.2 above) will not change for Single Loop Operation. The additional figures referenced from Specification 3.2.3 are the result of the MCPR operating limit analyses evaluated above.

The other two changes to Surveillance Requirements 4.4.1.1.2.6, correct inadvertent typographical errors that occurred during the issuance of Amendment 60 to the Unit 2 Technical Specifications.

1. No. The changes are either evaluated elsewhere in this No Significant Hazards Considerations evaluation, or are entirely editorial in nature.
2. No. See 1. above.
3. No. See 1. above.

Specification 5.3.1 - Fuel Assemblies

This section has been changed to describe the actual core configuration for U2C5, which includes one inert (i.e., solid zircaloy-2) rod.

1. No. The inert rod was used to repair a fuel assembly that failed during U2C2. This repaired assembly was analyzed and found to be acceptable in support of U2C4 operation, which was approved by the NRC (See Reload Summary Report Reference 5). Based on the above, use of the repaired assembly does not involve a significant increase in the probability or consequences of an accident previously evaluated.
2. No. See 1 above.
3. No. See 1 above.

Specification 5.3.2 - Control Rod Assemblies

The changes to this specification are provided in order to recognize the replacement control blade design being utilized in U2C5.

1. No. The main differences between the replacement Duralife 160C control blades and the original equipment control blades are:

a) the Duralife 160C control blades utilize three solid hafnium rods at each edge of the cruciform to replace the three B_4C rods that are most susceptible to cracking and to increase control blade life.

b) the Duralife 160C control blades utilize improved B_4C tube material (i.e. high purity stainless steel vs. commercial purity stainless steel) to eliminate cracking in the remaining B_4C rods during the lifetime of the control blade;

c) the Duralife 160C control blades utilize GE's crevice-free structure design, which includes additional B_4C tubes in place of the stiffeners, and increased sheath thickness, a full length weld to attach the handle and velocity limiter, and additional coolant holes at the top and bottom of the sheath;

d) the Duralife 160C control blades utilize low cobalt-bearing pin and roller materials in place of stellite which was previously utilized;

e) the Duralife 160C control blades handles are longer by approximately 3.1 inches in order to facilitate fuel moves within the reactor vessel during refueling outages at Susquehanna SES; and

f) the Duralife 160C control blades are approximately 16 pounds heavier as a result of the design changes described above.

The Duralife 160C control blade has been evaluated to assure it has adequate structural

margin under loading due to handling, and normal, emergency, and faulted operating modes. The loads evaluated include those due to normal operating transients (scram and jogging), pressure differentials, thermal gradients, seismic deflection, irradiation growth, and all other lateral and vertical loads expected for each condition. The Duralife 160C control blade stresses, strains, and cumulative fatigue have been evaluated and result in an acceptable margin to safety. The control blade insertion capability has been evaluated and found to be acceptable during all modes of plant operation within the limits of plant analyses. The Duralife 160C control blade coupling mechanism is equivalent to the original equipment coupling mechanism, and is therefore fully compatible with the existing control rod drives in the plant. In addition, the materials used in the Duralife 160C are compatible with the reactor environment. The impact of the increased weight of the control blades on the seismic and hydrodynamic load evaluation of the reactor vessel and internals has been evaluated and found to be negligible.

With the exception of the crevice-free structure and the extended handle, the Duralife 160C blades are equivalent to the NRC approved Hybrid I Control Blade Assembly (See Reload Summary Report Reference 9). The mechanical aspects of the crevice-free structure were approved by the NRC for all control blade designs in Reload Summary Report Reference 10. A neutronics evaluation of the crevice-free structure for the Duralife 160C design was performed by GE using the same methodology as was used for the Hybrid I control blades in Reload Summary Report Reference 9. These calculations were performed for the original equipment control blades and the Duralife 160C control blades described above assuming an infinite array of ANF 9x9 fuel. The Duralife 160C control blade has a slightly higher worth than the original equipment design, but the increase in worth is within the criterion for nuclear interchangeability. The increase in blade worth has been taken into account in the appropriate U2C5 analyses. However, as stated in Reload Summary Report Reference 9, the current practice in the lattice physics methods is to model the original equipment all B_4C control blade as non-depleted. The effects of control blade depletion on core neutronics during a cycle are small and are inherently taken into account by the generation of a target k-effective for each cycle. As discussed above, the neutronics calculations of the crevice-free structure show that the non-depleted Duralife 160C control blade has direct nuclear interchangeability with the non-depleted original equipment all B_4C design. The Duralife 160C also has the same end-of-life reactivity worth reduction limit as the all B_4C design. Therefore, the Duralife 160C can be used without changing the current lattice physics model as previously approved for the Hybrid I control blades (Reload Summary Report Reference 9).

The extended handle and the crevice-free structure features of the Duralife 160C control blades result in a one pound increase in the control blade weight over that of the Hybrid I blades, and a sixteen pound increase over the Susquehanna SES original equipment control blades. In Reload Summary Report Reference 9, the NRC approved the Hybrid I control blade which weighs less (by more than one pound) than the D lattice control blade. The basis of the Control Rod Drop Accident analysis continues to be conservative with respect to control rod drop speed since the Duralife 160C control blade weighs less than the D lattice control blades, and the heavier D lattice control blade speed is used in the analysis. In addition, GE performed scram time analyses and determined that the Duralife 160C control blade scram times are not significantly different than the original equipment control blade scram times. The current Susquehanna SES measured scram times also have considerable margin to the Technical Specification limits. Since the increase in weight of the Duralife 160C control blades does not significantly increase the measured scram speeds and the safety analyses which involve reactor scrams utilize either the Technical Specification limit scram times or a range of scram times up to and including the Technical Specification scram times, the operating limits are applicable to U2C5 with Duralife 160C control blades.

Since the Duralife 160C control blades contain solid hafnium rods in locations where the B_4C tubes have failed, and the remaining B_4C rods are manufactured with an improved tubing material (high purity stainless steel vs commercial purity stainless steel), boron loss due to cracking is not expected. Therefore, the requirements of IE Bulletin 79-26, Revision 1 do not apply to the Duralife 160C control blades. However, PP&L plans to continue tracking the depletion of each control blade and discharge any control blade prior to a ten percent loss in reactivity worth.

Based on the discussion above, the new control blades proposed to be utilized in U2C5 do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. No. The replacement blades can only be evaluated for their effectiveness as part of the overall reactivity control system, which is evaluated in terms of analytical consequences in 1. above. Since they do not cause any significant change in system operation or function, no new events are created.
3. No. The analyses described in 1. above indicate that the replacement blades meet all pertinent regulatory criteria for use in this application, and are expected to eliminate the boron loss concerns expressed in IE Bulletin 79-26, Revision 1. Therefore, the proposed change does not result in a significant decrease in any margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: October 2, 1990

Description of amendment request: The proposed amendment would change the Technical Specifications in order to add several new containment isolation valves to Table 3.6.3-1 "Primary Containment Isolation Valves." These valves are being added in support of upcoming modifications which will separate the Containment Radiation Monitors (CRM's) from the Hydrogen/Oxygen Analyzers and Post Accident Sampling System (all three systems currently share common containment penetrations).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its October 2, 1990 submittal.

The proposed changes do not:

I. Involve a significant increase in the probability or consequence of an accident previously evaluated.

This modification installs piping into penetrations similar or identical to designs already in place in the plant. It is designed to requirements enveloping all design basis accidents and malfunctions for the SSES containment. While in an absolute sense, the addition of any amount of additional equipment can be said to increase the probability of occurrence of an accident, the addition of this equipment does not increase the probability of an accident by an amount greater than the uncertainty in the original accident probability analyses and thus no significant licensing-basis change in probability can be said to have occurred due to this modification.

There is no specific condition of this modification or its location on containment that would affect any accident analysis

evaluated in the FSAR and the small size (1') line is represented by numerous other cases in the containment design that have been thoroughly evaluated previously.

The Technical Specification change itself simply lists the new isolation valves. No change in operational requirements are proposed for the new valves.

Based on the above, no significant increase in the probability or consequences of an accident previously evaluated will occur due to the proposed change.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed in I above, nothing in the design of this modification is different from existing Susquehanna containment design or design practice. No features of the design or the locations for installation have been identified by any design criterion that would indicate the existence of any mechanism for creation of an accident or malfunction of a different type than previously analyzed in the FSAR.

III. Involve a significant reduction in a margin of safety.

As specified in I above, the new design will meet all applicable design standards and is therefore consistent with the established margin of safety that is defined by containment integrity requirements.

The Technical Specifications directly affected by this modification, 3.6.1.1 "Primary Containment Integrity," 3.6.1.2 "Primary Containment Leakage," and 3.6.3 "Primary Containment Isolation Valves," will be satisfied by having the isolation valves meet all applicable surveillance requirements. Meeting these requirements will show that the modification has no significant adverse impact on any margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 19, 1990

Description of amendment request: The proposed amendment would change the Technical Specifications. The degraded voltage setpoints would be revised in Technical Specification Table 3.3.3-2, "Emergency Core Cooling System Actuation Instrumentation Setpoints". The degraded voltage setpoint would be increased from 84% to 93%. Technical Specification Tables 3.3.3-1, "Emergency Core Cooling System Actuation Instrumentation," and 3.3.3-3, "Emergency Core Cooling System Response Times," would also be changed to be consistent with the new setpoint.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the following basis and conclusion provided by the licensee in its submittal.

The proposed changes do not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The degraded voltage setpoints were addressed in FSAR Question 40.6. The proposed change enhances safety by raising the level of assurance that safety-related equipment will receive adequate operating voltage. As seen [from the] analyses, the raising of the setpoints does not increase the probability or consequences of an accident through the introduction of spurious actuations.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

As discussed above, nothing in the design of the Degraded Voltage Protection Scheme has been changed except the setpoint. No features of raising that setpoint have been identified that would indicate the existence of any mechanism for creating an accident or malfunction of a different type than previously analyzed.

III. Involve a significant reduction in a margin of safety.

As discussed above, the proposed action increases the margin of safety. The proposed setpoints provide an increased assurance that adequate voltage will be provided to connected 4.16kV, 480V, and 120V loads.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street N.W., Washington, D.C. 20037

NRC Project Director: Walter R. Butler

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 15, 1990

Description of amendment request: The proposed amendment would remove Containment Isolation Valve Table 3.6-1 from Technical Specifications. The subject table will be replaced by references to Ginna UFSAR Table 6.2-13. Temporary notes associated with the containment purge and mini-purge systems are also removed from the Technical Specifications. Appropriate surveillance testing changes are made in Section 4.4.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. All additions and deletions to the table are also acceptable and do not increase the consequences of an accident as discussed in Sections 3.3.1.3, 3.3.2.1, 3.3.2.7, and 3.3.2.8. Thus, the function and capability of the containment isolation system to isolate any radiological release within containment is not degraded.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated. The additions and deletions to the table are acceptable as discussed in Sections 3.3.1.3, 3.3.2.1, 3.3.2.7, and 3.3.2.8. The changes do not degrade the containment isolation or associated parent systems. There are no adverse affects upon other systems, nor any new failure modes induced.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety. The functions and characteristics of the containment isolation system remain unchanged. However, changes are made to valve isolation times and the valves listed for specific penetrations. These changes will be addressed in the amendment request to remove Table 3.6-1 from the Technical Specifications and reference this updated UFSAR table.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502.

NRC Acting Project Director: Curtis J. Cowgill, III

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: November 20, 1990 (TS 90-16)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). The proposed changes are to revise the Limiting Condition for Operation (LCO) 3.6.2.1 for the containment spray system to clarify the operability requirements for containment spray (CS) and residual heat removal (RHR) spray. This clarification is to ensure that an entire train of CS and RHR spray (i.e., all A Train or all B Train CS and RHR spray components) is operable when in the action for LCO 3.6.2.1. The action statement associated with this LCO would be revised to support a subsystem approach (similar to TS 3.5.1 for emergency core cooling system) that requires two independent subsystems comprised of a pump, heat exchanger, and flow path for both CS and RHR spray. In addition, the index and bases have been revised to reflect the title of "Containment Spray Subsystems."

Basis for proposed no significant hazards consideration determination: In its application, TVA provided the following information to support its proposed changes to the TSs:

The present wording for LCO 3.6.2.1 has led to confusion as to which pumps are allowed to be operable and be within the action statement requirements. The wording has caused Operations' personnel to be unsure of when TS 3.0.3 would be applicable. This revision will resolve this confusion.

By implementing this revision, assurance will be provided that an entire containment spray subsystem is available when in the action statement for LCO 3.6.2.1. The requirements of TS 3.0.3 will be complied with for loss of equipment in both subsystems. This clarification ensures that the required CS system components are available as assumed in the accident analysis to supply a spray flow of 6,750 gallons per minute (gal/min). This flow is achieved by having at least one complete subsystem with a CS pump capable of delivering 4,750 gal/min of spray and an RHR pump capable of delivering 2,000 gal/min of spray. The title changes in the index and bases have been made to provide consistency with the LCO. This change does not alter the operation, testing, or maintenance of the CS system or compromise nuclear safety.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This clarification to Limiting Condition for Operation (LCO) 3.6.2.1 will provide operators the requirements to ensure SQN's accident analysis is maintained by the containment spray (CS) system. There is no change to the equipment or method of operation, but only wording enhancements are utilized to ensure proper application of the TSs. These changes to LCO 3.6.2.1 requirements are explicitly consistent with the SQN design criteria and the Final Safety Analysis Report (FSAR) design basis loss of coolant accident analysis. The index and bases changes to use the title "Containment Spray Subsystems" have been made to ensure consistency with the LCO. This revision will not increase the probability or consequence of an accident but will ensure adequate CS capabilities to support the analysis.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No changes to plant design, testing, or operation are involved and therefore no possibility exists for a new or different kind of accident being created. This clarification will ensure proper application of LCO 3.6.2.1 action requirements.

3. Involve a significant reduction in a margin of safety.

By clarifying the operability requirements, this revision ensures that two independent containment spray subsystems are delineated, each with the ability to supply spray flow of 6,750 gallons per minute (gal/min). While under LCO 3.6.2.1 action requirements, at least one complete subsystem will be maintained or the requirements of TS 3.0.3 will be applicable. The 6,750 gal/min spray flow meets the required capacity for the FSAR accident analysis, and therefore the margin of safety for containment integrity is maintained without any reduction. The index and bases revision provides consistency for the "Containment Spray Subsystems" title.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant

to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 11, 1988

Brief description of amendments: The amendments modify the Technical Specifications to clarify Table 3.3-9 by adding the "Auxiliary Shutdown Control Panel(s)" as one of two available locations to read instrumentation for steam generator pressure, steam generator level, and auxiliary feedwater flow rate, and correcting the name of the "Auxiliary Feedwater Pump Turbine Control Panels."

Date of issuance: November 13, 1990

Effective date: November 13, 1990

Amendment Nos.: 79 and 73

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29405) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 30, 1990

Brief description of amendments: The amendments replace the existing McGuire Units 1 and 2 reactor coolant system heatup and cooldown limit curves with revised curves (TS Figures 3.4-2, 3.4-3, 3.4-4 and 3.4-5), as well as revise the reactor vessel surveillance capsule withdrawal schedule (TS Table 4.4-5).

Date of issuance: November 15, 1990

Effective date: November 15, 1990

Amendment Nos.: 115 & 97

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38599) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 15, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: September 4, 1990

Brief description of amendments: The amendments reduce the required measured reactor coolant system flow rate by one percent from 97220 GPM/loop to 96250 GPM/loop. Additionally, an administrative change removes references to the resistance temperature detector bypass manifold system. This system was removed from both McGuire units and previously approved by the NRC in Facility Operating License Amendment Nos. 84 (Unit 1) and 65 (Unit 2).

Date of issuance: November 20, 1990

Effective date: November 20, 1990

Amendment Nos.: 116 & 98

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40465) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 20, 1990. No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 20, 1990, as supplemented October 19, 1990

Brief description of amendment: The amendment changed Technical Specification Surveillance Requirement 4.6.1.5 by replacing the existing requirement to periodically (once every 18 months) verify the charging capability of each Emergency Diesel Generator (EDG) starting air compressor with a requirement to periodically (once every 31 days) verify that the starting air receiver tanks are at or above the required minimum pressure.

Date of issuance: November 21, 1990

Effective date: November 21, 1990

Amendment No.: 139

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 17, 1990 (55 FR 42095) The October 19, 1990 supplement provided clarifying information and did not change the proposed finding of the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: October 12, 1990

Brief description of amendment: The amendment revised Technical Specification Table 3.8.4.1-1, "Primary Containment Penetration Conductor Overcurrent Protection Devices," Sections C.1 and C.4 to reflect the removal of a load from Section C.1 and the addition of the load to Section C.4. The new circuit breaker in Section C.4 will provide primary containment penetration conductor overcurrent protection for the larger Reactor Water Cleanup (RWCU) precoat pump which is being installed to improve RWCU filter and system performance.

Date of issuance: November 20, 1990

Effective date: November 20, 1990

Amendment No.: 51

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 18, 1990 (55 FR 42295). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: August 22, 1990, and supplemented by letter dated October 17, 1990.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) regarding operation in the steam condensing mode (SCM) of the residual heat removal (RHR) system. The licensee has determined that the SCM is not required for safe operation of River Bend Station and plans on permanently disabling the SCM of RHR. The amendment deleted maintenance and surveillance requirements for three valves associated with the SCM and established a final trip setpoint for the High RHR/Reactor Coolant Isolation Cooling (RCIC) steam line flow for RCIC isolation.

Date of issuance: November 23, 1990

Effective date: November 23, 1990

Amendment No.: 52

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38602) and October 24, 1990 (55 FR 42921) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 7, 1990

Brief description of amendment: The amendment changes Technical Specification 3.9.3.2 to add a requirement that the Spent Fuel Pool (SFP) bulk temperature be maintained below 140 degrees F at all times and remove the current requirement that the SFP cooling trains be operable in Modes 5 and 6 whenever the most recent 1/3 core off-load has decayed less than 21 days (504 hours) from subcriticality and the shutdown cooling is not being used to cool the SFP. Action statements are added to require (1) immediate actions to restore the temperature below 140 degrees F, (2) within one hour suspension of fuel movement within the SFP, (3) within one hour isolation of the SFP cleanup demineralizers, and (4) recording SFP temperature at least once per 4 hours if the Limiting Condition for Operation is not satisfied. The surveillance requirement is also revised to monitor the SFP temperature every 12 hours.

Date of issuance: November 26, 1990

Effective date: November 26, 1990

Amendment No.: 150

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38604) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 31, 1990

Brief description of amendment: The amendment changes Millstone Unit 3 Technical Specification (TS) 3.7.12.3, "CO_2 Systems" to clarify the remedial actions to be taken when one or more CO_2 fire suppression systems become inoperable.

Date of issuance: November 15, 1990

Effective date: November 15, 1990

Amendment No.: 58

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 19, 1990 (55 FR 38605) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 6, 1990, as supplemented September 17, 1990.

Brief description of amendment: The amendment made administrative changes to the Fort Calhoun Station's Technical Specifications.

Date of issuance: November 19, 1990

Effective date: November 19, 1990

Amendment No.: 134

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 17, 1990 (55 FR 42096) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 16, 1990, as revised April 2, 1990

Brief description of amendments: The amendments changed the Technical Specifications for emergency diesel generator surveillance testing.

Date of issuance: November 19, 1990

Effective date: November 19, 1990

Amendment Nos.: 103 and 69

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (55 FR 14150 dated April 16, 1990). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 16, 1990. The staff has found three of the requested changes to be unacceptable and has issued a Notice of Partial Denial. On April 4, 1990, the staff granted a Temporary Waiver of Compliance which was immediately effective and remained in effect until these license amendments were issued. The Commission's related evaluation is contained in a Safety Evaluation dated November 15, 1990.

Attorney for Licensee: Jay Silberg, Esq., Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: October 7, 1988, supplemented by letter dated December 23, 1988 (LCA-170)

Brief description of amendment: The amendment revises the security plan by allowing the use of dedicated observers in lieu of security officers to compensate for certain safeguards degradations. The amendment also describes the conformance to the Code of Federal Regulations, Part 73.55(c)(6) of Title 10 regarding electrical cable penetrations in the control room floor.

Date of issuance: November 27, 1990

Effective date: November 27, 1990

Amendment No.: 166

Facilities Operating License No. NPF-1: Amendment changed the Technical Specifications.

Dated of initial notice in **Federal Register:** May 30, 1990 (55 FR 21976) The Commission's related evaluation of the amendment is contained in the staff's letter to Portland General Electric Company dated November 27, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: June 11, 1990

Brief description of amendment: The amendment deletes the reference to Regulatory Guide 1.129 in Surveillance Requirements 4.9E. "Station Batteries" and 4.9.F, "LPCI MOV Independent Power Supplies." The result is application of an equalizing charge to the batteries prior to conducting the performance discharge (capacity) test. Also consistent terminology and the latest industry standard related to the battery systems are incorporated. The latest industry standard is identified in a change to the Bases section.

Date of issuance: November 13, 1990

Effective date: November 13, 1990

Amendment No.: 167

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36348) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 13, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Public Service Electric & Gas Company, Docket No. 50-272, Salem Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: January 22, 1990

Brief description of amendment: This amendment changed Surveillance Requirements specified in Table 4.3-13, Table Notation, of Technical Specification 3.3.3.9. This change consisted of adding the statement to item (1) 3. "(Indication on the instrument drawer in Control Equipment Room only for 1-R12A)." The clarifying statement changed the CHANNEL FUNCTIONAL TEST response requirements associated with radiation monitor 1-R12A to match the monitor's actual design.

Date of issuance: November 21, 1990

Effective date: Unit No. 1 is effective as of the date of issuance to be implemented within 60 days of the date of issuance.

Amendment No. 116

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 7, 1990 (55 FR 8236) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: July 3, 1990, as supplemented by letters dated August 22 and September 10, 1990, and by the design calculation that was submitted on July 30, 1990.

Brief description of amendment: The amendment revises the basis for Technical Specification 3.4.3 to establish auxiliary feedwater system flow requirements of 175 gpm per train for maximum flow, and 100 gpm per train for minimum flow. Additionally, the amendment corrects an error in the applicability section of Technical Specification 3.4.3.

Date of issuance: November 15, 1990

Effective date: November 15, 1990

Amendment No.: 138

Provisional Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 10, 1990 (55 FR 37273) The supplementary information which was not specifically referenced in the initial **Federal Register** notice was provided to correct an existing error in the applicability section of Technical Specification 3.4.3 and to facilitate NRC review efforts and, therefore, did not alter the proposed action that was initially noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 15, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: August 22, 1990

Brief description of amendment: The amendment revises Technical Specification 6.4, "Training," to reference the correct edition of the National Fire Protection Association Standard No. 27 concerning the licensee's fire brigade training program.

Date of issuance: November 16, 1990

Effective date: November 16, 1990

Amendment No.: 139

Provisional Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40476) The Commission's related evaluation of the amendment is contained in a letter dated November 16, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 9, 1990 (TS 90-03)

Brief description of amendments: The amendments revise Sections 1, Definitions; 3/4.3, Instrumentation; 3/4.11, Radioactive Effluents; 3/4.12, Radiological Environmental Monitoring; and 6, Administrative Controls, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications. The changes implement NRC's recommended alternatives for the Radiological Effluent Technical Specifications as contained in Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Sections of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program," dated January 31, 1989.

Date of issuance: November 16, 1990

Effective date: November 16, 1990

Amendment Nos.: 148, 134

Facility Operating Licenses Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 4, 1990 (55 FR 12601) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 5, 1988, supplemented September 1, 1988.

Brief description of amendment: The amendment revised the designation of Instrument No. 7 in Table 3.3-9, Remote Shutdown Monitoring Instrumentation, and Table 4.3-6, Remote Shutdown Monitoring Instrumentation Surveillance Requirements, from Control Rod Position Limit Switches to the correct designation as Control Rod Position Switches. Additionally, in Table 4.3-6, the requirement to perform a channel calibration of these switches every 18 months is deleted.

The deletion of the footnote in Table 4.3-6 was previously implemented in Amendment No. 135.

Date of issuance: November 21, 1990

Effective date: November 21, 1990

Amendment No. 150

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34384) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 11, 1991, 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 petition for leave to intervene. Requests for a hearing and petitions 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. 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 a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. 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, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to 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 amendments 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.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: 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, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: October 25, 1990

Brief description of amendment: The amendment modifies the Appendix A Technical Specifications (TSs) relating to the required river water flow through the Recirculation Spray (RSS) heat exchangers and the allowable containment internal air partial pressure. Specifically, the amendment modifies Surveillance Requirement 4.6.2.2.e.3 by the addition of a footnote indicating that the minimum RSS heat exchanger flow may be 6000 gpm vice 8000 gpm provided additional operating restrictions are applied to containment internal air partial pressure. Limiting Condition for Operation 3.6.1.4 and Figure 3.6-1 are modified to incorporate an additional limit line applicable to the containment internal air partial pressure . This additional limit line is applicable when river water flow through the RSS heat exchangers is 6000 gpm or more but less than 8000 gpm.

Date of issuance: November 16, 1990

Effective date: November 16, 1990

Amendment No. 156

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 16, 1990.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: November 21, 1990

Brief description of amendment: This amendment revised the Operating License to increase the peak fuel pin rod average burnup limit to 60 megawatt-days/kilogram (MWd/kg). The previous limit had been 52 MWd/kg.

Date of issuance: November 27, 1990

Effective date: November 27, 1990

Amendment No.: 111

Facility Operating License No. NPF-6. Amendment revised the license. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 27, 1990.

Attorney for licensee: Mr. Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

NRC Project Director: Theodore R. Quay

Dated at Rockville, Maryland, this 5th day of December 1990.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 90-28968 Filed 12-11-90; 8:45 am]

BILLING CODE 7590-01-D

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title*: Nonresident Questionnaire.

(2) *Form(s) submitted*: RRB-1001.

(3) *OMB Number*: 3220-0145.

(4) *Expiration date of current OMB clearance*: Three years from date of approval.

(5) *Type of request*: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response*: On occasion and Quarterly.

(7) *Respondents*: Individuals or households.

(8) *Estimated annual number of respondents*: 1,200.

(9) *Total annual responses*: 1,200.

(10) *Average time per response*: .0833 hours.

(11) *Total annual reporting hours*: 77.

(12) *Collection description*: Under the Railroad Retirement Act, the benefits payable to an annuitant living outside the United States may be subject to withholding under Public Laws 98-21 and 98-76. The form obtains the information needed to determine the amount to be withheld.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 90-29012 Filed 12-11-90; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[34-28679; File No. SR-MCC-90-07]

Self-Regulatory Organizations; Midwest Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participants' Transaction Recording Fees

December 6, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 11, 1990, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MCC-90-07) described in Items I and II below, which items have been prepared by the self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SRO's Statement of the Terms of Substance of the Proposed Rule Change

MCC proposes to amend its Trade Recording Fee Schedule by waiving trade recording fees for Tape B eligible issues.[2] This waiver will only apply to firms sending orders in Tape B eligible securities to the floor of the Midwest Stock Exchange ("MSE") and will be limited in time to the period beginning with the effectiveness of this change and ending on December 31, 1990.

II. SRO's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the SRO 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 SRO has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. SRO's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed waiver of trade recording fees for transactions in Tape B eligible securities is to implement part of a program to promote additional order flow in Tape B eligible securities to the MSE and to attract additional clearing business to MCC. The proposed fees that MCC will charge to its participants are equitably allocated and reasonable in accordance with section 17A(b)(3)(D) of the Act.

[1] 15 U.S.C. 78s(b)(1)

[2] The term "Tape B" refers to the Consolidated Tape's Network B, which reports price and volume data for round-lot trades in American Stock Exchange ("Amex") listed stocks whether executed at the Amex, at a regional exchange, or over-the-counter. *See* D. Scott, *Wall Street Words*, 70,230 (1988).

B. SRO's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. SRO Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act, in that it changes a fee imposed by MCC, and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be avaiable for inspection and copying at the principal office of MCC. All submissions should refer to file number SR–MCC–90–07 and should be submitted by January 2, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

[FR Doc. 90–29107 Filed 12–11–90; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–28678; File No. SR–NASD–90–50; International Series Release No. 203]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the PORTAL Market Rules

I. Introduction

On August 24, 1990, the National Association of Securities Dealers, Inc., ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] to amend Schedule I to the NASD By-Laws ("PORTAL Rules"). The proposed rule change amends the PORTAL Rules to delete the requirement that a PORTAL dealer, PORTAL broker or PORTAL qualified investor ("PORTAL participant") maintain at its agent, who provides it access to a PORTAL depository organization, a segregated account for PORTAL Market transactions only.[2] The Commission did not receive any comments in response to its notice of the proposed rule change.[3] This order approves the proposal.

II. Description

The PORTAL Rules [4] were approved by the Commission on the same day that it approved Rule 144A under the Securities Act of 1933.[5] In its filing the NASD stated that the approved PORTAL Rules were based on an earlier version of Rule 144A. Accordingly, the NASD structured PORTAL to limit the possibility that unregistered securities enter the U.S. retail market. The PORTAL Rules, for example, require PORTAL participants to maintain PORTAL securities in a segregated account at a PORTAL depository organization [6] and PORTAL dealers and brokers are required to clear PORTAL transactions through a segregated account at the PORTAL clearing organization.[7] PORTAL securities must remain in the investor's segregated PORTAL account at the PORTAL depository until the securities are (1) sold or transferred to another PORTAL account in the PORTAL Market or (2) sold or transferred to a non-PORTAL account in a qualified exit transaction [8] or qualified exit transfer.[9] Previously, the PORTAL Rules also required PORTAL participants to maintain an account for PORTAL transactions at their agent who is providing them access to the services of a PORTAL depository organization and clearing organization that is segregated from all other non-PORTAL accounts they may have at the agent. Because PORTAL securities are maintained in a segregated account at the PORTAL depository and PORTAL transactions are required to be cleared through a segregated account at a PORTAL clearing organization, the account at an agent bank providing access to the PORTAL depository does not hold physical securities for PORTAL Market transactions. The account at a broker/dealer acting as a clearing broker for a PORTAL dealer or broker similarly does not hold securities for the PORTAL Market transactions of the dealer or broker.

III. Discussion

The NASD's existing rules would require the custodian bank to establish a special account for each PORTAL participant, which must be limited to only PORTAL securities. Because Rule 144A does not require this segregated accounting, the NASD's proposal will conform its rules to Rule 144A as adopted by the Commission. Accordingly, PORTAL participants will be permitted to commingle their

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] Specifically, the NASD proposed deleting section 1(b)(3) to Part III and section 1(b)(3) to part IV and amending section 1(b)(6) to part III and section 1(b)(7) to part IV.

[3] The proposal was noticed in Securities Exchange Act Release No. 28430, September 12, 1990, 55 FR 38625.

[4] *See* Securities Exchange Act Release No. 27956 (April 27, 1990) 55 FR 18781.

[5] 17 CFR 230.144A (1990). Securities Act Release No. 6862, April 23, 1990, 55 FR 17933.

[6] The NASD initially has designated two depository organizations to perform the functions of a securities depository with respect to PORTAL securities. These organizations are the Depository Trust Company ("DTC") for U.S. securities and Centrale de Livraison de Valuers Mobilieres, S.A. Luxembourg ("CEDEL"), for foreign securities.

[7] The PORTAL clearing organizations are DTC and the International Securities Clearing Corporation.

[8] The PORTAL Rules permit the sale of PORTAL securities to an account outside the PORTAL Market in a transaction registered under section 5 of the Securities Act or not subject to such registration by reason of compliance with Regulation S, Rule 144, or Rule 145; or with Rule 144A, as determined by the Association, upon submission of an opinion of counsel prior to the transaction. In addition, exit transactions are permitted where the issuer is repurchasing its securities and where the seller has demonstrated to the NASD on a pre-exit basis that the transaction is exempt from Commission registration and the purchaser will acquire securities that can be freely resold without registration under the Securities Act.

[9] A qualified exit transfer is: (1) A return of borrowed securities to a non-PORTAL account; or (2) a transfer by a PORTAL participant from its PORTAL account to an account of the PORTAL participant outside the PORTAL Market.

PORTAL securities with other securities held for them by the custodian bank. This will provide the participants greater flexibility in establishing accounts and in their relationship with the custodian banks. This change should not affect significantly the NASD's ability to conduct routine and special surveillance activities consistent with its statutory responsibilities under the Act because the NASD will continue to require that PORTAL participants permit NASD access to the account, whether PORTAL securities are segregated or not. Under the amended rules, PORTAL participants still will be required to be members or have their agents be members of a PORTAL depository organization and direct that their accounts for PORTAL securities be segregated from all other accounts they may have at the PORTAL depository.[10]

PORTAL participants also will continue to be required to deposit and maintain all PORTAL securities in segregated PORTAL accounts at the PORTAL depository organization until such securities are sold or transferred to another PORTAL account or sold or transferred to a non-PORTAL account in an exit transaction permitted under the PORTAL Rules.[11] In addition, PORTAL participants will continue to be required to authorize and direct the relevant PORTAL depository organization (or authorize its agent to authorize and direct the relevant PORTAL depository organization) to release information on its PORTAL account activity to the NASD or its designee.[12] Further, a PORTAL dealer or broker that executes a qualified exit transaction or a qualified exit transfer in a PORTAL security is required to enter in the PORTAL Market a PORTAL transaction report.[13] By comparing the daily reports from the PORTAL depository organizations with the exit reports filed by participants, the NASD is able to track the exit of securities from the PORTAL system. The NASD also will conduct examinations of each PORTAL dealer and broker every six months to review, among other things, the member's compliance with the qualified exit transaction and transfer restrictions of the PORTAL Rules. The proposed rule change, therefore, should not significantly affect the NASD's surveillance of PORTAL Market transactions.

The Commission has determined to approve the NASD's proposed rule change because it is consistent with the provisions of section 15A(b)(6) of the Act.[14] In that the proposed amendments to the PORTAL Rules are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: December 6, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–29068 Filed 12–11–90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–17900; 812–7644]

Cypress Fund Inc.; Application

December 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Cypress Fund Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 17(b) from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicant seeks an order permitting affiliated shareholders and affiliated persons of such shareholders to participate in a tender offer whereby shareholders may redeem Applicant's shares at net asset value. Redemption proceeds would be in-kind, consisting of a pro rata share of Applicant's portfolio assets.

FILING DATE: The application was filed on November 29, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 31, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Applicant, 1285 Avenue of the Americas, 18th Floor, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272–3022, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is registered as a non-diversified, closed-end management investment company under the 1940 Act. Its investment objective is long-term capital appreciation, and, in accordance with its investment policies, Applicant has invested in a limited number of issuers that are selected on the basis of having two or more of the following characteristics: (a) A balance sheet containing little or no debt, (b) significant ownership by company founders or management, (c) a strong market position, and (d) limited institutional ownership. Applicant's shares have been publicly traded on the American Stock Exchange since late 1986. As is typical of many closed-end companies, Applicant's shares trade at a discount from net asset value.[1]

2. Applicant's investment adviser is Mitchell Hutchins Asset Management Inc. ("Mitchell Hutchins"), a wholly-owned subsidiary of PaineWebber Incorporated, which is in turn a subsidiary of Paine Webber Group, Inc., a publicly-traded financial services holding company.

3. As of November 23, 1990, Applicant had approximately 6,213,816 shares outstanding. NAV Partners, L.P. ("NAV Partners"), owns approximately 32.4% of the outstanding shares.[2] William J. Reik,

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[10] Section 1(b)(5) of part III and section 1(b)(2) of part IV of the PORTAL Rules.

[11] Section 1(b)(6) to part III and section 1(b)(7) to part IV of the PORTAL Rules.

[12] Section 1(b)(7) to part III and section 1(b)(4) to part IV of the PORTAL Rules.

[13] Daily reports from the PORTAL depository organizations will identify PORTAL dealers and brokers that effect exit transactions in PORTAL securities without an entry of a transaction report.

[14] U.S.C. 78*o*–3 (1982).

[1] As of November 23, 1990, that discount was approximately 4.2%.

[2] The number of outstanding shares has declined since the most recent Schedule 13D filed by NAV Partners as of the filing of the application. Therefore, the reported ownership of 31.4% by NAV Partners in its Schedule 13D is incorrect. NAV Partners is a Delaware limited partnership whose

Continued

Jr., Applicant's former portfolio manager and managing director of Mitchell Hutchins, owns approximately 9.4% of the outstanding shares.[3] By virtue of their stock ownership of Applicant, NAV Partners and Mr. Reik are affiliated persons of Applicant as defined under section 2(a)(3) of the 1940 Act, but neither party is in a managerial or decision-making position with respect to Applicant. Affiliated persons of Applicant also include its investment adviser, and members of its board of directors and officers some of whom also own shares of Applicant.

4. On November 29, 1990, Applicant's board of directors announced a tender offer for any or all of its shares pursuant to section 23(c)(2) of the 1940 Act and in accordance with Rules 13e–3 and, if applicable, 13e–4 under the Securities Exchange Act of 1934. Consideration for shares tendered will consist of pro rata distributions "in kind" (cash and portfolio securities in the same proportion as in Applicant's portfolio) [4] the value of which will equal the aggregate net asset value of shares so tendered and valued as of the Valuation Data further described in the application.

5. The tender offer, which expires on January 2, 1991, is conditioned on a least 30% of the shares being tendered and on receipt of the exemptive order requested in the application.[5] Shareholders wishing to participate must tender all of their shares. Unless the tender offer is withdrawn or the conditions are not met, Applicant will accept all shares tendered and shareholders will receive their pro rata portion of (a) each of Applicant's portfolio securities (other than fixed income securities with maturities of less than one year) held as of the Valuation Date, and (b) the cash value of Applicant's Other Net Assets.

6. While NAV Partners, Mr. Reik, and two of Applicant's directors [6] have expressed their intent to tender their shares, none of them is committed to do so and Applicant has no agreement, understanding or arrangement with any of them regarding the tender offer.

7. Upon completion of the tender offer, Applicant expects to continue its operations consistent with its investment objectives and the board of directors will consider various alternatives to realize net asset value for the remaining shareholders. Such alternatives, which are further discussed in Applicant's Issuer Tender Offer Statement, include: (a) Merger of Applicant into an open-end investment company; (b) liquidation of Applicant's assets followed by a pro rata distribution of the proceeds to remaining shareholders; and (c) conversion of Applicant into an open-end investment company. All of these alternatives would require shareholder approval. If the tender offer statement is not consummated, the board of directors is expected to continue to explore alternatives to realize net asset value for shareholders.

Application's Legal Conclusion

8. Section 17(a)(2) of the 1940 Act prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, to purchase from such investment company any security or other property (except securities of which the seller is the issuer). Applicant requests an exemption from this prohibition pursuant to section 17(b) to the extent that participation of affiliated shareholders, or affiliated persons of such shareholders, would involve the purchase of portfolio securities from Applicant.

9. Applicant contends that the terms of the proposed transactions under the tender offer meet the standards set forth in section 17(b) for the following reasons. The tender offer gives all shareholders, affiliated or not, the same choice of remaining invested in Applicant or receiving the net asset value of their shares in an in-kind distribution and does not give any offeree an advantage over other shareholders. Thus, there is no overreaching on the part of any person and the consideration to be paid is reasonable and fair. Furthermore, if affiliated shareholders, such as NAV Partners and Mr. Reik, tender their shares, Applicant may be a more feasible candidate for merger into an open-end investment company or for conversion into an open-end company because the risk and costs associated with large-scale redemptions would be reduced. Large-scale redemptions could depress the value of portfolio securities because the unexpected liquidation of portfolio securities can negatively affect the price for such securities.

10. Applicant submits that the proposed transactions are consistent with its investment policies as set forth in its registration statement and as announced by Applicant's board of directors in September 1989 to pursue alternatives to realize net asset value for Applicant's shareholders. Applicant also asserts that proposed transactions are consistent with the general purpose of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

FR Doc. 90–29069 Filed 12–11–90; 8:45 am]

BILLING CODE 8010–01–M

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sole general partner is NAV Corporation, a wholly-owned subsidiary of Twenty-First Holdings, Inc. ("TFH"), which is wholly-owned by Robert N. Gordon. Mr. Gordon is the president of NAV Corporation and of Twenty-First Securities Corporation, a registered broker-dealer also owned by TFH.

[3] Mr. Reik may be deemed to own beneficially another 1.4% of the shares held in discretionary accounts of clients of Mitchell Hutchins because Mr. Reik has dispositive, but not voting, power over such shares.

[4] According to Applicant's Issuer Tender Offer Statement, 79% of its assets consist of portfolio securities. Cash will be paid for assets represented by cash, cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements) and other assets (including receivables and prepaid expenses), net of all liabilities ("Other Net Assets"). Fractional shares of a portfolio company attributable to a shareholder also will be paid in cash.

[5] The tender offer is a result of a policy adopted by the board of directors in September 1989 to achieve net asset value for Applicant's shares. In April 1989, NAV Partners launched a tender offer in an attempt to gain voting control of Applicant. Applicant commenced a competing tender offer in June 1989. A proxy contest ensued in which NAV Partners sought the election of its own candidates to the board of directors. At a shareholders' meeting in December 1989 51% of the shares entitled to vote rejected NAV Partners' proposal.

[6] Clifford M. Hardin owns 2,098 shares and Robert E. Kresko owns 10,978 shares. In addition, 31,500 shares are held by trusts for the benefit of Mr. Kresko's children and 2,099 shares are held by his wife.

[Rel. No. IC–17899; 811–486]

Seaboard Associates, Inc.; Application

December 5, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Seaboard Associates, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application was filed on November 14, 1990 and an amendment thereto was filed on December 4, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 2, 1991, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1776 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, (202) 272–3043, or Jeremy N. Rubenstein, Branch Chief, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. On July 29, 1943, applicant was formed under the name Associated Motion Picture Industries, Inc. for the purpose of purchasing the assets of Setay Company, Incorporated ("Setay"). Setay was formed in 1927, and its shares were originally sold in private transactions to employees of Consolidated Film Industries, Inc. Applicant purchased the assets of Setay in consideration of the assumption of certain of Setay's liabilities and the issuance of 94,735.8 shares of stock of applicant. Setay then liquidated and made a private distribution in kind of applicant's shares to Setay stockholders, who thereupon became shareholders of applicant.

2. On April 22, 1944, applicant filed a registration statement on Form N–8B–1 under the 1940 Act. Applicant has been unable to ascertain, from either its files or the records of the Commission, the exact date on which the registration statement was declared effective, but believes that such action was taken early in 1945. In 1960, applicant changes its name to Seaboard Associates, Inc.

3. Applicant is duly incorporated, validly existing, and in good standing under the laws of the State of Delaware. Applicant is engaged, and proposes to continue to engage, in the business of investing in or holding interests in oil and gas, marketable securities, and interests in real estate. Applicant owns a 97% interest in Metropolitan Royalty Corporation ("Metropolitan"), which is engaged in the oil and gas business.

4. On May 2, 1990, in light of the substantial costs of compliance with the 1940 Act and administration of the accounts of numerous small shareholders, applicant's board of directors determined to seek shareholder approval to effect a 1-for-20 reverse split of its common stock and to repurchase fractional stock interests. A significant purpose of the transaction was to reduce the number of beneficial owners below 100 and thereby enable applicant to seek to deregister under the 1940 Act.

5. Applicant solicited and obtained approval of the proposed transaction from its stockholders pursuant to a Proxy Statement prepared and filed pursuant to Regulation 14A, which described the transaction and the board's deliberations. Immediately before the transaction, applicant had 191 beneficial owners of its 151,501.8 shares of common stock, held by 172 holders of record. Of these, there were one hundred eleven beneficial owners who held fewer than 20 shares. On August 31, 1990, applicant effected the reverse stock split. Shareholders holding fewer than 20 shares before the split became holders of fractional shares immediately thereafter. Applicant then repurchased the fractional shares.

6. Rule 23c–1 permits a registered closed-end investment company to purchase for cash securities of which it is the issuer, subject to certain conditions. Applicant represents that it complied with Rule 23c–1 in connection with the repurchases of its shares. In accordance with the Rule, the holders of the newly-created fractional shares were paid based on the net asset value per share of the applicant's shares as of the date of the transaction. Checks were mailed to all shareholders on September 10, 1990, immediately following applicant's calculation of net asset value and a review of such calculation by applicant's independent accountants.

7. The vast majority of applicant's assets consist of oil interests, which applicant owns indirectly through Metropolitan. The most recent appraisal of such assets was as of August 31, 1990. This appraisal updated an extensive appraisal of such assets performed as of January 1, 1990. Another updated appraisal also had been performed as of July 31, 1990 because applicant had anticipated effecting the reverse stock split in early August, rather than at the end of the month. The transaction was deferred for a few weeks so that applicant's board of directors could better assess the impact of the invasion of Kuwait on the price of oil and, hence, the value of applicant's assets.

8. At the time of filing of the application and the amendment thereto applicant had 75 holders of record of its common stock, which represent 79 beneficial owners, as calculated pursuant to section 3(c)(1) of the 1940 Act. Applicant has not filed a registration statement pursuant to the Securities Act of 1933 with respect to any securities issued by it and has not made, and does not propose to make, a public offering of its securities. For these reasons, applicant believes it has ceased to be within the definition of "investment company" by virtue of the exclusion provided in section 3(c)(1) of the 1940 Act, and seeks to deregister as an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–29070 Filed 12–11–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before January 11, 1991. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: William Cline, Small Business Administration, 1441 L Street NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538.

OMB reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBIR Mailing List and Confirmation Request.

Form No.: SBA Form 1386.

Frequency: On occasion.

Description of respondents: Small Businesses interested in participating in the SBIR solicitation process.

Annual responses: 30,000.

Annual burden: 250.

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 90-29102 Filed 12-11-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2470]

Republic of Palau (Trust Territory of the Pacific Islands); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 28, 1990, I find that the Republic of Palau constitutes a disaster area as a result of damages caused by Super Typhoon Mike which occurred on November 10, and 11, 1990. Applications for loans for physical damage may be filed until the close of business on January 28, 1991, and for loans for economic injury until the close of business on August 28, 1991, at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795; or other locally announced locations.

The interest rates are:

For Physical Damage:	
Homeowners with Credit Available Elsewhere	8.000%
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.25
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 247006 and for ecomonic injury the number is 719500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 3, 1990.

Alfred E. Judd,

Acting Assistant Administrator, for disaster Assistance.

[FR Doc. 90-29103 Filed 12-11-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0316]

Advent IV Capital Co.; Surrender of License

Notice is hereby given that Advent IV Capital Company, 75 State Street, Boston, Massachusetts 02109 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (The Act). Advent IV Capital Company was licensed by the Small Business Administration on July 27, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on November 28, 1990, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 5, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-29101 Filed 12-11-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice No. 1302]

Delegation of Authority No. 185

Secretary of State

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111, 22 U.S.C. 2658), I hereby delegate to the Assistant Secretary of State for Consular Affairs the functions and responsibilities that are conferred upon the Secretary of State by section 599C of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991, Public Law 101-513, "Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon".

Dated: November 29, 1990.

Lawrence S. Eagleburger,

Acting Secretary of State.

[FR Doc. 90-29014 Filed 12-11-90; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Order Tentatively Awarding Certificates in Miami-Cancun Service Proceeding

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Tentative award of primary certificate authority to Pan American World Airways, Inc., and backup certificate authority to American Airlines, Inc. to serve Miami-Cancum, Order 90-12-11, Docket 47223.

SUMMARY: By Order 90-10-31, the Department instituted a proceeding to select one additional primary and one backup air carrier to provide scheduled foreign air transportation between Miami and Cancun, Mexico. The Department is proposing to award to Pan American World Airways, Inc., a certificate for primary authority and to American Airlines, Inc., a certificate for backup authority to both Pan American and Eastern Air Lines, Inc./Continental Airlines, Inc., which already has primary authority on the route.

DATES: Responses to the Department of Transportation's tentative awards should be filed by December 17, 1990. Answers should be filed by December 24, 1990.

ADDRESSES: Responses and answers should be filed in Docket 47223, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20490 and should be served on all parties in Docket 47223 and Mr. Robert Goldner, Room 9216, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Goldner, Room 9216, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4826.

Dated: December 6, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-29071 Filed 12-11-90; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of Great Western Aviation Company

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 90-12-10, Order to show cause.

SUMMARY: The Department of Transportation is proposing to find

Great Western Aviation Company fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., Room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than December 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: December 5, 1990.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–29072 Filed 12–11–90; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 90–069]

Chemical Transportation Advisory Committee (CTAC) Meeting, CTAC Subcommittee on Tank Filling Limits, and CTAC Subcommittee on Inert Gas Systems Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: A. CTAC will hold a meeting on Wednesday, January 23, 1991 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m.

The agenda for the meeting follows:

1. Call to order.
2. Opening remarks.
3. U.S. Coast Guard Remarks.
4. Introduction of new members.
5. General interest topics.
6. Subcommittee reports:
   a. Marine Occupational Safety and Health
   b. Tank Filling Limits
   c. Inert Gas Systems
7. Future Subcommittee Tasks.
8. International Activities.
9. Any other business.
10. Closing Remarks.
11. Adjournment.

B. The Subcommittee on Tank Filling Limits of CTAC will hold a meeting on Thursday, January 24, 1991 in Room 1301, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Subcommittee was formed to develop recommendations for safe filling limits for liquefied gas ships. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. This will be the Subcommittee's first meeting. The Subcommittee will address questions remaining regarding the IACS/SIGTTO study in filling limits for liquefied gas ships.

C. The Subcommittee on Inert Gas Systems of CTAC will hold a meeting on Thursday, January 24, 1991 in Room 3319, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Subcommittee was formed to develop guidelines for the safe operation and maintenance of inert gas systems. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The Subcommittee will develop recommendations to address problems associated with the maintenance of existing inert gas systems in which the manufacturer of the system is either no longer in business or the specific system design is no longer produced and major components are not readily available.

Attendance to the meetings is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Dr. M.C. Parnarouskis or Lieutenant Commander R.H. Fitch, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street SW., Washington, DC, 20593, (202) 267–1217.

Dated: December 5, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–29100 Filed 12–11–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 5, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0027.

Form Number: None.

Type of Review: Extension.

Title: Earnings-Based Accounts.

Description: The rule is necessary in order to prevent overreliance on earnings-based accounts as fundraising tools by savings associations, which, in turn, represents a significant risk to the savings association and the Savings Association Insurance Fund.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 80.

Estimated Burden Hours Per Response: 25 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: John Turner (202) 906–6025, Office of Thrift Supervision, 1700 G Street NW., 3rd Floor, Washington, DC 20552.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–29087 Filed 12–11–90; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-90-27]

TIME AND DATE: Monday, December 17, 1990 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Soft Drinks and their Containers (D/N 1600)
5. Inv. Nos. 701-TA-305 & 306, and 731-TA-476-482 (P) (Steel Wire Rope from Argentina, Chile, India, Israel, Mexico, The People's Republic of China, Taiwan, and Thailand)—briefing and vote.
6. Inv. Nos. 731-TA-483 & 484 (P) (Certain Personal Word Processors from Japan and Singapore)—briefing and vote.
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: December 7, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-29157 Filed 12-10-89; 9:45 am]

BILLING CODE 7020-02-M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, April 25, 1991, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, April 25, from 10:00 a.m. to 5:30 p.m., on Friday, April 26, from 9:00 a.m. to 5:30 p.m., and on Saturday, April 17, from 9:00 a.m. to 1:00 p.m.

PLACE: The Red Lion Hotel, 300 112th Avenue S.E., Bellevue, Washington 98004.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include: national and international response plans for marine mammal die-offs; high seas driftnet fisheries; the status of marine mammals in Alaska; the status (preparation, review, approval, and implementation of research and management programs) of recovery and conservation plans; and ongoing negotiations and activities pursuant to international agreements.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1825 Connecticut Avenue N.W., Room 512, Washington, DC 20009, 202/653-6237.

Dated: December 6, 1990.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 90-29178 Filed 12-10-90; 11:12 am]

BILLING CODE 6820-31-M

NUCLEAR REGULATORY COMMISSION

DATES: Weeks of December 10, 17, 24, and 31, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 10

Thursday, December 13

8:30 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

10:00 a.m.
Affirmation/Discussion and Vote (PUBLIC MEETING)
a. Final Rule, Part 20—Revised Standards for Protection Against Radiation (Tentative)

Week of December 17—Tentative

Monday, December 17

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)

10:0 a.m.
Briefing on EEO Program (Public Meeting)

Tuesday, December 18

10:00 a.m.
Briefing by DOE on Status of Civilian High Level Waste Program (Public Meeting)

Wednesday, December 19

9:00 a.m.
Briefing by NUMARC on Level of Design Detail for Part 52 (Public Meeting)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 24—Tentative

There are no meetings scheduled for the Week of December 24.

Week of December 31—Tentative

Thursday, January 3

1:30 p.m.
Briefing on NRC Technical Training Center (Public Meeting)

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: December 10, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89-29209 Filed 12-10-89; 8:45 am]

BILLING CODE 7590-01-M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (EDT), Tuesday, October 23, 1990.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

A—Budget and Financing

2. Repurchase of TVA Bond Held by the Federal Financing Bank and Sale of Portion of Investments in Decommissioning Fund.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichiel, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call 615–632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–479–4412.

William L. Osteen, Jr.,

Associate General Counsel and Assistant Secretary.

[FR Doc. 89–29182 Filed 12–10–89; 12:53 pm]

BILLING CODE 8120–02–M

Corrections

Federal Register
Vol. 55, No. 239
Wednesday, December 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Washington County, RI

Correction

In notice document 90-27458 appearing on page 48949 in the issue of Friday, November 23, 1990, make the following correction:

In the second column, in the second complete paragraph, in the fourth line, after the last word, insert "not be analyzed. Initially, all feasible alternatives will".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 6

RIN 2900-AD74

Authority of Fiduciaries To Conduct Insurance Transactions

Correction

In proposed rule document 90-19103 beginning on page 33140 in the issue of Tuesday, August 14, 1910, make the following correction:

§ 6.211 [Corrected]

On page 33141, in the first column, in § 6.211(a), in the fourth line "Office" should read "Officer".

BILLING CODE 1505-01-D

federal register

Wednesday
December 12, 1990

Part II

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960-AC35

Federal Old-Age, Survivors, and Disability Insurance; Determining Disability and Blindness; Addition of Down Syndrome and Other Serious Hereditary, Congenital or Acquired Disorders to the Listing of Impairments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These amendments revise the criteria we use when we determine whether children's impairments meet or equal the severity of the impairments found in the multiple body system disorders listings. These final rules add new listings to the multiple body system category of impairments in part B of appendix 1, Listing of Impairments, to subpart P of part 404 of Title 20 of the Code of Federal Regulations. They provide separate listings for Down syndrome and for the evaluation of other hereditary, congenital, and acquired syndromes.

The Supreme Court's February 20, 1990, decision in *Sullivan* v. *Zebley, et al.*, _____ U.S. _____, 110 S.Ct. 885 (1990), requires us to provide an individual assessment of the functional impact of any child's impairment(s) when the impairment(s) does not meet or equal the severity of the impairments found in the Listing of Impairments. Since the Court's decision did not preclude the use of the listings as a basis for a decision that a child is disabled, the listings contained in these final rules will be used to determine that a child is disabled based on an impairment(s) that meets or equals the severity of a listed impairment. However, consistent with the Supreme Court's holding in *Zebley*, we will not deny any child's claim for Social Security or supplemental security income benefits based only on a finding that the child's impairment(s) does not meet or equal these, or any other, listings.

DATES: These rules are effective December 12, 1990.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1759.

SUPPLEMENTARY INFORMATION: Throughout this preamble and the regulatory text we refer to "Down syndrome" rather than "Down's syndrome." "Down" without the apostrophe "s" is the term currently being used by the National Down Syndrome Congress and the National Down Syndrome Society and is the term used in several major texts on childhood disability.

These final rules add new listings to the multiple body system category of impairments in Part B of the Listing of Impairments. They provide separate listings for Down syndrome and for the evaluation of other hereditary, congenital, and acquired syndromes.

These regulations were published in the **Federal Register** (52 FR 37161) as a Notice of Proposed Rulemaking (NPRM) on October 5, 1987. Interested parties were given 60 days to submit comments. We received comments from State government agencies, national organizations, and special interest organizations which deal with persons with disabilities.

Pursuant to public comments on the NPRM and our experience in administering the disability programs, we have made an important revision in the final rules. We have added a new final listing 110.06, solely for children who have non-mosaic Down syndrome, which provides that any child who has a medically established diagnosis of Down syndrome will be found to meet the listing. Final listing 110.07 is the listing we proposed as listing 110.06 in the NPRM. It is to be used to evaluate hereditary, congenital, and acquired conditions other than Down syndrome that have multiple body system effects similar to Down syndrome, and for cases of mosaic Down syndrome.

The primary purpose of establishing these new listings is to update the evaluation process under the Listing of Impairments. Part A of Appendix 1, Listing of Impairments, describes, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity, absent evidence to the contrary. Part B of Appendix 1 contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18.

Until the publication of this rule, we did not have a specific listing for Down syndrome. Instead, most children with Down syndrome were evaluated under the criteria of listing 112.05—Mental Retardation—which requires measurement of intellectual functioning or of the failure to attain expected developmental milestones. Although this policy identified disability in most children with Down syndrome, it was not always adequate for assessing the impairments of the youngest children, especially infants from birth to 6 months of age, in whom the multiple manifestations of impairment cannot be easily evaluated. As a consequence, we have been following a procedure whereby we have deferred the evaluation of the impairments of infants until they attained 6 months of age in those cases in which we were unable to find the applicant disabled or to evaluate properly the effects of the impairment.

However, after more than 2 years of applying the procedure, it has become apparent to us that virtually all infants who have Down syndrome of the Trisomy 21, regular and translocation types, (i.e., all except those who have mosaic Down syndrome) will be found disabled when the effects of their impairments can be properly documented and evaluated. In a recent study we conducted of 152 claims filed on behalf of infants and children with Down syndrome, we found that all children with non-mosaic Down syndrome could establish that they met or equaled our listings by the age of 6 months. In addition, 77 percent of 4-to-5-month-old infants could be found to meet or equal a listing. Consequently, we have changed our regulations to reflect these new data and our new policy.

We have also made this change in response to interest in the evaluation of childhood disability from some members of Congress, the public, advocacy groups, and others. During the past 2 years, legislation has been introduced in both Houses of Congress which, if enacted, would establish a rebuttable presumption of disability for children under age 4 with congenital or genetic impairments, including Down syndrome. Two of the commenters on the NPRM suggested that we have a separate listing for Down syndrome. We have also recently met with advocates for the rights of disabled children, who urged us to consider creating a category of disability for infants based on the diagnosis of Down syndrome. Finally, as we draft new rules to comply with the Supreme Court's decision in *Zebley*, we have been consulting with experts in childhood disability. All of the experts who addressed the subject supported the idea that infants with Down syndrome should be found disabled by virtue of the diagnosis and its well-established medical and functional implications.

Other conditions, including mosaic Down syndrome, that can affect several

body systems in ways similar to Down syndrome, will be evaluated under listing 110.07, which we originally proposed as listing 110.06. Conditions to be evaluated under this listing (for example, PKU and fetal alcohol syndrome) can certainly be disabling, but are not as invariably disabling as non-mosaic Down syndrome. The new listing 110.07 will facilitate and expedite adjudication and help to ensure that proper consideration is given to the variety of possible manifestations of these disorders.

Mosaic Down syndrome is a rare form of the condition which manifests a wide range of impairment severity. The condition can be profound and disabling, but it can also be so slight as to go undetected. Therefore, we do not believe that it would be appropriate to find that individuals meet the listing based solely on this diagnosis. However, we want to stress that children with mosaic Down syndrome can still be found disabled if they meet or equal final listing 110.07; furthermore, under the new policy we follow pursuant to the Supreme Court's decision in *Zebley*, we may also find such children disabled based upon an individualized assessment of their functioning, even if they do not have an impairment that meets or equals these new listings, or any other listings.

Listing 110.07 will also be used to evaluate those claims of children with mental retardation of known causes associated with impairments of other body systems. However, listing 112.05, relating to mental retardation, is being retained because it will continue to be needed to evaluate the large number of claims in which mental retardation is alleged but in which the medical cause cannot be medically identified.

We are also revising the introductory material in 110.00 to identify better what is meant by the term "catastrophic congenital abnormalities or diseases" and to describe a level of severity which is considered sufficient to find a person disabled by these abnormalities or diseases. We have expanded the introduction by including several major congenital abnormalities that do not fall into the "catastrophic" category described in listing 110.08. We believe these changes will help ensure greater uniformity and equity in the adjudicative process for children with conditions that usually affect more than one body system.

In response to other concerns expressed by the commenters, we have also revised the documentation requirements in proposed 110.00C (110.00B in the final regulations) to indicate that medical evidence that is persuasive that a positive diagnosis of non-mosaic Down syndrome has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory findings. Paragraph A of final listing 110.07 (proposed listing 110.06) has also been revised to include additional neurological and developmental criteria to assure wider application to other impairments that are intended to be covered, and the documentation requirements in 110.00B (previously in proposed 110.00C) have been revised to prevent any possible conflicts between the documentation of Down syndrome and other impairments evaluated under this listing.

The comments we received and the changes we have made are addressed in more detail in the following discussion. We condensed, summarized, or paraphrased many of the written comments we received. We received several comments which did not pertain to the proposed changes in the listings; we have referred them to the appropriate Social Security office for reply.

Discussion of General Comments

Comment: Two commenters expressed the belief that the proposed listing did not adequately address the major adjudicative problem with Down syndrome; that is, of children less than a year old. These comments expressed the view that the listing should define appropriate developmental milestones in early life and provide guidelines for testing younger infants with Down syndrome. One of the commenters suggested that we consider such claimants as presumptively disabled and subsequently evaluate the claim.

Response: The comment has been adopted in part. We have provided in final listing 110.06 that when non-mosaic Down syndrome is established by clinical and laboratory findings the child will be considered disabled from birth. Although some older claimants will benefit from the new listing, we expect that the greatest benefit of this new listing will be in its application to young infants, especially from birth to 6 months. With regard to the comment on defining milestones and providing guidelines for testing, the discussion in 112.00B applies to evaluating milestones and age-appropriate activities in children with any impairment. We will also provide additional guidance in the revised childhood mental listings and in the new regulations we are now preparing in response to the Supreme Court's decision in *Zebley*.

Comment: Another comment noted that the proposed listing included other hereditary and congenital conditions as well as Down syndrome. The commenter suggested that a separate listing be established for Down syndrome. A similar comment expressed concern that the combining of Down syndrome with other impairments could result in conflicts regarding documentation.

Response: We agree with the comments. We have, therefore, added a separate listing 110.06 for non-mosaic Down syndrome, and redesignated the listing we proposed as 110.06 as final listing 110.07. Proposed listing 110.06 was developed primarily to address evaluation considerations specific to Down syndrome; however, there are many other conditions that manifest similar multisystem impairments for which final listing 110.07 can ensure a more accurate evaluation of disability. We have also revised this listing to clarify the documentation requirements to ensure that conflicts regarding documentation between Down syndrome and other impairments will not result.

Discussion of Specific Comments

110.00 Multiple Body Systems

Comment: One commenter stated that the criteria we proposed in 110.00B were not clear as to whether anencephaly and Tay-Sachs disease should be evaluated under proposed listing 110.06, which required functional limitations, or under listing 110.08, which provides for an allowance on the basis of diagnosis and prognosis alone.

Response: We agree with the comment and have clarified the criteria that were in proposed 110.00B. Catastrophic conditions such as anencephaly and Tay-Sachs disease where early death or profound development impairment is reasonably certain, should continue to be adjudicated according to listing 110.08. We have revised paragraphs A and B of 110.00 to make this clear. A new paragraph A incorporates in the final regulation the major features previously found in the paragraphs A and B of the proposed regulations.

Comments: One commenter suggested that the phrases "fetal alcohol syndrome" and "severe chronic neonatal infection" in proposed 110.00B be omitted because they did not describe any specific diagnostic entities. Another reason the commenter recommended that "fetal alcohol syndrome" should be omitted was that there was no specific diagnostic test as required by proposed 110.00C.

Response: The comment was not adopted. "Fetal alcohol syndrome" is a medical term used to describe the triad of specific dysmorphic facial features, growth deficiency, and central nervous system dysfunction including hypotonia, interference with motor coordination, and mental retardation. The term "severe chronic neonatal infection" refers primarily to those diagnostic conditions such as toxoplasmosis, rubella, cytomegalic inclusion disease, herpes encephalitis, and other serious infectious processes that can result in long-term impairment in infants and young children. Further, the intent of 110.00C was to require definitive tests in only those instances where appropriate, i.e., such a test is available and usually performed in accordance with accepted medical practice in order to confirm the presence of a medical condition. In response to the commenter, the explanatory material in the final 110.00B has been revised to make this clear.

Comment: Another commenter pointed out that "fetal alcohol syndrome" may be suspected by clinical findings but cannot be confirmed by laboratory methods, whereas other conditions such as Down syndrome can be clearly diagnosed through laboratory studies, thus making a clinical description redundant and superfluous. The commenter recommended that proposed 110.00C be revised to require definitive laboratory tests or a clinical description, whichever is appropriate.

Response: The comment was not adopted because a positive diagnosis of Down syndrome cannot be established through the results of laboratory testing alone. The use of laboratory tests is limited to confirmation of a diagnosis that has been suggested on the basis of clinical descriptive evidence. Therefore, the documentation must include a clinical description of the physical findings as well as definitive laboratory tests where appropriate.

Comment: A commenter expressed concern that the material in parenthesis in 110.00B was not as clear as the developmental milestone discussion in the third paragraph of 112.00B and suggested that the discussion in the third paragraph of 112.00B be repeated or referred to in 110.00B.

Response: We agree with the comment and have revised the final rule. A reference to the discussion of developmental criteria that appears in 112.00 has been added to final 110.00A. This will clarify that the parenthetical material was not meant to be discussion of developmental milestone criteria but to provide specific guidance as to what would constitute a significant interference with age-appropriate activities.

Comment: One commenter stated that the discussion of age-appropriate activities in 110.00B appeared in conflict with the description in proposed paragraph A of listing 110.06. In 110.00B, we define significant limitation of age-appropriate activities in an infant as developmental milestone age not exceeding two-thirds of chronological age at the time of evaluation. That criterion was not included in paragraph A of proposed listing 110.06, where age-appropriate activities stand alone, but did appear in paragraph B of proposed listing 110.06, where an additional impairment was required to meet the listing.

Response: We disagree. The definition that we proposed in 110.00B (110.00A2 in the final regulation), of what constitutes a significant interference with age-appropriate activities in an infant, is to be used in evaluating claims under both paragraphs A and B of final listing 110.07 (proposed listing 110.06). A severity level has been established under paragraph A of listing 110.07 in the final regulations which is internally consistent with that required under paragraph B of listing 110.07 in the final regulations. The additional impairment in paragraph A of listing 110.07, which corresponds to the additional impairment required under paragraph B of listing 110.07, is the hypotonia or other cause of motor dysfunction. To ensure that the level of severity is understood, the definition is repeated in paragraph B of listing 110.07 of the final rules.

Comment: One commenter indicated that proposed 110.00D (110.00C in the final regulations), which stated that the combined impairments must be evaluated together to determine if they are equal in severity to a listed impairment, was unnecessary because equivalency is inherent in the sequence of evaluation.

Response: We agree with the commenter that equivalency is part of the sequential evaluation process. However, because the listings in 110.00 are somewhat different from the other listed impairments in Part B in that they often involve combinations of impairments, we do not agree that 110.00D is unnecessary. We want to be very clear in explaining that the impairments described in 110.00 rarely involve single physical or mental manifestations and that one shoud not assume that the failure of any single manifestation to meet a listing is the end of the inquiry at the listing level. Children who have the conditions contemplated by final listing 110.07, but who do not meet the listing, may nevertheless have combinations of impairments that are equivalent in severity to listing 110.07.

110.06 Multiple Body Dysfunction

Comment: One commenter noted that there was no mention of the upper age limit which applies to proposed listing 110.06; whereas, in the American Association of Mental Deficiency (AAMD) manual the 18th birthday is given as the upper limit of the developmental period.

Response: In our judgment it is not necessary to state an age limit in the listing itself because §§ 404.1525 and 416.925 of our regulations state that Part B of the Listing of Impairments applies only to the evaluation of impairments of persons under age 18.

Comment: One commenter expressed concern with the format used in proposed listing 110.06 for making reference to other listings and suggested that we revise the format. The commenter indicated that the format in the proposed listing was not consistent with the format of other reference listings in the Listing of Impairments, such as listings 109.09, 104.03, or 12.09.

Response: The comment was adopted in part. With the exception of the format proposed for paragraph B of final listing 110.07, the format is similar to, if not the same as in the other listings cited. We have revised the format of paragraph B of final listing 110.07 to conform with the other listings.

Comment: One commenter requested that we clarify what we meant by "infant" in paragraph A of proposed listing 110.06.

Response: We adopted the comment in part. We have added the phrase "or young child" after the word "infant" to clarify that the term was not meant to exclude the young child. There is no universally accepted definition of infancy according to upper age limit, developmental milestones or activities. For example, "Dorland's Illustrated Medical Dictionary," 26th Edition (W.B. Saunders Co., 1981), defines infancy as the time from the termination of the newborn period (i.e., the first 28 days of life) to the time of assumption of erect posture at 12 to 14 months of age. Some sources make reference to children as "infants" when below the age of 18 months, and thereafter as "children." Others, however, extend infancy to the end of the first 24 months. We are using the phrase "infant or young child" to avoid the situation of having the criteria inadvertently restricted in application to an arbitrary definition based on

chronological age. The criteria can and are meant to be applied to a child of any age where there may be some interference in developmental tasks such as those listed.

Comment: A commenter suggested that since proposed listing 110.06 was not limited to Down syndrome, the listing should also include neurological deficits. The same commenter also suggested that additional examples of age-appropriate developmental activities for young infants, such as following, recognition, and smiling, need to be included.

Response: We agree in part with the commenter's suggestions. We have revised final listing 110.07 to include neurological deficits and have added swallowing, following, reaching, and grasping to the example of age-appropriate major daily or personal care activities. We did not add recognition and smiling in the final listing, even though we agree that they are additional examples of age-appropriate behavior. Normal milestones, in the first year of life, include turning toward stimuli and simple causal mean-ends interactions with the inanimate and animate world. However, recognition and smiling are difficult activities to define and measure. The other age-appropriate major daily or personal activities included in the final listing are easier to define and measure.

Comment: Two commenters considered the format for paragraph B2 of proposed listing 110.06 to be confusing. Both commenters suggested an alternate format. One of the commenters also expressed concern that the two-thirds milestone criteria would complicate adjudication.

Response: The comment was adopted in part. We agree that the format may have been somewhat difficult to understand and have revised it to improve its clarity. However, we believe it is important to have a measurement of milestone performance; i.e., two-thirds of chronological age, which corresponds to an IQ of 60–69 for those infants and young children who cannot be evaluated with standardized intelligence tests. Methods for determining developmental age relative to chronological age, using milestone criteria, have been well established, and the procedure for determining two-thirds age milestones are no different than longstanding procedures for determining one-half age milestones.

Comment: One commenter requested that we include a further explanation of our definition of mental retardation in paragraph B of proposed listing 110.06. The commenter asked how the definition in this listing related to the definition found in the AAMD manual, "Classification in Mental Retardation" (1983).

Response: The comment was not adopted. We believe that the definition in paragraph B of final listing 110.07 is consistent with the definition in the AAMD manual even though the definition in listing 110.07 would not require us to use formal testing where a description of adaptive deficits could be satisfactorily evaluated according to established developmental norms, as indicated in 112.00B. We do not believe that it is necessary to add the requirement of formal testing to the listing and we have not done so in the final rules.

Comment: The same commenter questioned the cutoff IQ score presented in paragraph B of proposed listing 110.06 (i.e., 69) since the AAMD manual and the "Diagnostic and Statistical Manual of Mental Disorders", third edition, revised (DSM–III–R) mention 70 as the upper limit for IQ scores in the range of mental retardation.

Response: The cutoff IQ score of 69 is consistent with other listings in the current Listing of Impairments.

Comment: One commenter raised the question why the standards in proposed listing 110.06 were different than in listing 112.05.

Response: We intended a similar level of severity under paragraph B2 of proposed listing 110.06 as currently exists under paragraph C of listing 112.05. In the final rules, we have revised paragraph B of listing 110.07 to make it clear that the standard under these criteria is consistent with the standard established under paragraph C of listing 112.05 regarding the IQ criterion.

Comment: One commenter indicated that to be consistent with listing 110.02, the wording "growth failure" in paragraph C of listing 110.06 should be changed to "growth impairment."

Response: The recommendation was accepted and the listing had been revised to reflect it.

Comment: The same commenter recommended that to be consistent with the wording in 102.00 the word "impairments" should be substituted for the word "defects" in paragraph D of proposed listing 110.06.

Response: We agree with the recommendation and have made this change.

Comment: One commenter raised the question whether the speech defect described in paragraph D of proposed listing 110.06 included only those speech conditions due to a hearing defect, as required under listing 102.08. The commenter recommended that speech defects attributable to other causes, such as those under listing 111.09, should also be included.

Response: The comment was adopted. We agree that neurological disorders as a cause of speech and language impairments as described under listing 111.09 should be included in addition to those referred to under 102.00. In the final rules we have revised the sentence to read, "Significant interference with communication due to speech, hearing, or visual impairments as described under the criteria in 102.00 and 111.09."

Comment: One commenter noted that in paragraph F of proposed listing 110.06 the reference listing included listing 111.02, major motor seizures, but excluded listing 111.03, minor motor seizures. In the commenter's opinion this did not appear appropriate, and the commenter recommended that we include minor motor seizures in paragraph F of proposed listing 110.06.

Response: The comment was adopted. Multisystem disorders when manifested by seizures are more often associated with the major motor type than the minor motor type. However, we have included minor motor seizures in paragraph F of listing 110.07 in the final regulations.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the changes we have made will have little, if any, impact on costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect only individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Disability Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and Disability Insurance.

Dated: July 26, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 4, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 404—[AMENDED]

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405 (a), (b), and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), (5), (6), and (15) of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

Appendix 1 to Subpart P—[Amended]

2. Listing 110.00, Multiple Body Systems, of Part B of Appendix 1 (Listing of Impairments), of subpart P is amended by revising the text of paragraphs A and B, by adding a new paragraph C and by adding new listings 110.06 and 110.07 to read as follows:

110.00 Multiple Body Systems

A. This section refers to those life-threatening catastrophic congenital abnormalities and other serious hereditary, congenital, or acquired disorders that usually affect two or more body systems and are expected to:

1. Result in early death or developmental attainment of less than 2 years of age as described in listing 110.06 (e.g., anencephaly or Tay-Sachs); or

2. Produce long-term, if not life-long, significant interference with age-appropriate major daily or personal care activities as described in listings 110.06 and 110.07. (Significant interference with age-appropriate activities is considered to exist where the developmental milestone age did not exceed two-thirds of the chronological age at the time of evaluation and such interference has lasted or could be expected to last at least 12 months.) See 112.00B for a discussion of developmental milestone criteria and evaluation of age-appropriate activities.

Down syndrome (except for mosaic Down syndrome, which is to be evaluated under listing 110.07) established by clinical findings, including the characteristic physical features, and laboratory evidence is considered to meet the requirement of listing 110.06 commencing at birth. Examples of disorders that should be evaluated under listing 110.07 include mosaic Down syndrome and chromosomal abnormalities other than Down syndrome, in which a pattern of multiple impairments (including mental retardation) is known to occur, phenylketonuria (PKU), fetal alcohol syndrome, and severe chronic neonatal infections such as toxoplasmosis, rubella syndrome, cytomegalic inclusion disease, and herpes encephalitis.

B. Documentation must include confirmation of a positive diagnosis by a clinical description of the usual abnormal physical findings associated with the condition and definitive laboratory tests, including chromosomal analysis, where appropriate (e.g., Down syndrome). Medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory report. Documentation of immune deficiency disease must be submitted and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measures of cellular immunity mediators.

C. When multiple body system manifestations do not meet one of the established criteria of one of the listings, the combined impairments must be evaluated together to determine if they are equal in severity to a listed impairment.

* * * * *

110.06 Down syndrome (excluding mosaic Down syndrome) established by clinical and laboratory findings, as described in 110.00B. Consider the child disabled from birth.

110.07 Multiple body dysfunction due to any confirmed (see 110.00B) hereditary, congenital, or acquired condition with one of the following:

A. Persistent motor dysfunction as a result of hypotonia and/or musculoskeletal weakness, postural reaction deficit, abnormal primitive reflexes, or other neurological impairment as described in 111.00C, and with significant interference with age-appropriate major daily or personal care activities, which in an infant or young child include such activities as head control, swallowing, following, reaching, grasping, turning, sitting, crawling, walking, taking solids, feeding self; or

B. Mental retardation as evidenced by one of the following:

1. Mental retardation as described in 112.05A, B, or C; or

2. Achievement of only those developmental milestones generally acquired by children no more than two-thirds of the child's chronological age, and a physical or other mental impairment imposing additional and significant restrictions of function or developmental progression; or

C. Growth impairment as described under the criteria in 100.02A or B; or

D. Significant interference with communication due to speech, hearing, or visual impairments as described under the criteria in 102.00 and 111.09; or

E. Cardiovascular impairments as described under the criteria in 104.00; or

F. Other impairments such as, but not limited to, malnutrition, hypothyroidism, or seizures should be evaluated under the criteria in 105.08, 109.02 or 111.02 and 111.03, or the criteria for the affected body system.

* * * * *

[FR Doc. 90–28745 Filed 12–11–90; 8:45 am]

BILLING CODE 4190–29–M

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AB96

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These amendments revise the medical criteria in the Listing of Impairments that are used to evaluate mental disorders in children under age 18 for the disability programs in title II and title XVI of the Social Security Act (the Act). The revisions reflect advances in medical knowledge, treatment, and methods of evaluating mental disorders in children and provide up-to-date criteria for use in the evaluation of disability claims based on childhood mental disorders.

These amendments revise the criteria we use when determining whether children's impairments meet or equal the severity of the impairments found in the mental disorders listings. The Supreme Court's February 20, 1990, decision *Sullivan* v. *Zebley et al.*, _____ U.S. _____, 110 S.Ct. 885 (1990), requires us to provide an individual assessment of the functional impact of a child's impairments when the severity of the impairments does not meet or equal the severity of the impairments found in the Listing of Impairments. Since the Court's decision did not preclude the use of the listings as a basis for a decision that a child is disabled, the listings contained in these final rules will be used to determine that a child is disabled based on an impairment that meets or equals the severity of a listed impairment. We currently are developing standards to implement the Supreme Court's decision in *Zebley*. Until these standards are implemented, disability claims filed on behalf of children with impairments will not be denied based only on our finding that the severity of their impairments does not meet or equal the criteria set out in these final rules.

DATES: These rules are effective December 12, 1990.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1759.

SUPPLEMENTARY INFORMATION: The criteria for evaluating the severity of

mental disorders in children are found in 112.00 of Part B of the Listing of Impairments in Appendix 1 of subpart P of part 404 of title 20 of the Code of Federal Regulations (CFR). Appendix 1 is divided into Part A and Part B. The criteria in Part A describe impairments that are severe enough to prevent a person from doing any gainful activity, absent evidence to the contrary. Part B of Appendix 1 contains additional criteria that only apply to the evaluation of impairments of persons under age 18. Part B was initially included only in Appendix 1 of subpart I of part 416 in 1977, subsequent to the enactment of the Supplemental Security Income (SSI) program. While Part B applies mainly to claims by children for SSI benefits based on disability under title XVI of the Act, it also applies to some claims for disability insurance benefits and child's insurance benefits under title II. In recodifying the title II and title XVI disability regulations on August 20, 1980 (45 FR 55566), we took the criteria used in making disability determinations out of part 416 and placed them only in Appendix 1 of subpart P of part 404. This was done to eliminate repetition in the regulations, since the criteria contained in Appendix 1 apply to both the title II and title XVI disability programs. (See 20 CFR 404.1525 and 416.925.).

When parts of the Listing were revised and published in **Federal Register** on December 6, 1985 (50 FR 50068), we indicated in the preamble that medical advancements in disability evaluation and treatment, and our increased program experience would require us to review and update the Listing periodically. Accordingly, we published termination dates ranging from 4 to 8 years for each of the specific body system listings. These dates currently appear in the introductory paragraphs of the Listing; the expiration date for Part B of the listings for mental disorders in children was December 5, 1993. We are now updating the mental disorders listings in 112.00 (Part B) and extending the effective date of these revised listings for 5 years from the date of their publication. We intend to carefully monitor these regulations over the 5-year period by providing ongoing evaluation of the medical evaluation criteria. Therefore, 5 years after publication of the final rules, these regulations will cease to be effective unless extended by the Secretary or revised and promulgated again as a result of the findings from the evaluation period.

These regulations were published in the **Federal Register** (54 FR 33238) as a Notice of Proposed Rulemaking (NPRM) on August 14, 1989. Interested persons, organizations, and groups were invited to submit comments pertaining to the proposed amendments within a period of 60 days from the date of publication of the NPRM. The comment period ended on October 13, 1989. After carefully considering the comments contained in the 145 letters we received regarding the proposed rules, we are adopting the proposed rules with modifications explained later in this preamble.

Explanation of the Final Rules

We have updated the medical terms we use to describe the major mental disorders of childhood, their characteristics, and symptoms to conform to the terminology currently used by psychiatrists, psychologists, pediatricians, and other professionals who treat children who have mental disorders. The terminology we proposed in the NPRM in the **Federal Register** of August 14, 1989 (54 FR 33238) was based on the third edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM–III), published by the American Psychiatric Association (APA) in 1980. We have revised these final listings so that they are based on the terminology used in the revised third edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM–III–R), published by the APA in 1987. This edition, as the previous edition, gives a common basis for communication, which is particularly important in evaluating medical reports used in determining disability. In most instances, any differences between the terminology in the DSM–III–R and the DSM–III do not have a substance effect on the rules from the way we proposed them; we describe any important changes below and in the "Public Comments" section of this preamble.

The listings are also more specifically related to distinct types of mental disorders. Thus, we have included fewer disorders under the same listing than were grouped together under the former listings. The result is an increase in the number of listings from four to eleven. The organization of mental disorders is based on the DMS–III–R, which provides a more realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing.

In the NPRM, we proposed to confine the use of the Psychiatric Review Technique to those cases in which we used the criteria of the adult mental listings to evaluate children's claims. However, in response to several public comments, we reconsidered using a technique to assist in the evaluation of claims filed on behalf of children with mental disorders. We are now preparing revisions to the technique and plan to publish these revisions in an NPRM.

We have also revised the terminology used to describe the various age groups. The term "newborn and younger infants" is used to describe children from birth to attainment of age 1, and the term "older infants and toddlers" means children age 1 to attainment of age 3; the term "infants and toddlers" refers to both groups together, that is, from birth to attainment of age 3.

One of the major changes from the NPRM is in the way we will apply the paragraph B criteria. Many public commenters questioned why certain listings required children to meet more of the paragraph B criteria than others. They stated that if the paragraph B criteria represented functional measures of listing-level severity, it should follow that the same number of paragraph B criteria would be disabling under all of the listings. We agree with the commenters and have revised the listings so that all listings that employ paragraph B criteria have the same number of functional requirements.

Another major change in the way we apply the paragraph B criteria is that we will require children aged 3 to attainment of age 18 to meet two of the age-appropriate paragraph B criteria. In some listings, this is an increase from the proposed listings, whereas in others it is a decrease. We explain the reasons for these changes below. Older infants and toddlers, age 1 to attainment of age 3, will have to meet only one of the age-appropriate paragraph B criteria; similarly, final listing 112.12 (proposed listing 112.10), the listing for newborn and younger infants from birth to attainment of age 1, also requires only one criterion.

The final listings also include a significantly revised listing 112.08 and two new listings, which we added in response to numerous public comments. In the NPRM, we proposed a listing 112.08, Personality Disorders, that did not provide specific criteria for the evaluation of these disorders in children. Instead, it was a reference listing to listing 12.08 in Part A of Appendix 1 to subpart P of the Regulations No. 4, the adult listings. In response to comments, we have replaced the reference listing with a complete listing, which includes paragraph A and paragraph B criteria specific to children.

We also agreed with the many commenters who urged us to add new listings for psychoactive substance dependence disorders (final listing

112.09) and attention deficit hyperactivity disorder (final listing 112.11). We describe both of these listings in the summary below and address the public comments in the public comment section of this preamble. We have renumbered two of the listings to reflect the addition of these two new listings. Autistic Disorder and Other Pervasive Developmental Disorders, proposed as listing 112.09, is now final listing 112.10, and Developmental and Emotional Disorders of Newborn and Younger Infants (originally called "Developmental and Emotional Disorders of Infancy" in the proposed rules at 112.10) is now listing 112.12.

The following is a summary of the listings we are adopting in these final rules and some of the more extensive changes we have made from the text of the proposed rules. We describe other changes in the public comments section of this preamble.

112.00 Preface

In 112.00A of the preface, Introduction, we explain the basic approach used in the listings. In this section, we explain that each listing begins with an introductory statement (capsule definition) that describes the disorder or disorders addressed by the listing. If a child has a mental disorder described by this capsule definition, the listing is used to evaluate the disorder to determine whether the child "meets" the listing. Most of the listings then continue with a dual approach, which divides each listing into two paragraphs. The first paragraph (the paragraph A criteria) describes the characteristics necessary to substantiate the existence of a listed mental disorder, while the second paragraph (the paragraph B criteria) describes the applicable restrictions and functional limitations which may result from the disorder in children and the number of paragraph B criteria needed to satisfy the severity requirement of the listing.

In response to public comments, we have added a new paragraph at the end of 112.00A to emphasize that the impairments in the listings are examples of some of the most common disabling mental disorders that may affect children. The new paragraph provides that when a child has a medically determinable impairment that is not listed or a combination of impairments, no one of which meets a listing, we will make a medical equivalency determination in accordance with §§ 404.1526 and 416.926 of our regulations.

In 112.00B of the preface, Need for Medical Evidence, we describe the need for medical evidence to substantiate the existence of a medically determinable impairment. Although we have not made any substantive changes in this paragraph, we have revised the first sentence so that it contains language that is the same as language in §§ 404.1525, 404.1526, 404.1528, 416.925, 416.926, and 416.928 of our regulations. The change is intended to clarify our meaning of the term "laboratory findings" and to make the language of the listings consistent with the regulations.

In 112.00C of the preface, Assessment of Severity, we describe in detail the multiple factors in the paragraph B criteria of listing 112.02 which we use for assessing the degree of functional limitations required to meet the severity of the listing in various age groups in children. We reorganized the text and made several changes to clarify terminology; we describe these changes in the public comments section. We also made several additions in response to public comments. These additions are intended to provide further detail on the importance of parents and others as sources of information about a child's day-to-day functioning in medical evaluations of mental disorders and in our adjudications of the cases. Other revisions provide specific detail about sources of evidence of the various areas of functioning at different age levels. Related to these additions is an important change of terminology. We have replaced the word "clinical" with the word "medical" in this section and throughout the remainder of the preface and the listings to underscore our intent that all determinations, including those that ultimately rely on the results of standardized testing, must be based on consideration of all medical evidence, which generally incorporates information supplied by parents and others. We provide a detailed explanation for this change, including why we chose the word "medical," in our responses to the public comments.

Finally, we have added a statement in the second paragraph to explain that older infants and toddlers (that is, children from age 1 to attainment of age 3) may present the same problems of diagnosis as younger infants because of insufficient developmental differentiation. When such children have impairments that do not meet the listings, we will consider whether the impairments are equivalent to any listed impairment, including the impairments in listing 112.12 when appropriate to the particular facts of a child's case.

In 112.00D of the preface, Documentation, we discuss the evidence needed to document mental disorders in children. In the final rules, we have expanded the first paragraph to include discussion of the importance of evidence from parents and other sources who have knowledge of a child's day-to-day functioning in medical evaluations and in our adjudications. Beginning with the seventh paragraph, we have added more detail about the use of standardized testing, including a new tenth paragraph which codifies our longstanding policies on how long IQ test results remain valid at different ages. A new eleventh paragraph specifies that standardized intelligence tests are essential to adjudications under final listings 112.05C, D and E, and that listings 112.05A, B, and F provide alternatives to testing. In the 16th paragraph, we have incorporated additional detail on the evaluation of children whose principal language is not English; these are also longstanding policies. Throughout 112.00D we have also added references to pediatricians as expert sources of evidence about children's mental disorders.

In 112.00E, Effect of Hospitalization or Residential Placement, and 112.00F, Effects of Medication, we explain that evaluation of mental disorders in children must include consideration of the fact that medications, hospitalizations, and other highly structured living arrangements may minimize the overt indications of severe, chronic mental disorders without necessarily affecting the functional limitations imposed by the disorder. Section 112.00F also acknowledges that medications may sometimes produce side effects that add to the functional limitations resulting from mental disorders in children. The only change we have made from the language we proposed for both of these sections is the addition of a sentence at the end of the first paragraph of 112.00E, to provide more guidance on how to assess functional impairment when structured settings ameliorate the overt indications of a mental disorder.

112.02 Organic Mental Disorders

We incorporated ten factors that are characteristic of organic mental disorders in children in the paragraph A criteria of the final listing; this is one more criterion than we proposed in the NPRM. We have also revised the language of the capsule definition to incorporate the description we had originally proposed as the opening statement to the paragraph A criteria and to make the capsule definition consistent with the DSM–III–R. In paragraph A, we have provided more

examples of medical findings associated with the various A criteria.

Paragraph B contains the restrictions or functional limitations used to assess the severity of these disorders and, by reference, the disorders is most of the other listings. Mental disorders do not manifest themselves in the same way in children of different ages. Therefore, paragraph B provides criteria for the assessment of impairment severity for two age groups, "older infants and toddlers," age 1 to attainment of age 3, and "children," age 3 to attainment of age 18.

The criteria used to assess impairment severity in older infants and toddlers (age 1 to attainment of age 3) are based upon functional deficits in the following areas: Gross and fine motor development, cognitive/communicative function, and social functioning. The criteria used to assess impairment severity in children (age 3 to attainment of age 18) are based upon functional deficits in the following areas: Cognitive/communicative function, social functioning, personal/behavioral function, and concentration, persistence, and pace.

The criteria in paragraph 112.02B1 recognize the difficulty of assessing specific areas of functional impairment in older infants and toddlers. Therefore, each of the first three criteria under this paragraph is based on a comparison of a child's functioning in one of the major milestone domains with children who are one-half the child's chronological age. We believe that a disorder of such functional impact in a child age 1 to attainment of age 3 is sufficient to establish listing-level severity and have, therefore, provided that when an older infant or toddler, age 1 to attainment of age 3, demonstrates functional deficits or restrictions in one of the first three areas to the degree specified in the paragraph B1 criteria, the child will satisfy the requirements of listing 112.02. We have also provided a fourth criterion which states that a child who is somewhat less impaired in the major milestone domains, but who demonstrates this lessor degree impairment in at least two of the major milestone domains, will be found to be disabled.

We have revised the language of paragraph 112.02B1 to replace the language "50 percent or less of the anticipated developmental norm," with the more straightforward language "generally acquired by children no more than one-half the child's chronological age," in the first three B1 criteria; this is not a change in meaning, but a clarification of our intent.

We have made an important change in paragraph 112.02B2. A number of commenters pointed out that there were inconsistencies in the proposed rules, especially in the number of paragraph B criteria applied throughout the listings. As we have already stated, we agree with the comment that the functional criteria should be uniform, that is, that each listing should require the same number of paragraph B criteria.

Five commenters asked us to adopt a system whereby a child with "marked" impairment of functioning in two of the domains of the paragraph B criteria, or "extreme" impairment in one domain, would meet the severity level of the listings. The commenters stated that this was the "clinically appropriate" solution and that it would " render the listings in harmony with professional opinion."

In a different context, though clearly relevant, the American Psychiatric Association (APA) has provided professional support for this position in connection with its study of our adult mental criteria. The APA concluded that the usefulness of functional domains, each of which taps complex phenomena, is enhanced by requiring demonstrated impact in more than just one domain. We believe that, although the functional domains for children age 3 to attainment of age 18 are not identical to those for adults, there is some overlaps and they do tap similarly complex phenomena.

Furthermore, when we compared the paragraph B1 criteria (that is, the criteria for older infants and toddlers, age 1 to attainment of age 3) with the paragraph B2 criteria (the criteria for children age 3 to attainment of age 18) we realized that we had proposed inconsistent systems of rating function at the two age levels. In paragraph B1 we had, in effect, proposed a system very much like the system the five commenters proposed. That is, the first three criteria, requiring milestones of 50 percent of the expected norm in any of the functional domains, described such functional impairment that they could be characterized as extreme, and any one of them in an older infant or toddler could alone establish disability. This was underscored by our fourth criterion in paragraph B1, which recognized that a child who was somewhat less impaired in two of the three domains—which means a combination of two paragraph B criteria at the marked level—would be disabled.

On the other hand, the paragraph B2 criteria were not based on measurable milestones but were based on a standard of "marked" impairment. It was clear to us that it would have been inconsistent with the scheme in paragraph B1 to provide that a marked impairment in only one functional domain would meet the severity of the listing; perhaps more importantly, it would have contradicted our intent in placing the term " marked" on a continuum between moderate and extreme, that is, that a child's impairment could meet or equal the severity of a listed impairment without being profoundly debilitated.

Therefore, we decided to require that children age 3 to attainment of age 18 would have to meet two of the paragraph B criteria. We believe that our decision is consistent with the APA's research findings about the adult paragraph B criteria, that it is " clinically appropriate" and that it will make our listings internally consistent and more understandable. We further believe that this change will clarify that the requirements in listing 112.02B2 are comparable to the requirements in listing 112.02B1d and thus provide a more realistic frame of reference for the evaluation of functional impairment in children for both age groups.

112.03 Schizophrenic, Delusional (Paranoid), Schizoaffective, and Other Psychotic Disorders

This listing groups psychotic disorders that are more closely related than in the former listing. Mood disorders are to be evaluated under listing 112.04.

In the final listing, we have revised the title, capsule definition, and the paragraph A criteria to reflect DSM–III–R terminology. In the new NPRM, we had proposed requiring that there be an abnormality of affect (blunt, flat, or inappropriate affect) associated with signs of disrupted thought (incoherence, loosening of associations, illogical thinking, or poverty of content of speech) under criterion 112.03A3. In final paragraph 112.03A4, we have made abnormal affect a separate paragraph A criterion, consistent with DSM–III–R criteria.

To fulfill the requirements of listing 112.03, it must be demonstrated that an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria also has functional deficits or restrictions in one of the areas to the degree specified in the criteria of listing 112.02B1; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in listing 112.02B2.

112.04 Mood Disorders

We have changed the title (from "Affective Disorders") to reflect current terminology. We have also revised the

capsule definition and the paragraph A criteria of each of the three types of syndromes in the listing to be consistent with the DSM–III–R and to provide criteria that are specific to these disorders in children

In the former organization of the childhood mental listings, mood disorders were evaluated under listing 112.03 ("Psychosis of Infancy and Childhood") or listing 112.04 ("Functional Nonpsychotic Disorders"). The new listing includes only those disorders that are characterized by a disturbance of mood. In paragraph A of the listing, we describe the characteristics of mood disorders in much greater detail than they were described in the former listings.

To fulfill the requirements of listing 112.04, it must be demonstrated that an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria also has functional deficits or restrictions in one of the areas to the degree specified in the criteria of listing 112.02B1; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in listing 112.02B2.

112.05 Mental Retardation

Listing 112.05 now contains six separate paragraphs instead of the three in the former listing, any one of which is a basis for meeting the listing. In response to public comments, we have revised the language of paragraph A; however, it remains the same in concept as former listing 112.05A. Instead of using the less specific reference to developmental milestones of the former listings, we now assess the functional impact of mental retardation in the specific functional domains of listing 112.02B.

Paragraph B contains a new set of criteria patterned after adult listing 12.05A. These criteria are applicable when the child requires assistance for personal needs which is grossly in excess of what is ordinarily expected and the use of standardized IQ testing is precluded.

Paragraph C is the former paragraph B and remains unchanged. Paragraph D corresponds to paragraph C of the former listing; the only significant change is that we have increased the upper IQ limit from 69 to 70 to accord with the upper limit of mild mental retardation in the DSM–III–R. (We have changed all other references in Parts A and B of these listings to conform to this change. See the descriptions of "Other Changes" at the end of this preamble.)

Paragraph E corresponds to proposed paragraph D and was not a part of the former listings. It provides an alternative to the assessment of children with IQ's of 60 through 70. Instead of requiring a coexisting physical or mental impairment, listing 112.05E can be met with specified levels of dysfunction in the domains of listing 112.02B.

Paragraph F is new. We added it in response to comments that pointed to new rules for evaluating children with serious hereditary, congenital or acquired disorders that we had proposed in a separate notice and subsequently published as listing 110.07B2.

Paragraph F of listing 112.05 provides another alternative to paragraph D. It is to be used when a child has mental retardation which coexists with another physical or mental impairment but valid IQ test results are lacking. Instead of demonstrating an IQ of 60 through 70, the child must demonstrate a specified level of dysfunction in the cognitive/communicative domains of 112.02B; the specified level corresponds to developmental milestones normally attained by children who are two-thirds of a child's chronological age.

We have also deleted the discussion about standardized testing we proposed in the opening paragraph of 112.05. As we explain in greater detail in the responses to public comments, we have provided clearer and more comprehensive discussions in 112.00D in lieu of the statement we proposed to head the listing itself. Finally, we have made minor editorial revisions throughout the listing.

112.06 Anxiety Disorders

We have revised the title (from "Anxiety-Related Disorders") to reflect current DSM–III–R terminology. In the former organization of the listings, anxiety disorders were grouped with similar mental disorders in a single listing (112.04). New listing 112.06 exclusively covers disorders related to anxiety. Items 3, 4, and 6 in paragraph A of this listing are similar to items covered in the former listing. New paragraph A1 gives significance to separation anxiety. New paragraph A2 gives significance to avoidance behavior of childhood. New paragraph A5 gives significance to frequent panic attacks. New paragraph A7 provides for the inclusion of anxiety disorders resulting from traumatic experiences. We have also made revisions to the capsule definition and the third and fifth A criteria to update the terminology consistent with the DSM–III–R and to make the listing more comprehensive.

As in listings 112.02, 112.03, and 112.04, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.06 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

112.07 Somatoform, Eating, and Tic Disorders

These disorders were previously evaluated along with nonpsychotic disorders under former listing 112.04. The new listing now includes under one heading various mental disorders which have physical manifestations. To make this fact clear, we have revised the title and the capsule definition from the language we proposed in the NPRM to state more explicitly the kinds of impairments that are to be evaluated under this listing. We have also revised paragraph 112.07A1, the criterion for eating disorders, to provide more specific guidance for the evaluation of certain eating disorders; this includes a reference to average weight tables for children in the most recent edition of the "Nelson Textbook of Pediatrics", Richard E. Behrman and Victor C. Vaughan, III, editors, Philadelphia: W. B. Saunders Company.

As in most other listings in this section, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.07 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

112.08 Personality Disorders

These disorders were previously evaluated under listing 112.04. In the NPRM, we proposed a reference listing which referred the evaluator to listing 12.08 of the adult mental disorders listings in Part A of the Listing of Impairments. We reasoned that reference to the adult listings was appropriate because personality disorders do not usually manifest themselves until later in childhood.

We received many comments urging us to include a specific listing for personality disorders in children. Some commenters pointed out that mental disorders that affect both children and adults do not necessarily manifest themselves in the same way in children

as they do in adults. Almost all of the commenters also pointed out that even if the paragraph A criteria of adult listing 12.08 were applicable to children, the adult paragraph B criteria would rarely be applicable because two of those criteria are work-related.

Because we agree with the commenters that there will be only rare cases in which it will be appropriate to use any of the adult mental disorders criteria, we have replaced the proposed reference listing with a listing for children. The listing contains a full complement of paragraph A and paragraph B criteria. We have not, however, adopted all of the public recommendations for the criteria we should include in the listing; we provide responses to specific comments later in the public comments section of this preamble.

Final listing 112.08 provides a capsule definition based on the DSM-III-R definition, but tailored specifically to children. There are seven paragraph A criteria, six of which are the same as the paragraph A criteria of adult listing 12.08; the seventh is a new criterion which incorporates obsessive compulsive personality disorder into the listings.

The functional criteria are the same as in most of the other childhood mental disorders listings. An older infant or toddler, age 1 to attainment of age 3, who satisfied the paragraph A criteria will fulfill the requirements of listing 112.08 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

112.09 Psychoactive Substance Dependence Disorders

We have added this new listing in response to numerous public comments with which we agreed. We have redesignated proposed listing 112.09, originally assigned to autism and other pervasive developmental disorders in the proposed rules, to 112.10 in the final rules, so that the numerical designation for the childhood listing for psychoactive substance dependence disorders (112.09) will correspond to the adult listing for these disorders (12.09).

The new listing is based on criteria for psychoactive substance dependence in the DSM–III–R. However, we have consolidated several of the criteria in the DSM–III–R so that we have six paragraph A criteria. We did this to eliminate some overlap in the DSM–III–R criteria.

A child will satisfy paragraph A of the listing if he or she demonstrates at least four of the specified paragraph A criteria. As in most of the other listings, an older infant or toddler, age 1 to attainment of age 3, will fulfill the requirements of listing 112.09 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02. If a child does not meet the listing because he or she does not satisfy the specific paragraph A criteria—as, for instance, might happen if the child has a substance abuse rather than a substance dependence disorder—the child will generally still be evaluated under this listing to determine whether he or she has an impairment equivalent in severity and duration to this listing.

The listing is not intended for the evaluation of children who have fetal alcohol syndrome (FAS) or other similar psychoactive substance syndromes. Because these impairments typically involve more than one body system, children who are born with FAS or other such syndromes will be evaluated under listing 110.07 which includes specific criteria for evaluating these impairments.

112.10 Autistic Disorder and Other Pervasive Developmental Disorders

In the final listings, we have revised the number designation from proposed 112.09 to final 112.10 because we assigned listing 112.09 to the new psychoactive substance dependence disorders listing. We have also revised the title, capsule definition and the paragraph A criteria to be consistent with the DSM–III–R. The former listings did not specifically include autistic disorder and other pervasive developmental disorders. Instead, the disorders were evaluated under listings 112.02, 112.03, or 112.05, depending on the individual facts of the case.

The final listing requires an autistic child to demonstrate qualitative deficits in all three of the following areas: Social interaction, verbal and nonverbal communication and imaginative activity, and repertoire of activities and interests. Children with other pervasive developmental disorders are required to demonstrate qualitative deficits in only the first two of the areas. Because the DSM–III–R lists so many examples under each of these categories, we decided to list only the broad categories as paragraph A criteria in order to avoid giving the impression that we would disregard any appropriate findings.

As in most other listings in this section, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.10 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

112.11 Attention Deficit Hyperactivity Disorder

We have added a new listing for the evaluation of children with attention deficit hyperactivity disorder (ADHD). One of the most frequent public comments was that we should have included a separate listing for ADHD, a category that was recommended by experts that helped us to formulate the proposed revisions. We omitted the listing from the NPRM because, as several commenters pointed out, only a minority of children with ADHD will be disabled, and we thought that the children who were disabled because of ADHD could be found to have an impairment that equalled one of the listings we proposed. However, in reconsidering the matter in light of the public comments, we agree with the commenters who stated that children with ADHD comprise a well-defined group, and that the specific guidance of a listing will ensure the most fair, accurate, and uniform adjudications possible. We summarize the specific comments and provide our responses later in this preamble.

The language of the capsule definition and the paragraph A criteria in new listing 112.11 are nearly identical to the experts' proposal. The major difference between the final rule and the experts' proposal is that the capsule definition in the experts' proposal stated that the disorder had to be manifested in a school setting. Since we recognize that some children who are not in school may have the disorder, we have not included this language in the final rule. We have also ensured that the terminology of the listing is consistent with the DSM–III–R. The criteria in the new listing, however, are less specific and, therefore, somewhat broader than the DSM–III–R criteria. They provide that a child who demonstrates developmentally inappropriate inattention, impulsiveness, and hyperactivity to a marked degree will

satisfy the paragraph A criteria of the listing.

As in most other listings in this section, an older infant or toddler, age 1 to attainment of age 3, who satisfies the paragraph A criteria will fulfill the requirements of listing 112.11 by demonstrating functional deficits or restrictions in one of the areas to the degree specified in the paragraph B1 criteria of listing 112.02; a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions specified in two of the areas in paragraph B2 of listing 112.02.

112.12 Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to Attainment of Age 1)

The former listings provided only minimal guidance for the special problems of evaluating developmental and emotional disorders in children from birth to attainment of age 1, who often have not developed sufficient personality differentiation to permit formulation of appropriate diagnoses. This new listing provides such guidance, including criteria for evaluating functional loss in all infants of this age group.

Because we added two new listings at 112.09 and 112.11, we have revised the number designation of the final listing from proposed 112.10 to final 112.12. We have also revised the title to incorporate our new terminology for describing infants from birth to attainment of age 1 and made minor editorial changes for the sake of clarity and in response to a public comment that we summarize later in the public comments section. The only substantive change from the proposed rule is that we have added a fifth criterion to reflect the new rules in paragraph Bld of listing 112.02. As in paragraph Bld in listing 112.02, new paragraph E of listing 112.12 provides that a newborn or younger infant may be found to meet the severity of the listing when he or she has attained development or function generally acquired by children no more than two-thirds of the child's chronological age in two or more of the following areas: cognitive/communicative, motor, and social.

Explanation of Changes to Regulations §§ 404.1520a and 416.920a

We are amending §§ 404.1520a(a) and 416.920a(a) to provide that the special procedure described in those regulations must be applied to persons under age 18 when Part A of the Listing of Impairments is used to evaluate mental impairments in these persons.

Public Comments

Subsequent to the publication of the NPRM in the **Federal Register** (54 FR 33238) on August 14, 1989, we mailed copies to organizations, associations, and other professionals whose responsibilities and interests require them to have some expertise in the evaluation of mental impairments in children. We also sent copies to State agencies (including State disability determination services), national organizations, and other parties interested in the administration of the title II and title XVI disability programs. As part of our outreach efforts, we invited comments from national organizations representing people who are mentally ill, advocates of people who are mentally ill, and service providers. We also invited comments from various health and medical associations, as well as from law and legal service organizations.

We received 145 letters containing comments pertaining to the changes we proposed. The majority of the comments were from organizations and groups that represent people interested in specific mental impairments. Many were from sources with specialized backgrounds in psychiatry, psychology, pediatrics, and other specialties involving childhood mental health. Many of the comments concerned the specific evaluation criteria for the proposed listed mental disorders. Other comments questioned the reasons for not including other childhood mental disorders in the Listing of Impairments.

We have carefully considered the comments and have adopted many of the recommendations. We provide our reasons for adopting or not adopting the recommendations in the summaries of the comments and our responses below. A few of the comments, however, pertained to Social Security matters that were not within the purview of the proposed regulations. We have referred these comments to the appropriate components of the Social Security Administration; therefore, we have not addressed them in this preamble.

A number of the comments were quite long and detailed. Of necessity, we had to condense, summarize, or paraphrase them. However, we have tried to express everyone's views adequately and to respond to all of the relevant issues raised by the commenters.

Finally, several of the commenters referred to the recommendations of the experts that helped us to prepare the proposed listings, and we refer to these experts in our responses below in the same terms. The experts are almost the same as those medical, legal, and other professionals who helped us to prepare the adult mental listings published in August 1985.

General Comments

Comment: Several commenters pointed out that the proposed listings were based on the DSM–III, but that this manual had been replaced by the DSM–III–R. The commenters urged us to reevaluate carefully the proposed listings to make sure that they were completely compatible with the revised manual.

Response: We adopted the comment. We have carefully reevaluated the terminology and criteria of the proposed listings and have made revisions to update the language of the final listings.

Comment: Several commenters offered examples of specific disorders in the DSM–III–R that were not in the listings. Some of these commenters also noted that we had not included all of the DSM–III and DSM–III–R diagnostic criteria for the impairments that were in the listings. Some recommended specific signs and symptoms for inclusion in several of the listings; one commenter systematically catalogued examples of omissions in each of the listings.

Response: The listings are not intended to be all encompassing; rather, they are examples of some of the most common major childhood mental disorders. However, we have tried to accommodate as many of the recommendations as possible, and have made substantial additions and revisions in the final listings. These include the addition of two new listings categories, psychoactive substance dependence disorders (112.09) and attention deficit hyperactivity disorder (112.11), as well as a specific listing for personality disorders instead of the reference to adult listing 12.08 we had originally proposed. We have also revised and expanded the capsule definitions of final listings 112.02, 112.03, 112.04, 112.06, 112.07, 112.08, and 112.10, and many of the paragraph A criteria throughout the listings in response to the comments. However, it is not the purpose of the listings to include all mental impairments or every sign and symptom listed in the DSM–III–R. This does not mean that a child who has an unlisted impairment cannot be found to be disabled with use of the listings. Such a child will be found disabled if his or her impairment(s) is medically equivalent to a listed impairment.

Comment: One commenter questioned the appropriateness of the DSM–III as the basis of these listings. The commenter supported the direction we took in incorporating DSM–III diagnostic

categories in the rules, but expressed the opinion that this standard should not be considered the best or the only source for evaluating mental disorders in children. The commenter urged us to be flexible and to provide our adjudicators with the most reliable and equitable methods for determining mental disability in children.

Response: We believe that we have provided the most reliable and equitable methods for assessing mental disability in children. We chose the DSM–III, and now the DSM–III–R, as the source of the categories and terminology in our listings because, based upon our experience with thousands of claims involving childhood mental impairments, it was the most widely used and accepted resource in the psychiatric and psychological communities. The experts, which included a pediatrician and specialists in the treatment of mental disorders in children, concurred. Also, as demonstrated by the previous comment, most commenters who addressed this issue not only supported our use of the DSM–III DSM–III–R, but urged us to include more terminology and criteria from the manual. Nevertheless, our main interest is in providing the most current, useful and widely understandable rules we can; therefore, we will remain flexible and consider other accepted sources as appropriate in the future.

Furthermore, we want to stress that the DSM–III–R was not the source of our rules on determining severity. We, with the assistance of the experts, devised the crucial rules in 112.00 for the evaluation of mental impairments, and established the functional criteria for listing-level severity in 112.00 and the listings. We used the DSM–III–R only for the descriptions of the impairments and categories of impairments in the listings. We adopted its terminology and categories as a convention for determining and classifying the existence of common mental disorders in children—that is, as the source of our capsule definitions and paragraph A criteria—because it is widely used, widely accepted, and familiar to most professionals who deal with mental impairments. Moreover, we believe that even those professionals who rely on or give greater credence to other manuals are nevertheless generally aware of the DSM–III–R criteria, whereas the converse is not always true.

Comment: One commenter stated that the DSM–III was developed by psychiatrists and was most frequently used by psychiatrists. The commenter noted that other medical specialists, such as pediatricians, did not contribute to the manual. The commenter stated that the criteria in the DSM–III were not used as a norm by other professionals, including nonpsychiatrist clinicians and "SSI disability adjudicators."

Response: Although the comment may have been somewhat true of the DSM–III (there were, in fact, psychologists involved in the drafting), the advisory committees that prepared the DSM–III–R were composed of professionals with varying backgrounds, including psychologists, educators, and a doctor of social work. Furthermore, virtually all of the diagnostic terms of the DSM–III were included in the ninth revision of the "International Classification of Diseases, Clinical Modification" (the ICD–9–CM), which has been the official system in this country for recording all diagnoses and diseases since 1979; the DSM–III–R maintained consistency with the ICD–9–CM. As we stated in the last response, we believe that the DSM–III–R is very widely used, its terminology well-known, and that it is used by many professionals besides psychiatrists.

We disagree with the comment about "SSI disability adjudicators." These individuals are either employed by State agencies who make disability determinations for us using our rules or work directly for us. They are required by sections 221(a) and 1633 of the Act to use evaluative criteria we provide through regulations (including these listings), rulings, and internal operating instructions. Therefore, we provide the rules used by SSI disability adjudicators.

Comment: Many advocates of the rights of mentally impaired people commented that the listings did not include all impairments from which a child might suffer. The commenters recommended that we provide a "catchall" listing, which would include all impairments that were not included in the other childhood mental listings. The commenters stated that the law requires us to consider "any" impairment that could cause a child to be disabled, but that the listings approach results in our overlooking many medically determinable impairments or denying the claims of those children who do not have impairments that specifically "meet" the listings. One commenter recommended that a catchall listing should also include children with combinations of impairments, no one of which meets a listing; the commenter also suggested that such a listing would serve to keep the childhood mental listings up-to-date, because any currently recognized impairment would automatically be included. Many commenters also suggested that we could make clear in our rules that the listings are only examples of impairments that could make a child disabled.

In related comments, many of the same commenters stated that our policies on determining equivalency were inadequate to assess the impairments of all disabled children, that we do not provide an individualized assessment of the impairments of those children who do not meet or equal the listings, and that we should revise the disability rules to provide for a determination of residual functional capacity in the case of every child who does not have an impairment or combination of impairments that meets or equals the listings. Some commenters asserted, moreover, that we frequently deny the cases of children who do not have impairments that meet the listings. One group stated that they had often represented children with severe functional impairments that did not meet or equal the listings even though the children were nonetheless in their opinion disabled.

Response: We have not adopted the recommendation to add a generic, all-inclusive listing; however, we have provided additional text in 112.00A regarding the importance of equivalency determinations and clarified that the listings are examples of impairments that could disable a child. In addition, we are currently developing standards to implement the Supreme Court's decision in *Sullivan* v. *Zebley et al.* These new standards will provide guidance on how to evaluate the functional impact of children's impairments when the severity of their impairments does not meet or equal the severity of a listed impairment.

Our intent in revising these listings and in issuing all of our listings is to provide specific examples of some of the most common mental impairments upon which we will find a child disabled. The listings are not a list of every possible mental disorder that a child might have. This does not mean that we do not consider impairments that are not listed. Our policy of equivalency is intended to provide an assessment of claims filed on behalf of children with any impairments.

In addition, we have made it clear in the revisions to the final listings and in the responses we give below that individualized assessment is vital to the proper use of these rules. We have emphasized that direct observation by professionals and, in most cases, evidence from parents and others who are aware of a child's day-to-day functioning are critical to the evaluation of mental disorders in children. We have

also provided paragraph B criteria that are based on functioning over time, again a determination that must be made individually in each case. We believe that the kind of comprehensive guidance we have provided within these listings and their introductory paragraphs, especially the detailed guidance we have provided on case development and the assessment of functional impairment, is an appropriate response to some of the problems raised by the commenters.

Although we have not adopted the recommendation to add a generic, all-inclusive listing for children age 1 and older, we recognize in these final rules, as in the proposed rules, the need for such a listing for newborn and younger infants (birth to attainment of age 1). The reason is that it is often difficult, if not impossible, to permit a specific and appropriate diagnosis for newborn and younger infants. Therefore, we believe that a general listing is necessary to evaluate these difficult cases.

Even though the listings do not specifically name every impairment, we believe that with the addition of listings for psychoactive substance dependence disorders and attention deficit hyperactivity disorder, and the other additions and revisions to the final listings we have made in response to public comments, the listings relate to the vast majority of children who have mental impairments. Those children who have mental disorders that are not described by these listings—whether because their impairments are not listed or because they have combinations of impairments, no one of which meets a listed impairment—will have their cases evaluated to determine whether their impairments are medically equivalent to any listed impairment.

To underscore our commitment, we have added language in the last paragraph of 112.00A stressing and restressing the importance of equivalency determinations. We have provided, both at the beginning and the end of the paragraph, that adjudicators must assess equivalency in any case in which a finding cannot be made that a child has an impairment that meets a listing. In direct response to one of the recommendations, we have also provided that the disorders in the listings are examples of impairments which are severe enough to find a child disabled.

Comment: Several commenters asked about our statements in the NPRM regarding the use of the Psychiatric Review Technique Form (PRTF) to evaluate children. Most commenters expressed support for the PRTF and recommended that we consider developing a separate form for use with children.

Response: As we explained in the summary at the beginning of this preamble, we agree with the commenters and we will be proposing a new PRTF and revisions to §§ 404.1520a and 416.920a. When we wrote our explanation in the NPRM, we had in mind the PRTF, that is, the form we now use to evaluate mental disorders in adults. Since the form contains only the adult mental criteria, it is clearly not useful for the vast majority of evaluations under these new listings. Nevertheless, in those rate instances in which the adult listings will apply to children we will require adjudicators to complete an adult PRTF. We have revised the language in these rules to clarify that the technique is applicable to children only when Part A of the Listing of Impairments is used to evaluate their impairments.

112.00A Introduction

Comment: One commenter who was familiar with the experts' proposals asked why the fourth sentence of the second paragraph of 112.00A used only one example instead of the three examples the experts proposed. The commenter suggested that our intent was to narrow the types of clinical behavior on which adjudicators should focus and reduce the weight to be assigned to findings that could have grave prognostic implications.

Response: This was certainly not our intent. On the contrary, our intent was to strengthen the sentence. The original sentence proposed by the experts stated that findings such as separation anxiety, failure to mold or bond with parents, and withdrawal "may have grave prognostic implications and may be comparable in severity to the findings that mark mental disorders in adults." In contract, the sentence we proposed stated that the finding of failure to mold or bond with parents "has grave prognostic implications and serves as a finding comparable in severity to the findings that mark mental disorders in adults." Our intent, therefore, was to give one imperative example (failure to mold or bond is a grave prognostic finding) instead of three conditional examples that might or might not apply and, therefore, did not provide useful, concrete guidance.

Upon further consideration, however, we have realized that any discussion of severity is out of place in the second paragraph of 112.00A. The simple intent of the paragraph is to explain that the signs and symptoms of mental disorders in children can be different from those that define mental disorders in adults; we believe this is clear from the third sentence in the paragraph, which states that the "presentation of mental disorders in children . . . may be subtle and of a character different from the signs and symptoms found in adults." Therefore, in response to the comment we have revised the fourth sentence to include the three examples proposed by the experts, but to make the examples consistent with the intent of the paragraph we have also deleted the language about their severity. The revised sentence now reads: "For example, findings such as separation anxiety, failure to mold or bond with the parents, or withdrawal may serve as findings comparable to findings that mark mental disorders in adults."

Comment: One commenter objected to the last sentence of the seventh paragraph of proposed 112.00A (the sixth paragraph in the final listing), which states that "[t]he functional restrictions in paragraph B must be the result of the mental disorder which is manifested by the clinical findings in paragraph A." The commenter believed that this meant that "[i]n order for a child to be found disabled . . . the medically determinable impairment causing one or more of the functional limitations must meet or equal the "A" criteria of a listed impairment." The commenter suggested that we delete the sentence and provide that children can equal a listing if they meet one or more of the paragraph B criteria due to any of the mental impairments included in the DSM–III or DSM–III–R.

Response: We did not adopt the comment, but we have added a new paragraph at the end of 112.00A to emphasize the importance of equivalency determinations. The sentence cited by the commenter occurs only in the context of our discussion of how we will determine whether a child meets a given listing. Our regulations in §§ 404.1526 and 416.926 already provide that a child may equal a listing as the result of any medically determinable impairment or combination of impairments.

The system we adopted in these listing is the same as the system we use in the adult mental listings. Each listing begins with an introductory statement that describes the disorder or disorders addressed by the listing. In most listings, the introductory statement is followed by clinical signs and symptoms (the paragraph A criteria) which, if satisfied, lead to an assessment of the functional limitations in the paragraph B criteria. If a child satisfies all three of these elements in most listings, he or she is found to "meet" the requirements of the

listing. Our only intent in the last sentence of the sixth paragraph of final 112.00A is to establish that, in order to meet the listing, the functional restrictions, in the paragraph B criteria must be the result of the listed mental disorder rather than extraneous causes unrelated to the impairment.

Our policy on equivalency provides that any unlisted impairment or a combination of impairments, no one of which individually meets or equals a listing, may be equivalent to a listing. In §§ 404.1526(a) and 416.926(a) of the regulations, we provide that the test is one of "severity and duration." Hence, under these childhood mental listings, we may find any medically determinable impairment that does not meet a listing to be equivalent to a listed impairment. This would include all of the medically determinable impairments in the DSM–III–R.

In response to this comment and other comments that we describe elsewhere in this preamble, we have added a new paragraph to the end of 112.00A to stress the importance of determining whether a child has an impairment or combination of impairments that is equivalent in severity to a listed impairment whenever we find that the child does not have an impairment that meets a listing. We share the concerns of this commenter and several others that diagnosis of mental disorders in children can be quite difficult, especially in young children. Therefore, we want to be very clear that one should not assume that the failure of a child to present evidence of a particular listed impairment ends the inquiry into whether the child is disabled. This new language is consistent with language we recently added in 110.00C, to stress that children with multiple impairment syndromes often suffer from combinations of impairments and may have impairments that are equivalent to a listing even if they do not meet a listing.

112.00B Need for Medical Evidence

Comment: Two commenters commented on our use of the terms "medical," "sources of medical evidence," "psychiatric signs," and "psychological test results." With regard to the first three terms, the commenters were concerned that the choice of language precluded or limited the type of acceptable evidence from psychologists; one of the commenters thought that the fourth term could not describe "medical" information because it described psychological evidence.

Response: We do not believe that there is any need to revise the language of these listings in the way the commenters suggested since it is consistent with language we use throughout the regulations. However, we have revised the first sentence of 112.00B because we agree that it was unclear.

The terms cited by the commenters are terms of art that are defined elsewhere in the regulations. Sections 404.1513 and 416.913 define the term "acceptable medical sources," and specifically include licensed or certified psychologists. Similarly, §§ 404.1528 and 416.928 state that "medical findings consist of symptoms, signs, and laboratory findings." They further define "signs" as including "psychological abnormalities," and later explain that this includes psychiatric signs. "Laboratory findings" include "psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques," including "psychological tests." Therefore, our regulations provide that licensed or certified psychologists are sources of medical evidence, including the kinds of psychiatric findings that are a part of their practice, and that medical evidence includes the results of psychological testing.

However, in considering this comment we noted that the first sentence of 112.00B did not state our policy clearly because it seemed to state that psychological and developmental test findings were not "laboratory findings." We have revised the sentence to make it consistent with the remainder of the regulations.

Comment: One commenter thought that the definition of "symptoms" in 112.00B was too narrow. The definition we gave was "complaints presented by the child," and the commenter pointed out that, even though a symptom is experienced by the child, the child may not always "present" the symptom; a parent or other person may note the symptom, rather than the child.

Response: In these regulations, the word "symptom" is a term of art, defined in §§ 404.1528(a) and 416.928(a) as "your own description of your physical or mental impairment." Therefore, our definition of the term in the proposed rules was correct in the context of our regulations. However, this does not mean that we do not consider information from parents, teachers, caretakers, and any other individuals who observe and report what they perceive as the child's experience of a symptom. On the contrary, these final rules make it clear that we consider such observations to be very important evidence. They just do not fall within the regulatory definition of "symptoms."

112.00C Assessment of Severity

Comment: Two commenters suggested that we provide definitions of terms used in these listings. One commenter recommended that we define all of the terms, because clear and concise definitions of the terms would eliminate subjectivity. The other commenter suggested that we provide definitions for the terms "cognitive/communicative" and "personal/behavioral," which we introduced in 112.00C. The commenter was concerned that, without such definition, nonprofessional adjudicators would not apply the terms uniformly. Both commenters asked us to define the term "marked," and one asked us to provide examples to illustrate how we would use the term.

Response: We have not adopted the comments. Most of the terms cited by the first two commenters are standard medical terminology, well-known to all professionals who make use of them. We do not generally provide definitions for any such terminology anywhere in our listings unless we intend to use a term as a term of art.

Furthermore, even though we have not specifically defined all of the terms cited by the commenters, we have provided guidance in the subparagraphs of 112.00C that is tantamount to a definition of some of the terms. For example, with regard to the second commenter's recommendations, 112.00C1b of the final rule provides that:

> Cognitive/communicative function is measured using one of several standardized infant scales. Appropriate tests for measure of such function are discussed in 112.00D * * *.

It also states that:

> For older infants and toddlers, alternative criteria covering disruption in communication as measured by their capacity to use simple verbal and nonverbal structures to communicate basic needs are provided.

Similarly, 112.00C2a provides:

> In the preschool years and beyond, cognitive function can be measured by standardized tests of intelligence although the appropriate instrument may vary with age. A primary criterion for limited cognitive function is * * *.

We believe that it is this kind of guidance that will minimize subjectivity and ensure that our adjudicators apply the rules uniformly.

For the measure of listing-level functional restriction, we provided he same definition for the term "marked" as in the adult mental listings, i.e., more than moderate but less than extreme. We decided not to provide examples of "marked" impairment in the listings because we believe that it is impossible

to devise a single example, or even two or three examples, that would uniformly illustrate the definition of the term. Any example we devised would have to be as clear and unambiguous as we could possibly make it; we believe that an unambiguous example would have to be so obvious that it would not provide useful guidance. We are also concerned about the possibility of misinterpretation. We do not want to create a situation in which some people might assume that our examples were the only examples of the level of marked impairment of functioning and apply the rules too narrowly.

Comment: Several commenters were concerned about the provision in the first paragraph of proposed 112.00C which provided that, when we assess the functional limitations caused by a disorder, we give preference to the results of standardized testing over clinical findings. One commenter thought that the proposed rules placed a much stronger emphasis on objective test scores that the experts originally proposed. Another commenter suggested that we adopt as a model a recent final regulation of the U.S. Department of Education ("Early Intervention Program for Infants and Toddlers With Handicaps," 34 CFR part 303), which requires every evaluation and assessment to be based on informed clinical opinion and also discusses the special importance of clinical opinion when standardized measures are unavailable or inappropriate. The Department of Education regulation was first published at 54 FR 26306, June 22, 1989. All of the commenters were concerned that the emphasis on standardized testing in the proposed rules could imply an intent to downplay the importance of clinical findings or result in inappropriate use or purchase of testing.

Response: We have partially adopted the comments. We believe that the results of a valid, reliable test, as defined in 112.00D, are the best evidence of a child's ability to function and will ensure to the greatest extent possible that we assess functioning accurately, fairly, and uniformly. However, inherent in our definition of what constitutes a valid, reliable test is the understanding that the clinician has considered other medical findings (including clinical signs and the claimant's symptoms, as defined in §§ 404.1528 and 416.928) and any other information that could have a bearing on the assessment of the validity of the results. This would include historical information and information about daily activities, socialization, etc., from both medical and nonmedical sources. Therefore, we did not intend that these rules downplay the importance of clinical evidence; on the contrary, our intent was to build in recognition of the importance of clinical findings in every adjudication.

Nevertheless, we agree with the commenters that the proposed language was not as clear as it could have been. We have, therefore, made changes throughout final 112.00D, the paragraph B criteria of listing 112.02, and in final listing 112.12 (proposed listing 112.10), to clarify our intent and to address the commenters' concerns. In listings 112.02B and 112.12A and B, we have replaced the word "clinical" with the terms "medical" or "other medical" wherever it occurred. We used the word "medical" because it is the terminology we use in §§ 404.1525, 404.1526, 416.925, and 416.926 when we explain that decisions under the listings must be based on "medical findings" consisting of "symptoms, signs and laboratory findings." We provide the same definition of medical findings in §§ 404.1528 and 416.928.

We added explanations to the first paragraph of 112.00D to indicate that, whenever a medical source provides information about functioning, whether it be from medical examinations or standardized testing, we expect that the medical source will have followed standard clinical practice and considered medical history and any relevant information from parents and other individuals. We further provided that adjudicators may request information from nonmedical sources to supplement the record of the child's functioning.

In addition, 112.00B of the former listings contained a clause that was intended to convey our policy on consistency of the findings with the whole record with respect to measures of intellectual functioning. The clause stated that, "any discrepancies between formal test results and the child's customary behavior and daily activities should be duly noted and resolved." In response to the comments, we have restored this provision to the final rules and have placed it in the seventh paragraph of 112.00D to indicate that we have broadened it to include any kind of psychological test.

We have not added specific language to 112.00C to reflect these principles. Instead, we have added a cross-reference to 112.00D in the first paragraph of 112.00C so that it will be understood that the explanations in 112.00D apply to the instructions in 112.00C. We also modified the first paragraph in 112.00C to indicate that in most functional areas either standardized testing or other medical findings may be used to document severity, although valid test results are still preferred when they are available.

Finally, we have reviewed the Department of Education regulations and the attendant discussions in the **Federal Register** cited by the commenters. We do not believe that our regulations serve the same purpose, and this fact limits comparison with standards used by other agencies. However, we also believe that these revisions and other revisions described in a later response make clear that our policy is consistent with the Department of Education's insofar as it can be compared to the disability programs administered by the Social Security Administration.

Comment: Three commenters noted that there were inconsistencies in the terminology used to describe children from birth to 1 year and 1–3 years in 112.00C, 112.00D and listing 112.10.

Response: We agree. We have therefore standardized the terminology used to describe these age groups in the final regulations. The term "newborn and younger infants" now refers to children from birth to attainment of age 1, while "older infants and toddlers" now refers to children age 1 to attainment of age 3. The term "infants and toddlers" refers to both groups as a whole; that is, from birth to attainment of age 3.

Comment: Two commenters noted that 112.00C provides guidance for assessing severity in five different age groups (birth to attainment of age 1, age 1 to attainment of age 3, age 3 to attainment of age 6, age 6 to attainment of age 12, and age 12 to attainment of age 18) but that the paragraph B criteria of the listings recognize only two categories (age 1 to attainment of age 3 and age 3 to attainment of age 18). One of the commenters pointed out that the paragraph B criteria also do not include newborn and younger infants, up to age 1. Both commenters recommended that we adopt the same age category for the paragraph B criteria as we included in 112.00C.

Response: We have not adopted the comments. We believe, as did the experts that helped us formulate the paragraph B criteria, that it is appropriate to group ages 3 to 18 together under the same functional domains in the B paragraphs because these criteria are relevant to the entire age group. However, we recognize that the impairment manifestations and the methods of evaluating these manifestations vary from different age

levels within the group. This is why we have provided three subdivisions of the age-3-to-18 group in 112.00C2, 3, and 4.

The functional domains provided in listing 112.02B generally are applicable to the age group of birth to attainment of age 1; however, they do not address all of the domains pertinent to this age group. therefore, we provided a new, separate listing 112.12 (112.10 in the proposed listings) that is specifically tailored to the assessment of severity of this group's impairments. We believe this listing will provide a more realistic assessment of very young children and help to ensure uniform adjudications. However, the functional domains in the paragraph B criteria that are applicable to these children are incorporated in final listing 112.12.

Comment: One commenter thought that our statement in the first paragraph of proposed 112.00C1 that, "[i]n infancy, much of what we can discern about mental function comes from observation of the degree of fine and gross motor function," was in error. The commenter pointed out that there are standardized tests to measure cognitive skills and language ability in infants and very small children.

Response: We agree with the commenter. We did not mean to give the impression that there are no tests to measure these abilities in infants and toddlers. We were only indicating in 112.00C1 that, despite the existence of these tests, we would not ordinarily expect to find them in the evidence of record. Hence, our basic thrust in the first paragraph of 112.00C1 was to describe the kind of existing evidence we would expect to find: Assessments of a child's gross and fine motor function. We have, therefore, revised the language of 112.00C1 and reorganized 112.00C to clarify our intent.

Comment: Another commenter asked us to revise the rules to reflect the fact that in some cases abnormalities on screening tests may be so severe that further testing is unnecessary.

Response: We agree with the commenter and have modified the last sentence of the first paragraph of 112.00C1b and the twelfth paragraph in 112.00D of the final rules to reflect the recommendation. The new language indicates that, while screening tests performed during clinical examinations generally do not have high validity and reliability and are not considered appropriate primary evidence for disability determinations, there will be cases in which the results of screening tests show such severe abnormalities that further testing will be unnecessary.

Comment: One commenter stated that the use of age-appropriate social functioning as a severity criterion could be problematic because there is no one standard of social functioning. This could result in wide variations in adjudication.

Response: We recognize that there are a number of tests which measure various aspects of social functioning, and that not all tests yield identical findings. However, we believe tests that satisfy our requirements for validity and reliability generally assess the same or similar behavioral spheres. We also believe that any variations among the tests will not have a substantive effect on determinations under these rules.

Furthermore, in 112.00C we have provided guidance for assessing social functioning in children at four separate age levels. We provided this kind of detail to ensure against the variations in adjudication that the commenter was concerned about.

In considering the comment, however, we noted that proposed 112.00C2 (preschool children) and 112.00C3 (primary school children) did not provide as much detail on assessing social functioning as their counterparts in 112.00C1 (older infants and toddlers) and 112.00C4 (adolescents). We have therefore added language to final 112.00C2b and 112.00C3 to provide similar guidance.

Comment: One commenter expressed concern over our ability to document properly maladaptive or avoidant behaviors and limitations in social function for preschool children, age 3 to attainment of age 6. The commenter stated that most information for this age group will necessarily come from parents, who "at times prove to be either unreliable or poor historians."

Response: A hallmark of these listings is the emphasis on professional evaluations, with standardized testing whenever possible. In any case, standardized testing should be associated with an assessment of the consistency of the findings with the medical and other evidence, especially evidence from parents and other interested adults who have knowledge of the child's day-to-day functioning.

In most psychiatric and psychological evaluations, clinical assessment implies more than the examiner's own observations of the child; it also includes careful probing of the child's history and current functioning outside of the clinical setting. Clinicians are well aware that they have a duty to evaluate the accuracy and consistency of any information received from third parties, or for that matter, from the patient himself or herself, before they use the information in formulating a clinical judgment.

We acknowledge that some preschool-age children will have fewer sources of evidence that school-age children, although this phenomenon is becoming increasingly rare. However, and aside from the fact that we do not agree with the comment that "parents" as a group are any less reliable witnesses of their children's symptoms and behavior than other people who might give evidence, we also do not believe that there will generally be any greater difficulty in evaluating the claims of these children than of older children who are also still primarily in the care of their parents.

Nevertheless, to clarify the intent of these rules, we have modified final 112.00C2b (the second paragraph of 112.00C2 in the proposed rules) to indicate that social function is measured by assessment of a child's relationships with parents, other adults, and peers. This will mirror the discussion already in 112.00C2c (the third paragraph of 112.00C2 in the proposed rules), regarding the assessment of maladaptive or avoidant behaviors. However, we have also provided additional guidance on sources of information about children's functioning to underscore our policy that nonmedical sources of information frequently are very important to a valid assessment of functioning outside the clinical setting both in the present and over time. We have similarly expanded 112.00C2c to include the same sources of information for evidence of personal and behavioral functioning.

Comment: One commenter was concerned about the reference in 112.00C3 to standardized measures of academic achievement. The commenter stated that the instruments used by school districts varied so widely that we should provide more definitive guidance on how to measure this criterion.

Response: We agree with the comment that the reference in proposed 112.00C3 regarding the use of standardized measures of academic achievement requires clarification. Standardized measures of academic achievement are generally designed and used to measure the effects of a specific program of instruction or training. They are not designed to measure function in the domains contained in 112.02B, particularly cognitive function. Poor performance on such measures may or may not be indicative of functional impairment causally related to a medically determinable mental impairment. Therefore, we have deleted the second sentence of proposed 112.00C3, which stated that poor performance on standardized measures

of academic achievement directly correlates with impairment in function. In its place, we now state that "standardized measures of academic achievement may be helpful in assessing the cognitive impairment." The presence of cognitive impairment, if any, can only be determined by the specific facts of each case.

Comment: We received many comments about the proposed statement in the first paragraph of 112.00C4 that, in the cases of adolescents, "if, based on the description of the disorder by the clinician, the adjudicator believes the medical criteria of part B do not apply, the adult listing crite[r]ia will be used." All of the commenters expressed concern that this would require adjudicators to apply the adult paragraph B criteria to children whether or not the children had work histories; many of these commenters recommended that we use this rule only for children who had work histories or histories of work attempts. Other commenters recommended that we require adjudicators to use the childhood paragraph B criteria, even when they used the adult paragraph A criteria.

Several commenters also pointed out that the phrase "the description of the disorder by the clinician" was vague because it did not provide a clear standard by which adjudicators could judge whether to use the adult listings instead of the childhood listings. The commenters reminded us that adolescents are still children, and that the presentation and effects of mental disorders in adolescents are not the same as in adults, even though they may appear similar. Therefore, some commenters urged us to clarify the language to permit use of the adult listings only when a clinician has determined that the symptoms and characteristics of a child's disorder represent early onset of a condition properly diagnosed as an adult disorder. One commenter suggested that we provide that the adjudicator could not turn to the adult listings unless none of the childhood listings could apply; the commenter believed that in this circumstance we should require consideration of the adult listings.

Response: We agree with the commenters that the intent of this language was unclear as proposed, and we have deleted the sentence. Our intent was only to reflect the policies in §§ 404.1525 and 416.925, and the introductions to Parts A and B of the listings, that the adult listings will be used whenever the criteria in the childhood listings do not apply. These are general policies, intended for use with all the listings, not just the mental listings. However, we believe that they will rarely apply to childhood mental disorders because we have provided so much guidance for the evaluation of mental impairments in children, in recognition of the fact that mental disorders in children usually require different considerations than in adults, that most childhood mental disorders will be covered.

Comment: Two commenters pointed to the language in the third paragraph of proposed 112.00C4, which explained that school grades and the need for placement in special education "are relevant factors which must be considered in reaching a decision under paragraph B2d" but "are not conclusive." The commenters thought that this language would be confusing to adjudicators because it appeared inconsistent with statements in proposed 112.00C3 and the fourth paragraph of 112.00D, both of which emphasized the importance of information from school records. One of the commenters was concerned that adjudicators would give little weight to grades or placement in special education unless we provided more detailed instructions. The commenter requested that we clarify how we will assign "weight" to information from school records.

Response: We have not adopted the comments. The language in proposed 112.00C4 (which we have moved to the second paragraph of 112.00C3 in these final rules) states plainly that grades or the fact of placement in special education alone is insufficient to establish that a child has met the paragraph B2d criterion. It explains that this is because the criteria for grading and for special education placement vary too widely among school districts for us to be able to make any reliable generalization. This does not mean that we will not consider such evidence; only that, by itself, the evidence is insufficient to establish conclusively that the child has met one, particular paragraph B criterion.

This is not inconsistent with the two other provisions cited by the commenters. Both sections provide that school records can be a rich source of information about functioning, of test data, and of longitudinal evidence to complete a record. Inasmuch as these passages clearly address a much broader subject than the discussion now in the second paragraph of final 112.00C3, we do not agree that adjudicators will believe them to be in conflict.

We also did not adopt the comment asking us to provide clarification on how an adjudicator should "weigh" evidence from school records. In a sense, the provision in the second paragraph of final 112.00C3 is an instruction on how to assign weight to one kind of school evidence; that is, it provides that evidence of a child's grades or placement in special education cannot alone be given conclusive weight on the issue of whether the child meets the paragraph B2b criterion. Beyond that, we do not believe that it would be appropriate to provide additional guidance on "weighing" this or any other evidence in the context of the listings, just as we do not provide guidance in any listing on how adjudicators should "weigh" credibility or opinion evidence, or any other evidence that requires careful consideration of the individual facts of the case in the context of the entire record.

112.00D Documentation

Comment: One commenter stated that pediatricians are frequently more knowledgeable about children's developmental disorders, such as developmental delay, learning disabilities, and attentional problems, and that they have important expertise which differs from that of many child psychiatrists. The commenter recommended that we include the term "pediatrician" wherever we used the words "psychiatrist" and "psychologist."

Response: We have adopted the comment. The phrase "psychiatrist and psychologist" appears only in 112.00D. We have replaced the phrase with the phrase "psychiatrist, psychologist, or pediatrician" in the fifth paragraph, and "psychologist, psychiatrist, pediatrician, of other physician specialist" in the sixth, eighth, and fifteenth paragraphs. We used the second phrase in the paragraphs that discuss psychological testing because some tests may properly be administered by other kinds of physicians as well.

We did not change other terms in 112.00D, such as "medical sources," "physician," and "treating source," because they are nonspecific and will be understood to include pediatricians.

Comment: One commenter stated that our current regulations recognize only Ph.D. clinical psychologists as acceptable sources of medical evidence and that evidence from school psychologists who do not have doctorates "is not admissible by the SSA." The commenter requested that we revise the regulations to include both

clinical psychologists and school psychologists.

Response: Current §§ 404.1513 and 416.913 provide that we will recognize as acceptable medical sources any licensed or certified psychologists; this includes school psychologists who are licensed or certified. We do not require psychologists who submit evidence to us to have doctorates in clinical psychology. We do have more stringent rules for psychologists who work for us as adjudicators. These rules are set forth in Subpart Q of Part 404 and Subpart J of Part 416 of these regulations.

We would also like to clarify for the commenter that we do not refuse evidence from any source, even if the source is not an "acceptable" medical course under §§ 404.1513 and 416.913 of our regulations. Other provisions in these regulations state that we consider information from other sources. Thus any information may be submitted and will be considered in our assessment even though it is not evidence from an "acceptable" medical source.

Comment: One commenter was concerned that we did not provide a paragraph similar to the second paragraph of 12.00D in the adult mental listings to describe the various medical and nonmedical sources of evidence. The commenter further noted that the paragraph B criteria seemed to "undercut" the value of sources like parents and other concerned adults by requiring documentation in the form of appropriate standardized tests or clinical findings. In addition, the commenter stated that the paragraph B criteria should include a category of evidence from parents and other concerned adults among the acceptable documentation of functional limitation.

Response: We agree that the language we proposed could have been misinterpreted and that it did not include sufficient discussion of important sources of evidence, such as parents. As we explained in an earlier response, we have made changes throughout 112.00D and provided a cross-reference in 112.00C to 112.00D; the changes are intended to address this comment as well as the earlier comment. Furthermore, we have revised the criteria in listings 112.02B and 112.12 to be consistent with the discussions in 112.00D and to replace the word "clinical" with the word "medical" or the phrase "other medical," consistent with our regulations. However, the term "medical" is not meant to imply objective signs alone. It also includes assessment of a child's symptoms and thorough evaluation of all the available evidence.

To assure that the word "medical" is not misunderstood, we have provided new discussions stressing the importance of information from other sources and the role of such evidence both in the medical source's findings and in our development and evaluation of evidence in the case. To clarify how we used the term "medical," we have provided a parenthetical restatement of the regulatory definition of "medical findings" in the first paragraph of 112.00D. We have also provided parenthetical explanations in three of the paragraphs B criteria to serve as reminders of the principles in 112.00D. We believe that these extensive revisions should address the commenter's concerns, while they also clarify our policies.

Comment: Several commenters, again referring to the recent Department of Education regulations, questioned our position that there are standardized instruments for measuring developmental delay in infants and toddlers. These commenters recommended that we place greater emphasis on "informed clinical opinion" when we determine the degree of delay.

Response: Insofar as our rules can be compared to the rules of another agency, we believe that our rules are consistent with the rules promulgated by the Department of Education. However, we have revised the language of the final rules to make absolutely clear that informed clinical judgment is important in all evaluations, including those that ultimately rely on the results of standardized testing. Of course, when standardized test results are not available, other medical findings—which include clinical findings and, generally consideration of information from other sources, such as the claimant's parents, teachers and caregivers—become the sole means of assessing functional impact.

Furthermore, because we believe that our proposed use of the term "clinical" throughout these listings did not convey our intent to include all of the aforementioned important sources of information, we have revised both the preface and final listings 112.02B and 112.12 to remove the term and clarify our intent.

Comment: One commenter asked us to indicate the "weight or value" to be given to tests that rely on self-reports or reports of caretakers, as these are often important sources of valid information.

Response: We believe that we have clarified our intent in the preceding responses. It would obviously be impossible for us to provide absolute rules on the "weight or value" of every test, not only because there are so many different kinds of tests, but also because each child's case will be unique and must be evaluated on its own merits. The foregoing responses essentially explain that the "weight or value" we will give to any test results will depend on numerous factors. Certainly, statements by the claimant and others who know the claimant are very important factors in this consideration. For this reason, we provided discussions in the opening paragraphs of proposed 112.00D to describe various possible sources of information about the claimant and to underscore the importance of obtaining information from them. We have now revised 112.00C and 112.00D to emphasize this policy in the final rules. We also emphasize the importance of this kind of evidence in establishing a longitudinal record. In addition, we have provided that any test results should be correlated with the clinical findings and other evidence.

Comment: Two commenters expressed concern about the language in the second paragraph of 112.00D, which provides that we may hold the cases of some infants until they attain age 3 months in order to obtain adequate observations of behavior or emotional affect. The commenters suggested that this section should clearly state that development of medical evidence continue while a case is being held, and that any delay in securing evidence not adversely affect a child's date of eligibility for SSI payments. In addition, they recommended that we provide more definitive guidelines for the length of time that a premature infant's case can be held.

Response: We agree with the commenters that the paragraph was not clear and have, therefore, revised it to make it clearer. Our intent in this paragraph is not to delay the development of a case or to delay any child's eligibility for benefits. Rather, we want to prevent an inappropriate denial when there is evidence that a child has a developmental impairment but, because of the child's young age, the severity of his or her impairment cannot be determined.

We did not adopt the suggestion to provide "definitive" guidelines for the length of time a premature infant's case may be held because each infant's case will be different. Prematurity in and of itself does not establish impairment severity or guarantee that an infant will meet the 12-month duration requirement, and in the first months of a premature infant's life medical attention is often focused primarily on ensuring the

infant's survivial, not on measuring his or her abilities. Therefore, the amount of time a premature infant's case can be held will necessarily depend on a careful judgment based on the specific facts of the case. To clarify this principle, we have added language to the paragraph to indicate that the decision to extend the 3-month period will depend on the degree of prematurity and the adequacy of documentation of the child's development and emotional status.

We did not adopt the suggestion to add a discussion about the date on which eligibility for SSI should be established. We believe that our existing policies on establishing dates of onset and eligibility for SSI (ordinarily, the date of filing of the application) are adequate to address this issue and are inappropriate in the context of specific listings because they are not unique to childhood mental disorders.

Comment: A commenter questioned the language in the fifth paragraph of 112.00D, which provides that "[i]n some cases . . . it may be necessary" to obtain evidence from a consulting psychiatrist or psychologist when a claimant's treating source lacks expertise in dealing with mental disorders in children. The commenter stated that we should not make the rule optional, but require development with consulting specialists in every case in which the claimant's treating source is not an expert in mental disorders.

Response: We did not adopt the comment. Our policy is that when a treating source provides us with sufficient evidence for us to make our decision (which also means that we have no good reason to question the evidence), we will not obtain a consultative examination solely to confirm or refute the treating source's evidence. If a treating source cannot supply the kinds of information we need to evaluate a case properly under these listings, we will of course develop the evidence further.

We, therefore, intentionally provided in the fifth paragraph of 112.00D for the situation in which a claimant's treating source, though not an expert in the evaluation of mental disorders, nevertheless provides sufficient clinical and laboratory findings (including psychological testing, as necessary), opinions and other relevant evidence for us to make a decision under these rules. We think that such cases are likely to be rare, both because many children with significant mental disorders will have treating sources who are experts in the treatment of mental disorders and because treating sources who are not experts in mental disorders will not ordinarily be able to supply information that is complete enough for us to make a final determination or decision; however, we want to provide for the possibility.

Comment: Several commenters stated that more discussion was needed on the availability, applicability, and usefulness of standardized testing in connection with assessing the functional impact of mental disorders occurring during childhood. Specifically, they asked us to include a list of the tests we will use, or examples of some of the tests we will use, for assessing these areas. Two commenters recommended that we include a list of tests developed by the experts who assisted in the development of the proposed rules.

Response: We have not adopted the comments. We agree with the commenters that these listings do not identify all tests that may be useful in evaluating the functional impact of mental disorders. However, we do not believe that the regulations are the appropriate forum for providing this guidance.

Because of the large number of tests available, it would be practically impossible for us to publish and maintain a list of all available acceptable tests. Moreover, any list that included only examples of tests, such as the list prepared by the experts, could give the misleading impression that we have given our exclusive support to certain instruments. Furthermore, we would expect most professionals to follow standard practices in choosing the tools for evaluation, and we are confident that the mental health professionals we employ are aware of the available instruments.

For all these reasons, we decided that instead of naming additional specific tests, we would provide in the seventh paragraph of 112.00D a detailed description of our criteria for judging whether a test is "good," based upon its validity, reliability, and whether it is based on appropriate normative data. Any test that meets these standards constitutes acceptable documentation for the purposes of these listings.

When we promulgate any listing revisions, we routinely consider the need to update our supplemental training materials and other guidelines to ensure that our adjudicators have an appropriate and uniform understanding of the new rules and how to apply them. We believe that these are the appropriate vehicles for listing any additional examples of acceptable tests.

Comment: One commenter stated that our proposal to base listing 112.05 on IQ scores obtained from the Wechsler Intelligence Scale for Children-Revised (WISC–R), and our failure to mention other well-recognized tests included in the DSM–III–R would place the burden of establishing the validity of these other tests on the claimant.

Response: The proposed language was intended only to codify our existing policy. The IQ scores in both the former listing 112.05 and these final listings were derived from the WISC–R, which is one of the best known and most widely used scales. It was not our intent to place the burden of establishing the validity of other test results on the claimant; as we have always done, we will recognize the validity of other tests that meet our standards for validity and reliability.

For this reason, we included the discussion in the eighth paragraph of proposed 112.00D, now the ninth paragraph in the final rules, which recognizes the validity of other tests, but explains that identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual function because they may be based on a different mean and standard deviation. We, therefore, caution our adjudicators that it may be necessary to find a common denominator—percentile rank in the general population—in order to compare IQ scores from other valid tests with the standard in the listing. However, in response to the comment, we have expanded the ninth paragraph of final 112.00D to explain how we chose the IQ scores we use in 112.05 and to provide additional information about the mean and standard deviation of the Wechsler scales for purposes of comparison. In view of these revisions, we have also deleted the similar language we proposed in the opening paragraph of listing 112.05.

Comment: Another commenter stated that the language in the eighth paragraph of proposed 112.00D was confusing, although the commenter did not specify what about the language was confusing. The commenter suggested that it either be deleted or that we provide conversion charts to show the corresponding percentile ranks in the general population of IQs obtained on some of the more common tests that are not based on the same mean and standard deviation as the Wechsler scales.

Response: The language in the eighth paragraph of proposed 112.00D (the ninth paragraph in the final rule) reflected our longstanding, uniform policy for use of non-Wechsler series intelligence tests, which is currently found in Part A, in the seventh paragraph of 12.00D and listing 12.05,

and in Social Security Ruling 82–54. However, as we explain above, we have added more detail about our policy in the paragraph to clarify our policy for this commenter.

We did not adopt the recommendation to publish conversion charts as a part of these rules. The paragraph does not announce a change in policy, nor have we experienced any difficulties in adjudicating cases using these rules under either the childhood or adult listings. The conversions are not a matter of substantive policy but of fact: Any properly trained psychologist can determine the corresponding percentile rank to a given IQ score in a given test. Moreover, we do not include such factual medical detail in any of our other listings.

In addition, there are so many possible alternative tests that any chart that attempted to provide the detail requested by the commenter would be cumbersome and of necessity incomplete. In the unlikely event that there are widespread difficulties converting test results in the future, we will provide guidance to our adjudicators.

Comment: A commenter suggested that we either incorporate our internal operating instructions on evaluating psychological testing into these listings or obsolete them.

Response: Our internal operating instructions, e.g., the "Program Operations Manual System," have their basis in the Act and our regulations. The purpose of our internal operating instructions is to provide guidance to our adjudicators for a uniform understanding and use of the policies contained in the Act and regulations. It would be inappropriate for us to include all of these instructions in the regulations or to rescind those that we have not included.

However, we have reviewed our internal operating procedures again, and we believe that it is appropriate to add a new tenth paragraph to 112.00D to emphasize the importance of considering the recency of IQ tests and the consistency of the results of the tests with the child's behavior when evaluating claims under listing 112.05. The new language provides that the currency of IQ test results depends both on the child's age at the time of testing and the actual IQ scores, and includes our longstanding guidelines for making this assessment.

Comment: One commenter stated that the twelfth paragraph of proposed 112.00D (now the 13th paragraph in the final rule) conflicted with 112.00C1. The proposed paragraph used the Gesell Developmental Screening Test as an example, whereas the second sentence of the second paragraph of proposed 112.00C1 cautioned against the use of developmental screening devices when assessing cognitive/communicative function in children aged 1 to 3.

Response: We have adopted the comment, even though there was no conflict between the two sections. Standardized tests are more reliable measures of function than are gross screening devices and, in spite of its name, the Gesell Developmental Screening Test is a standardized test that meets the salient characteristics of a "good" test as explained in the seventh paragraph of 112.00D. However, since this test is no longer in widespread use, we have deleted it from the examples in the 13th paragraph of final 112.00D.

Comment: Several commenters addressed the statement in the 15th paragraph of proposed 112.00D (now the 16th paragraph of final 112.00D), that any required psychological tests be administered in the child's principal language. They expressed concern that this may not be possible in all situations. Two of the commenters also pointed out that there were other related situations that these provisions could include. For example, one commenter suggested that the situation in which a bilingual child's principal language was not English but the child could be tested in English if a test in the principal language was not available. The commenter proposed that we add language that would permit alternative testing in appropriate circumstances, provided that the child would not be otherwise disadvantaged.

Another commenter asked us to provide information about acceptable workups for non-English-speaking claimants "since existing standardized tests would generally be precluded."

Response: We have adopted most of the comments by clarifying the language of the 16th paragraph of final 112.00D. We did not intend to state or imply that a determination based on the listings could not be made without testing in a child's principal language. We also agree that there will be situations in which we will not be able to test in the child's principal language but could appropriately test in English (or even another language) without disadvantaging the child. To clarify our intent, we have added language similar to that in the fifteenth paragraph of final 112.00D to indicate when testing in the child's principal language is unavailable, we will use appropriate medical, historical, social, and other information when we make our determination. The rule will apply whether or not the child can be tested; however, it should be understood that this information could, in the proper circumstances, include testing that is not in the child's principal language.

We do not agree completely with the generalization about the availability of standardized tests in other languages. There are some languages, such as Spanish, in which such tests are available. We have, however, provided additional guidance in the 16th paragraph of final 112.00D to explain that the best indicators of severity in children from different cultures are often adaptive functioning, activities of daily living, and social functioning, based on reports from treating sources, parents, or others who are familiar with the child.

112.00E Effect of Hospitalization or Residential Care

Comment: Two commenters, who noted that these listings did not include paragraph C criteria comparable to 12.03C of the adult listings, suggested that we provide more detailed guidance in 112.00E for the evaluation of children who may not be able to function outside of structured settings or highly supportive living arrangements.

Response: We agree with the commenters that highly structured or supportive living arrangements may minimize the overt indications of mental disorders. Thus, we have added language to the first paragraph of 112.00E to explain that, when a child is in a structured setting, evaluation of mental disorders must include an assessment of the degree to which the child can function independently, appropriately, and effectively on a sustained basis outside the structured setting.

112.00F Effects of Medication

Comment: One commenter stated that 112.00F should require that attention be paid to the stabilizing effect of medication. The commenter further stated that this should include the likelihood of the individual continuing to take the medication and whether the individual would be disabled if he or she stopped taking the medication.

Response: We did not adopt the comment. Section 112.00F already emphasizes the need to address the stabilizing effects of medication. It points out that, although medication may ameliorate overt symptomatology, the child may nevertheless be functionally impaired and that, furthermore, side effects of the medication may themselves affect the child's ability to function. We do not agree that it is necessary to address the

likelihood that a child will fail to take his or her medication or the possible consequences of such failure in these listings. We have separate policies on failure to follow prescribed treatment, in which we make special provision for children and for all individuals who have mental disorders.

112.02 Organic Mental Disorders

Comment: One commenter suggested that we define the word "persistence" in listing 112.02A.

Response: We did not adopt the comment. The term has the same meaning as in common parlance and does not have any special meaning in these rules. It merely establishes a criterion that the organic mental disorders in the listing must be chronic, rather than acute. Therefore, we believe that it need not be defined.

Comment: One commenter suggested that we combine proposed listings 112.02, 112.09, and 112.10 into a listing labeled "developmental and emotional disorders of childhood." The commenter stated that there was no need to distinguish organicity, autism, and environment as separate etiological entities, that there was overlapping of the listings, and that a combined listing would "then handle learning disabilities and behavior disorders appropriately." The commenter also recommended that the new listing recognize three age groups instead of the two age groups we proposed for the paragraph B criteria.

Response: We did not adopt the comments. While it is certainly true that organic mental disorders, developmental disorders, and developmental and emotional disorders of infancy, as described in the DSM–III–R, cannot always be clearly distinguished, we have nevertheless tried to maintain the distinctions in the DSM–III–R as far as possible in order to conform our rules to current diagnostic criteria and nomenclature. Furthermore, the listings, like the DSM–III–R, are primarily descriptive, largely reflect signs and symptomatology, and do not espouse any particular theories of etiology.

As we explained in an earlier response, we do not believe that it is necessary to have more than two age categories for assessing functional impairment under the paragraph B criteria. The critical areas of function for evaluating children aged 3 to 18 are the same, although the manifestations will vary at different ages; this is why we provided guidance for evaluating three age groups within the age-3-to-18 category in 112.00C.

Comment: Many commenters questioned why certain listed impairments required a greater number of paragraph B criteria than other listings. They pointed out that the paragraph B criteria are the functional measures of listing-level severity; therefore, it should follow that all listings should be met by satisfying the same number of paragraph B criteria.

Response: We agree with the commenters, and have therefore revised all of the listings that have paragraph B criteria. For reasons we explain in detail in the "Explanation of Revisions" section of this preamble, we now require that an older infant or toddler, age 1 to attainment of age 3, must demonstrate functional deficits or restrictions to the degree specified in one of the paragraph 112.02B1 criteria, and that a child, age 3 to attainment of age 18, must demonstrate functional deficits or restrictions to the degree specified in two of the paragraph 112.02B2 criteria.

Comment: A commenter expressed concern about how we will determine whether a child has achieved only one-half of the expected milestones in listing 112.02B and other listings. The commenter asserted that the State agencies have denied claims in which children have demonstrated milestone achievement slightly more than one-half for their age in one area of development even though they met the criteria for milestone achievement in all other areas. The commenter believed that this application of the rule was too narrow.

Response: As a result of this comment and other technical reasons we have explained in the "Explanation of Revisions" section of this preamble, we have revised all of the rules that referred to "a pattern" of milestones, or achievement of "50 percent" of anticipated milestones, or other similar language to explicitly state the number of functional domains in which the child must demonstrate deficiency. We have also revised the language of these rules so that it is more straightforward and less open to interpretation. The criteria now all use uniform language which refers to achievement of milestones generally acquired by children no more than one-half or two-thirds (as appropriate to the specific rule) of the child's chronological age.

112.03 Schizophrenic, Delusional (Paranoid), Schizoaffective, and Other Psychotic Disorders

Comment: One commenter stated that the proposed 6-month standard for the persistence of symptoms in 112.03A seemed unnecessarily long if the point of the standard was to make sure that the symptomatology would not be temporary. The commenter stated that the symptoms described in the listing would be "very uncommon" in children, and thought that a 3-month standard would be enough to establish that the problem was severe. The commenter also stated that exceptions, such as drug-related symptoms, should never last 3 months.

Response: We did not adopt the comment. As in the adult mental listings, the intent of the paragraph A criteria is to describe certain mental syndromes or clusters of syndromes, without any inferences as to severity. Although we have not included every criterion that is in the DSM–III–R, we have based nearly all of the paragraph A criteria on the DSM–III–R, descriptions of syndromes or categories of syndromes.

Listing 112.03A uses the DSM–III–R criterion for chronicity of psychotic symptoms—6 months—applicable both to children and adults. We want to stress, however, that this does not imply, per se, any judgments about the severity of the impairments of children who do not satisfy this paragraph A criterion, nor does it mean that such children cannot be disabled. When a child does not satisfy the specific paragraph A criteria of this, or any other listing, this means only that the child can not meet a listed impairment. The child may still be found disabled under our current rules of medical equivalency or under the rules we are developing to implement the Supreme Court's February 20, 1990, decision in *Sullivan* v. *Zebley et al.* The determination will always depend on the facts of each case.

The comment about drug-related symptoms was unclear to us. Certainly, there are acute symptoms of drug intoxication that the temporary and that may not recur. However, we do not agree with the blanket statement of the commenter that drug-related symptomatology should "never" last 3 months. For this reason, and in response to numerous comments we summarize below, we have added a separate listing 112.09 to address the special problems of evaluating psychoactive substance dependence disorders.

112.04 Mood Disorders

Comment: One commenter thought that the word "currently" in the phrase "currently characterized" in 112.04A3 could imply that symptoms of bipolar disorder must be currently active.

Response: We agree with the commenter that the word "currently" could be confusing. We have, therefore, revised the language in parentheses to more closely follow the language of the DSM–III–R. The statement in parentheses will not read: "* * * (and currently or most recently characterized

by the full or partial symptomatic picture of either or both syndromes)." The changes address two problems. First, in response to the comment, the new language clarifies that a child need not be currently symptomatic in order to meet the paragraph A criteria. Second, it clarifies that the current or most recent episode need not have been manifested by the full symptomatic picture of manic or depressive syndrome, as long as there is a history of the full symptomatic pictures of both syndromes sometime in the past.

112.05 Mental Retardation

Comment: Several commenters noted that we did not include Down syndrome in the proposed listings. Two of the commenters were aware that we had proposed a separate listing for Down syndrome (see 52 FR 37161, October 5, 1987), to be added to 110.00, Multiple Body Systems, but noted that we would not have a listing for the impairment until the new listing was published as a final rule. One group submitted a copy of the comments they made on the NPRM that included the Down syndrome listing.

Response: We now have a separate listing for evaluating Down syndrome; see listing 110.06. We have not responded here to the duplicate comments on the NPRM for Down syndrome since we responded to the comments in the preamble to those final rules.

Comment: One commenter suggested that we define the phrase "developmental period" in the first sentence of listing 112.05. The commenter noted that the corresponding adult listing, 12.05, defines the term as the period prior to age 22.

Response: We did not define the term in 112.05 because in our judgment it is not necessary to provide an age limit in the context of the childhood listings. Sections 404.1525 and 416.925 of our regulations state that part B of the Listing of Impairments applies only to the evaluation of impairments of persons under age 18. Therefore, we have deleted the text in question from the opening of listing 112.05 because it is unnecessary; cases evaluated under 112.05 represent impairments that began before the end of the developmental period.

Comment: One commenter recommended that the IQ range in proposed 112.05C and 112.05D be "60 to 70" instead of "60 to 69" because the DSM–III–R defines mental retardation as involving an IQ of 70 or less.

Response: We concur with the commenter's recommendation and have changed the IQ ranges in final listings 112.05D (proposed listing 112.05C) and 112.05E (proposed listing 112.05D) to read "60 to 70." We have also changed the upper IQ range from 69 to 70 in adult listings 11.07A, 12.00D, and 12.05C and D and childhood listings 109.02B1, 111.02B1, 111.07B1 and 111.08B2.

Comments: Many commenters were concerned that listing 112.05 relied too heavily on IQ scores and failed to take into account all of the possible deficits in adaptive behavior, e.g., meeting standards of maturation, learning, personal independence, and social responsibility that are expected for a child's age level and cultural group. These commenters recommended that we substitute the phrase "marked deficits in adaptive behavior" for the phrase "marked impairment in personal/behavioral function" in section D2 of proposed listing 112.05. One commenter suggested that both sections A and D of proposed listing 112.05 should contain the more flexible language of the DSM–III–R regarding adaptive behavior, as opposed to the more rigid "developmental" limitations set forth in the proposed listings.

Response: We concur with the commenters that deficits in adaptive behavior can serve as a useful alternative to IQ scores. Therefore, as we stated previously in the section of the preamble explaining these final rules, we have added two new paragraph to listing 112.05, paragraphs B and F, which use deficits in adaptive behavior as an alternative to IQ scores, and have revised paragraph A to clarify its use of deficits in adaptive behavior. We have also revised paragraph E, which was proposed as paragraph D, to expand our use of deficits in adaptive behavior in conjunction with IQ scores in the 60 to 70 range.

Comments: One commenter noted that in the NPRM for the listings that included Down syndrome and other similar syndromes we have proposed a fourth criterion for mental retardation to be included in proposed listing 110.06, but that we had not proposed the same rule in the childhood mental listings. The commenter supported the additional rule, which was an alternative to the criteria in former listing 112.05C. The rule provided that a child would meet the listing if he or she had achieved only those developmental milestones generally acquired by children no more than two-thirds of the child's chronological age, and also had a physical or other mental impairment imposing additional and significant restrictions of function or developmental progression. The commenter urged that we make the childhood mental listings consistent with the listings under 110.00.

Response: We have adopted the comment. We have added the rule as 112.05F. We describe the new listing in the summary at the beginning of this preamble. We have also modified final listing 112.05E to include the two-thirds-milestone achievement criterion.

112.07 Somatoform, Eating, and Tic Disorders

Commenter: Two commenters thought that we had not included a listing for eating disorders.

Response: We included eating disorders in 112.07A1 of the proposed listings. We have changed the title of listing 112.07 to "Somatoform, Eating, and Tic Disorders" and added a reference to eating disorders in the capsule definition so that our intent will be clear. In addition, as part of our review of the listings to conform them to the terminology of the DSM–III–R, we have completely revised the language of 112.07A1. We believe that the revision more clearly indicates that this set of A criteria describes eating disorders.

Comment: One commenter thought that Tourette's disorder would not be covered by these listings. Another commenter asked us to provide guidance on which listing to use when evaluating the disorder.

Response: Tourette's Disorder is defined in the DSM–III–R as a tic disorder. We provided criteria in 112.07A2 which can be used for evaluating Tourette's Disorder and other tic disorders. As explained in the previous response, we have revised the title of listing 112.07 to "Somatoform, Eating, and Tic Disorders." We have also added a reference to tic disorders in the capsule definition. These revisions should clarify that Tourette's Disorder and other tic disorders are to be evaluated under this listing.

112.08 Personality Disorders

Comment: Many commenters were concerned about our proposal to include a listing for personality disorders in children that merely referred to the corresponding adult listing, 12.08. One of the most frequent comments was that a reference to the adult criteria would omit psychopathology and certain recognized disorders that are specific to children. In support of their assertion, many of the commenters directed our attention to a statement in the introduction to the chapter on personality disorders in the DSM–III–R. The statement explains that certain disorders of childhood—specifically, conduct disorder, avoidant disorder of childhood or adolescence, and identity disorder—are related to corresponding

diagnostic categories in the chapter on personality disorders. The commenters recommended that we include these disorders and all of their associated diagnostic criteria under listing 112.08. In the alternative, several commenters suggested that we include the phrase "disruptive behavior" in the listing to convey the idea that a full-blown personality disorder is not required for the listing.

Nearly every commenter also questioned our proposal to use the adult paragraph B criteria to evaluate these impairments. The commenters pointed out that, inasmuch as two of the adult criteria are work-related, proposed listing 112.08 would be based on a much stricter standard than the other childhood listings and that it would be unlikely that many children would be able to satisfy the criteria.

Response: As we have stated in the summary section of this preamble, we have adopted the comments to include a specific listing for personality disorders in children, instead of a reference listing. We agree with the commenters that it is inappropriate to relate the functional criteria of the listing to the adult paragraph B criteria, which we acknowledge most children will not be able to satisfy.

We did not, however, adopt the comments that asked us to include conduct, avoidant, and identity disorders as listed impairments under 112.08. The listings are examples of some common impairments that we use to find a child disabled. Although the childhood impairments in the DSM–III–R called "conduct disorder" and "identity disorder" could cause significant functional limitations in individual cases, we did not include them as separate listed impairments because we believe that they generally are not comparable in severity to other listed impairments. In fact, the passage in the DSM–III–C cited by the commenters states that conduct disorder in childhood or adolescence corresponds to the impairment called "antisocial personality disorder" in adults, and we do not list antisocial personality disorder in adult listing 12.08 either. Conduct disorder and antisocial disorder, unlike the other disorders, primarily represent conflicts between the individual and society. Although not listed as separate impairments, conduct disorder and identity disorder would not be excluded from consideration as disabling impairments.

Therefore, we have provided that a child must have a "full-blown" personality disorder in order to meet this listing. This does not mean that we will approach the evaluation of other related impairments with any preconceived notions about their severity in individual cases; only that we believe that these kinds of childhood mental disorders should not be listed impairments. As always, the decision whether any impairment meets or equals a listed impairment will depend on the individual facts of each case.

We did not include avoidant disorder of childhood or adolescence under listing 112.08 only because we had already included it under listing 112.06. Criterion 112.06A2 is intended to capture any disorders that are characterized by avoidance behavior.

For a similar reason, we also did not adopt the comment to include the phrase "disruptive behavior" as a paragraph A criterion in listing 112.08. The reason we did not is that we had already built it into our paragraph B criteria. Paragraph B2c(2) of listing 112.02—that is, the second paragraph in the third B criterion for children age 3 to attainment of age 18—describes "persistent maladaptive behaviors destructive to self, others, animals, or property, requiring protective intervention." As one of the commenters noted in arguing for the use of the childhood B criteria under listing 112.08, these criteria "refer to the very behaviors that are manifest in these disorders."

112.09 Psychoactive Substance Dependence Disorders

Comment: Many commenters asked us to add to the final listings a category of impairment for substance addiction disorders, as originally recommended by the experts. Several of the commenters stated that the listing should be a listing for substance abuse.

Response: We have adopted the majority of the comments and added a listing for substance addiction disorders, now called "psychoactive substance dependence disorders" in the DSM–III–R. We describe the new listing, which we have designated 112.09 to maintain correspondence with the numbering system in the adult listings, in the summary of the listings at the beginning of this preamble.

We have not adopted the comments that recommended that we include psychoactive substance abuse disorders among the listed impairments in listing 112.09. There is too much variability in the manifestations and severity of substance abuse disorders to permit a meaningful description in the listings. Children who have psychoactive substance abuse disorders as their primary mental impairment should be evaluated under this listing using our rules of medical equivalency.

Comment: Several of the commenters who asked us to include a listing for psychoactive substance dependence mentioned that they thought that having such a listing would be valuable because it could be applied to babies who were born with the conditions known as "fetal alcohol syndrome," "fetal cocaine syndrome," or other similar psychoactive substance syndromes.

Response: We consider fetal alcohol syndrome, fetal cocaine syndrome, and other similar syndromes to be multiple body system impairments because they typically present themselves as a constellation of impairments affecting more than one body system and involving more than substance dependence alone. We therefore have promulgated a separate listing 110.07, which includes these disorders. The listing recognizes the profound effect on development the combined impairments associated with these disorders can have.

112.10 Autistic Disorder and Other Pervasive Developmental Disorders

Comment: One commenter stated that proposed listing 112.09 (final listing 112.10), "Autism and Other Pervasive Developmental Disorders," omitted many of the criteria in the DSM–III–R for determining the existence of these disorders. The commenter was concerned that the proposed criteria could cause us to overlook many children who had the disorders.

Response: We have adopted the comment. The proposed criteria were based on the DSM–III, which did not include as much detail as the DSM–III–R. We have revised final listing 112.10 to reflect the more recent criteria.

112.11 Attention Deficit Hyperactivity Disorder

Comment: One of the most frequent comments was that we should have included a separate listing for Attention Deficit Hyperactivity Disorder (ADHD), a category that was recommended by the experts. Most commenters stressed that ADHD is a common impairment in children, that it is well-recognized and clearly defined, and that it is not appropriately captured by any of the listings we proposed. Hence, they believed that ADHD would be best evaluated under its own, separate listing. Three commenters stated their opinion that ADHD will rarely be disabling; however, two of these commenters still thought that a separate listing was necessary because the remaining listings were inadequate to

evaluate the conditions of children who have the impairment.

Many commenters expressed concern that if we did not include a separate listing for ADHD we would never find children with this impairment disabled. One commenter, who is the parent of a child with ADHD, was concerned that we had changed our rules so that children with ADHD could not qualify for benefits; many commenters, echoing this commenter's belief, stated that we had violated the law by eliminating from the listings a medically determinable impairment known to the medical community, and that we had "decreed that no matter how disabled a child with one of the excluded impairments is, his or her eligibility for benefits cannot be established."

Another commenter recommended that any listing for ADHD should not include a paragraph B functional requirement. Finally, one commenter recommended that we include the two other disruptive behavior disorders described in the DSM–III–R, conduct disorder and oppositional defiant disorder, in the listing that included ADHD.

Response: After carefully considering these comments, we agree with the majority of the commenters that we should include a listing for ADHD. We describe the listing in the summary at the beginning of this preamble. However, we want to emphasize that the fact that we do not list a particular disorder does not mean that we will not consider an unlisted disorder or that we would not find a child disabled by an unlisted disorder.

We did not adopt the recommendation to omit the paragraph B requirement from this listing. Children with ADHD exhibit a wide spectrum of impairment, ranging from slight to disabling. Therefore, it is imperative that any listing for ADHD include specific guidance for assessing the severity of the disorder in addition to criteria which establish its existence. We believe that the paragraph B criteria of listing 112.02, applicable in most of the other listings, appropriately describe the kinds of functional impairment associated with ADHD, and have therefore decided to include them in this listing as well.

We also did not adopt the recommendation to include the other disorders described in the DSM–III–R under the heading "Disruptive Behavior Disorders." We have explained our reasons for not including conduct disorder in the listings in our responses to the comments asking that we include it under listing 112.08. For the same reasons, we decided not to include "oppositional defiant disorder," the only other disorder named in this section of the DSM–III–R. Children who have either of these impairments may be evaluated under listing 112.08 or listing 112.11, depending upon the particular facts of their cases, using our medical equivalency rules.

112.12 Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to attainment of age 1)

Comment: Many commenters commented favorably on our proposal to add a listing (proposed listing 112.10, final listing 112.12) specifically for the evaluation of newborn and younger infants, from birth to attainment of age 1. However, they noted that the problems of diagnosing mental impairments can extend to older infants and toddlers, age 1 to attainment of age 3. They urged us to extend the listing to include older infants and toddlers.

Response: We have not adopted the comments, but we have added language to 112.00A and 112.00C to address the commenters' concerns.

Although we agree with the commenters that diagnosis of older infants and toddlers can be just as difficult as in newborn and younger infants, we believe that the problem is not as pervasive in the older group as it is in the younger group. Furthermore, the infant-specific criteria for assessing severity in final listing 112.12 become progressively less appropriate as infants become older. We have, therefore, decided to leave listing 112.12 as we proposed it; that is, as a listing designed specifically for the special problems associated with the evaluation of children from birth through attainment of age 1.

This is not to say that children who are older than 1 cannot be found to have an impairment which is equal to the severity of listing 112.12. As we emphasize throughout these responses, any child who does not have a listed impairment can still be found disabled if he or she has an impairment or combination of impairments that is equivalent to any listed impairment. Children older than 1 whose impairment manifestations are identical or sufficiently similar to the requirements of 112.12 could, in certain situations, be evaluated using the new listing.

In response to this and other comments we have already described, we have added language to 112.00A and 112.00C to stress the importance of deciding whether a child has an equivalent impairment or combination of impairments. In direct response to this comment, we have also added statements in the last paragraph of 112.00A and the second paragraph of 112.00C to indicate that children aged 1 to attainment of age 3 may exhibit similar problems of insufficient developmental differentiation to newborn and younger infants and that it is, therefore, vital to assess equivalency in such cases.

Comment: Several commenters offered suggestions for provisions that permitted presumptions of disability in the cases of the very youngest infants (from birth through the first weeks or months of life). Two of these commenters prefaced their suggestions with remarks about the proposed 50 percent developmental delay rules for newborn and younger infants in paragraphs A and B of proposed listing 112.10. One of these commenters was concerned because he believed that validated instruments for such young children are lacking. This commenter was also concerned that in some impairments, such as Down syndrome, developmental delays are not always immediately apparent. The commenter thought that we might deny such children at or near birth, even when there was a high probability that we would eventually find them disabled. The other commenter stated that under current regulations a finding of disability in children with genetic or congenital impairments cannot be made until the disability has manifested itself in 50 percent developmental delay.

With regard to the suggested provisions for presumption of disability, several commenters provided examples of some of the hereditary and congenital conditions they would include, based upon the likelihood that children with these impairments would eventually be found disabled when they were older. One of these commenters also suggested that this would be an equitable rule because most of the children who have one of these conditions would eventually be found disabled and eligible for benefits when they were older. Therefore, such a rule, in the view of the commenters, would only serve to provide such children with their rightful benefits in a more timely fashion.

Response: We disagree with the comment about the existence of valid tests for children from birth through attainment of age 1. As we state in the 13th paragraph of 112.00D, there are validated instruments appropriate to newborn and younger infants, such as the Bayley Scales of Infant Development and the Cattell Infant Intelligence Scale. Furthermore, all of the listings provide alternative criteria to testing; the criteria in final listing 112.12A and B (proposed listing 112.10A and B) are only two

criteria of five, which can be used to meet the listing.

Nevertheless, we share these commenters' concerns that some impairments can be especially difficult to evaluate in the very youngest infants. One of our major goals in devising these listings and the new rules in 110.00 and listings 110.06 and 110.07 was to address the problems of evaluating both mental and physical impairments in newborn and younger infants. Even though it is not true, as two commenters suggested, that we had no provision in our policy for finding disability in infants who did not demonstrate 50 percent developmental delay, we have been keenly aware of the difficulty of performing these evaluations. Final listing 112.12 is an innovation in our childhood listings: It is a rule that provides criteria specifically for children in their first 12 months. Similarly, new listing 110.07 recognizes the special problems associated with the assessment of severity in the children who have confirmed hereditary, congenital, or acquired conditions that usually affect two or more body systems. In addition, we have established certain listings under which a child can be found disabled by virtue of a medically documented diagnosis and its well-established medical and functional implications. New listing 110.06, which covers Down syndrome (except for the mosaic form), is one of these. This listing provides for a finding of disability based on Down syndrome established by clinical and laboratory findings.

In our view, new listing 112.12 and the new listings in 110.00 go a long way toward resolving the problems raised by the commenters. These new rules provide considerably more detail for evaluating impairments in newborn and younger infants than we have previously provided to our adjudicators; they provide for more timely assessments of claims; and they provide alternative criteria to the rule for 50 percent developmental delay. In addition, we will provide further guidance in the new regulations we are now preparing in response to the Supreme Court's decision in *Zebley*.

Comment: One commenter thought that the rule in proposed listing 112.10 for a developmental delay of 50 percent was inappropriately low because it did not equate with the requirement in proposed listings 112.05C or D, which recognized disability in older children who had IQs as high as 69. The commenter suggested that we increase the milestone rule from 50 percent or less to 69 percent or less.

Response: We have not adopted the specific suggestion, but have added a new rule that we believe responds to the comment.

Our intent in proposed listing 112.10, now final listing 112.12, was to create a listing for newborn and younger infants that would equate with the severity threshold in listings 112.05A and 112.05B, not proposed listings 112.05C and 112.05D. Proposed listing 112.05A and B (final listing 112.05A and C) result in a finding of "meets" based soley on a finding that a child who is mentally retarded demonstrates either the failure to attain specific developmental milestone or an IQ not greater than 59.

As we have indicated previously, we have added a new criterion to listing 112.12 to provide a standard that is comparable to the rules in paragraph Bld of listing 112.02.

Also, in response to this comment and earlier comments which addressed the need for comparable severity thresholds across all age groups, we replaced the phrase "marked impairment" in proposed listing 112.10C (now final listing 112.12C) to ensure comparability within that listing. We did not intend for "marked" in proposed listing 112.10C to be of a different severity threshold than that of the other paragraphs within that listing, e.g., the one-half chronological age cognitive/communicative functioning threshold in proposed 112.10A. However, with the definition of marked in the fourth paragraph of final listing 112.00C, it could be concluded that proposed listing 112.10C had a different severity threshold than the remaining paragraphs in that listing. Therefore, in final listing 112.12C, we replaced "marked impairment" with "an absent or grossly excessive response" to clarify its original intent.

Comment: One commenter stated that proposed listing 112.10 (final listing 112.12) did a "credible job" of tracking DSM–III–R criteria. However, the commenter suggested that some of the language, such as that in subsection D2, could be simplified to more accurately reflect an infant's behavior.

Response: We agree with the commenter. We have therefore revised the language of 112.12D to be simpler and to use terms more specific to infant behavior.

Additional Comments

Comment: One commenter was concerned about the evidence needed to establish a diagnosis under these listings. The commenter stated that we had provided "little room for clinical impressions" but "a lot of room to disqualify a case because the treating source did not know the precise way to support the diagnosis." The commenter recommended that we provide each treating source with clear instructions needed to make a determination under the listings. Similarly, the commenter asked if we would find a child disabled based upon a diagnosis submitted by a treating source unsupported by findings in the paragraphs A and B criteria of any listing. The commenter gave examples of specific impairments that were not mentioned by name in the listings and wondered if children with these disorders could be found disabled.

Response: The kinds of issues raised by this commenter are not specific to the childhood mental listings, but arise in connection with all disability cases. We are in the process of preparing for final publication a separate group of regulations which address, among other things, the responsibilities of our adjudicators in developing the specific information needed from treating sources to complete a record, how and when to obtain information from consultative examinations, and mechanisms for disseminating appropriate information about our evidentiary needs to the medical community.

Our policy, stated in §§ 404.1525(d) and 416.925(d) of the regulations, is that we will not consider an impairment to be a listed impairment solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the listings. On the other hand, we again want to assure this commenter that we will not deny any case simply because a child does not have a listed impairment or because a treating source who is unaware of our evidentiary needs has failed to submit the evidence we need, even though he or she has this information and is willing to provide it. We make every effort to assist claimants—especially children—in obtaining evidence.

Comment: One commenter asked us to include a statement of the "reasons or philosophy for giving disability payments to children." The commenter also expressed concern about whether the payment of benefits to children could be countertherapeutic and a disincentive to the child's family to seek treatment for the child. In a related comment, the commenter asked how we would evaluate cases of children who have treatable impairments but are disabled because they do not receive treatment.

Response: We rejected the recommendation to state in these regulations the "reasons or philosophy" behind the various payments available to children under the Social Security

Act. We pay benefits to children pursuant to laws enacted by the Congress and signed by the President of the United States. Our regulations implement the laws and explain in a practical way how we will abide by them; any statements of "philosophy," such as the commenter suggested, are beyond the purview of these regulations.

When we determine whether a child is disabled, we do not consider matters extraneous to the statute and regulations, such as whether paying benefits will be in the child's best interests. If the medical and other evidence establish that a child is disabled and the child meets all other statutory requirements, we will pay benefits.

With regard to the question of whether we would find a child disabled even if we knew, or thought, that the child could be successfully treated, the answer is that we will, unless the child has failed to follow prescribed treatment and does not have good cause for such failure. We have promulgated specific rules elsewhere in our regulations (see §§ 404.1530 and 416.930) about this issue to direct our adjudicators on how to evaluate such cases.

Other Changes

In view of the changes we are making in 112.00, Mental and Emotional Disorders, of Part B of Appendix 1 of the Listing of Impairments, we are also making a number of conforming and technical changes to other listings in both Parts A and B of the Listing of Impairments.

We are adding a paragraph to the Introduction to Appendix 1 of Subpart P of the Listing of Impairments to indicate that the childhood mental disorders listings will cease to be effective 5 years after publication as a final rule, unless extended by the Secretary or revised and promulgated again.

We are changing the phrase "IQs of 69" to "IQs of 70" in the seventh paragraph of 12.00D.

We are changing the phrase "IQ of 60 to 69 inclusive" to "IQ of 60 through 70" in the 12.05C and 12.05D.

We are changing the phrase "IQ of 69 or less" to "IQ of 70 or less" in listings 11.07A, 109.02B1, 111.02B1, 111.07B1, and 111.08B2.

We are changing the reference in the last sentence of the first paragraph of listing 110.00A2 from "See 112.00B" to "See 112.00C."

We are changing listing 110.07B to read "Mental impairment as described under the criteria in 112.05 or 112.12; or."

Regulatory Procedures

Executive Order 12291

The costs of this regulation are estimated to be as follows:

	1991	1992	1993	1994	1995
Additional SSI recipients	1,000	2,000	2,000	3,000	3,000
Program costs:					
Supplemental Security Income	$2	$6	$9	$12	$14
Medicaid	(1)	$5	$5	$10	$10
Medicare	(1)	(1)	(1)	(1)	(1)
Disability Insurance	(1)	(1)	(1)	(1)	(1)
Administrative savings	(1)	(1)	(1)	(1)	(1)

[1] Negligible

Therefore, the Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations will impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals who are applying for title II or title XVI benefits based on disability. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.802, Disability Insurance.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: May 3, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: August 9, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, part 404, subpart P, of Chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-_____)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act, as amended; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 442(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96-265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Section 404.1520a is amended by revising the second sentence of paragraph (a) introducing text to read as follows:

§ 404.1520a Evaluation of mental impairments.

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when Part A of the Listing of Impairments is used, a special procedure must be followed by us at each level of adminstrative review. * * *

* * * * *

Appendix 1 to Subpart P—[Amended]

3. Appendix 1 to subpart P (Listing or Impairments) is amended by adding a new paragraph before the last paragraph of the introductory text to read as follows:

The mental disorders listing in Part B (112.00) within 5 years. Consequently, the listings in this body system will no longer be effective on December 12, 1995, unless extended by the Secretary or revised and promulgated again.

4. Part A of the Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph A of listing 11.07 *Cerebral Palsy* to read as follows:

A. IQ of 70 or less; or

5. Part A of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising the second sentence of the seventh paragraph of 12.00D (*Documentation*) to read as follows:

* * * In this connection, it must be noted that on the WAIS, for example, IQs of 70 and below are characteristic of approximately the lowest 2 percent of the general population. * * *

6. Part A of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph C of listing 12.05 *Mental Retardation and Autism* to read as follows:

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant work-related limitation of function;

OR

7. Part A of Appendix 1 (Listing of Impairments) of subpart P is amended by revising the introductory text of paragraph D of listing 12.05 *Mental Retardation and Autism* to read as follows:

D. A valid verbal, performance, or full scale IQ of 60 through 70, or in the case of autism, gross deficits of social and communicative skills, with either condition resulting in two of the following:

8. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B1 of listing 109.02 to read as follows:

1. IQ of 70 or less, or

9. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising the last sentence of the first paragraph of A2 of 110.00 (Multiple Body Systems) to read as follows:

2.1 * * * See 112.00C for a discussion of developmental milestone criteria and evaluation of age-appropriate activities.

10. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B of introductory text of listing 110.07 Multiple Body Dysfunction to read as follows:

B. Mental impairment as described under the criteria in 112.05 or 112.12; or

11. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B1 of listing 111.02 to read as follows:

1. IQ of 70 or less; or

12. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B1 of listing 111.07 *Cerebral Palsy* to read as follows:

1. IQ of 70 or least; or

13. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising paragraph B2 of listing 111.08 to read as follows:

2. IQ of 70 or least; or

14. Part B of Appendix 1 (Listing of Impairments) of subpart P is amended by revising 112.00, Mental and Emotional Disorders, to read as follows:

112.00 Mental Disorders

A. *Introduction:* The structure of the mental disorders listings for children under age 18 parallels the structure for the mental disorders listings for adults but is modified to reflect the presentation of mental disorders in children. The listings for mental disorders in children are arranged in 11 diagnostic categories: Organic mental disorders (112.02); schizophrenic, delusional (paranoid), schizoaffective, and other psychotic disorders (112.03); mood disorders (112.04); mental retardation (112.05); anxiety disorders (112.06); somatoform, eating, and tic disorders (112.07); personality disorders (112.08); psychoactive substance dependence disorders (112.09); autistic disorder and other pervasive developmental disorders (112.10); attention deficit hyperactivity disorder (112.11); and developmental and emotional disorders of newborn and younger infants (112.12).

There are significant differences between the listings for adults and the listings for children. There are disorders found in children that have no real analogy in adults; hence, the differences in the diagnostic categories for children. The presentation of mental disorders in children, particularly the very young child, may be subtle and of a character different from the signs and symptoms found in adults. For example, findings such as separation anxiety, failure to mold or bond with the parents, or withdrawal may serve as findings comparable to findings that mark mental disorders in adults. The activities appropriate to children, such as learning, growing, playing, maturing, and school adjustment, are also different from the activities appropriate to the adult and vary widely in the different childhood stages.

Each listing begins with an introductory statement that describes the disorder or disorders addressed by the listing. This is followed (except in listings 112.05 and 112.12) by medical findings (paragraph A criteria), which, if satisfied, lead to an assessment of impairment-related functional limitations (paragraph B criteria). An individual will be found to have a listed impairment when the criteria of both paragraphs A and B of the listed impairment are satisfied.

The purpose of the criteria in paragraph A is to substantiate medically the presence of a particular mental disorder. Specific symptoms and signs under any of the listings 112.02 through 112.12 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the medical findings.

Paragraph A of the listings is a composite of medical findings which are used to substantiate the existence of a disorder and may or may not be appropriate for children at specific developmental stages. However, a range of medical findings is included in the listings so that no age group is excluded. For example, in listing 112.02A7, emotional liability and crying would be inappropriate criteria to apply to older infants and toddlers, age 1 to attainment of age 3; whereas in 112.02A1, developmental arrest, delay, or regression are appropriate criteria for older infants and toddlers. Whenever the adjudicator decides that the requirements of paragraph A of a particular mental listing are satisfied, then that listing should be applied regardless of the age of the child to be evaluated.

The purpose of the paragraph B criteria is to describe impairment-related functional limitations which are applicable to children. Standardization tests of social or cognitive function and adaptive behavior are frequently available and appropriate for the evaluation of children and, thus, such tests are included in the paragraph B functional parameters. The functional restrictions in paragraph B must be the result of the mental disorder which is manifested by the medical findings in paragraph A.

We have not included separate C criteria for listings 112.03 and 112.06, as are found in the adult listings, because for the most part we do not believe that categories like residual schizophrenia or agoraphobia are commonly found in children. However, in unusual cases where these disorders are found in children and are comparable to the severity and duration found in adults, the adult 12.03C and 12.06C criteria may be used for evaluation of the cases.

The structure of the listings for Mental Retardation (112.05) and Developmental and Emotional Disorders of Newborn and Younger Infants (112.12) is different from that of the other mental disorders. Listing 112.05 (Mental Retardation) contains six sets of criteria, any one of which, if satisfied, will result in a finding that the child's impairment meets the listing. Listing 112.12 (Developmental and Emotional Disorders of Newborn and Younger Infants) contains five criteria, any one of which, if satisfied, will result in a finding that the infant's impairment meets the listing.

It must be remembered that these listings are examples of common mental disorders which are severe enough to find a child disabled. When a child has a medically determinable impairment that is not listed or a combination of impairments no one of which meets a listing, we will make a medical equivalency determination. (See §§ 404.1526 and 416.926.) This determination can be especially important in older infants and toddlers (age 1 to attainment of age 3), who may be too young for identification of a specific diagnosis, yet demonstrate serious

functional limitations. Therefore, the determination of equivalency is necessary to the evaluation of any child's case when the child does not have an impairment that meets a listing.

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of symptoms, signs, and laboratory findings (including psychological or developmental test findings). Symptoms are complaints presented by the child. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation, development, and contact with reality, as described by an appropriate medical source. Symptoms and signs generally cluster together to constitute recognizable mental disorders described in paragraph A of the listings. These findings may be intermittent or continuous depending on the nature of the disorder.

C. *Assessment of Severity:* In childhood cases, as with adults, severity is measured according to the functional limitations imposed by the medically determinable mental impairment. However, the range of functions used to assess impairment severity for children varies at different stages of maturation. The functional areas that we consider are: Motor function; cognitive/communicative function; social function; personal/behavioral function; and concentration, persistence, and pace. In most functional areas, there are two alternative methods of documenting the required level of severity: (1) Use of standardized tests alone, where appropriate test instruments are available, and (2) use of other medical findings. (See 112.00D for explanation of these documentation requirements.) The use of standardized tests is the preferred method of documentation if such tests are available.

Newborn and younger infants (birth to attainment of age 1) have not developed sufficient personality differentiation to permit formulation of appropriate diagnoses. We have, therefore, assigned listing 112.12 for Developmental and Emotional Disorders of Newborn and Younger Infants for the evaluation of mental disorders of such children. Severity of these disorders is based on measures of development in motor, cognitive/communicative, and social functions. When older infants and toddlers (age 1 to attainment of age 3) do not clearly satisfy the paragraph A criteria of any listing because of insufficient developmental differentiation, they must be evaluated under the rules of equivalency. The principles for assessing the severity of impairment in such children, described in the following paragraphs, must be employed.

In defining the severity of functional limitations, two different sets of paragraph B criteria corresponding to two separate age groupings have been established, in addition to listing 112.12, which is for children who have not attained age 1. These age groups are: older infants and toddlers (age 1 to attainment of age 3) and children (age 3 to attainment of age 18). However, the discussion below in 112.00C1, 2, 3, and 4, on the age-appropriate areas of function, is broken down into four age groupings: older infants and toddlers (age 1 to attainment of age 3), preschool children (age 3 to attainment of age 6), primary school children (age 6 to attainment of age 12), and adolescents (age 12 to attainment of age 18). This was done to provide specific specific guidance on the age group variances in disease manifestations and methods of evaluation.

Where "marked" is used as a standard for measuring the degree of limitation it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired, or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with the ability to function (based upon age-appropriate expectations) independently, appropriately, effectively, and on a sustained basis. When standardized tests are used as the measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.

1. *Older infants and toddlers (age 1 to attainment of age 3).* In this age group, impairment severity is assessed in three areas: (a) Motor development, (b) cognitive/communicative function, and (c) social function.

a. *Motor development.* Much of what we can discern about mental function in these children frequently comes from observation of the degree of development of fine and gross motor function. Developmental delay, as measured by a good developmental milestone history confirmed by medical examination, is critical. This information will ordinarily be available in the existing medical evidence from the claimant's treating sources and other medical sources, supplemented by information from nonmedical sources, such as parents, who have observed the child and can provide pertinent historical information. It may also be available from standardized testing. If the delay is such that the older infant or toddler has not achieved motor development generally acquired by children no more than one-half the child's chronological age, the criteria are satisfied.

b. *Cognitive/communicative function.* Cognitive/communicative function is measured using one of several standardized infant scales. Appropriate tests for the measure of such function are discussed in 112.00D. Care should be taken to avoid reliance on screening devices, which are not generally considered to be sufficiently reliable instruments, although such devices may provide some relevant data; however, there will be cases in which the results of such tests show such severe abnormalities that further testing will be unnecessary.

For older infants and toddlers, alternative criteria covering disruption in communication as measured by their capacity to use simple verbal and nonverbal structures to communicate basic needs are provided.

c. *Social function.* Social function in older infants and toddlers is measured in terms of the development of relatedness to people (e.g., bonding and stranger anxiety) and attachment to animate or inanimate objects. Criteria are provided that use standard social maturity scales or alternative criteria that describe marked impairment in socialization.

2. *Preschool children (age 3 to attainment of age 6).* For the age groups including preschool children through adolescence, the functional areas used to measure severity are: (a) Cognitive/communicative function, (b) social function, (c) personal/behavioral function, and (d) deficiencies of concentration, persistence, or pace resulting in frequent failure to complete tasks in a timely manner. After 36 months, motor function is no longer felt to be a primary determinant of mental function, although, of course, any motor abnormalities should be documented and evaluated.

a. *Cognitive/communicative function.* In the preschool years and beyond, cognitive function can be measured by standardized tests of intelligence, although the appropriate instrument may vary with age. A primary criterion for limited cognitive function is a valid verbal, performance, or full scale IQ of 70 or less. The listings also provide alternative criteria, consisting of tests of language development or bizarre speech patterns.

b. *Social function.* Social function is measured by an assessment of a child's relationships with parents, other adults, and peers. These relationships are often observed not only at home but also in preschool programs, where the child's interactions with other children and teachers come under daily scrutiny.

c. *Personal/behavioral function.* This function may be measured by a standardized test of adaptive behavior or by careful description of maladaptive or avoidant behaviors. These behaviors are often observed not only at home but also in preschool programs.

d. *Concentration, persistence, and pace.* This function may be measured through observations of the child in the course of standardized testing and in the course of play.

3. *Primary school children (age 6 to attainment of age 12).* The measures of function here are similar to those for preschool-children except that the test instruments may change and the capacity to function in the school setting is supplemental information. Standardized measures of academic achievement, e.g., Wide Range Achievement Test-Revised, Peabody Individual Achievement Test, etc., may be helpful in assessing cognitive impairment. Problems in social functioning, especially in the area of peer relationships, are often observed firsthand by teachers and school nurses. As described in 112.00D, *Documentation,* school records are an excellent source of information concerning function and standardized testing and should always be sought for school-age children.

As it applies to primary school children, the intent of the functional criterion described in paragraph B2d, i.e., deficiencies of concentration, persistence, or pace resulting in failure to complete tasks in a timely manner, is to identify the child who cannot adequately function in primary school because of a mental impairment. Although grades and the need for special education

placement are relevant factors which must be considered in reaching a decision under paragraph B2d, they are not conclusive. There is too much variability from school district to school district in the expected level of grading and in the criteria for special education placement to justify reliance solely on these factors.

4. *Adolescents (age 12 to attainment of age 18).* Functional criteria parallel to those for primary school children (cognitive/communicative; social; personal/behavioral; and concentration, persistence, and pace) are the measure of severity for this age group. Testing instruments appropriate to adolescents should be used where indicated. Comparable findings of disruption of social function must consider the capacity to form appropriate, stable, and lasting relationships. If information is available about cooperative working relationships in school or at part-time or full-time work, or about the ability to work as a member of a group, it should be considered when assessing the child's social and personal/behavioral functioning. Markedly impoverished social contact, isolation, withdrawal, and inappropriate or bizarre behavior under the stress of socializing with others also constitute comparable findings.

In adolescents, the intent of the functional criterion described in paragraph B2d is the same as in primary school children. However, other evidence of this functional impairment may also be available, such as from evidence of the child's performance in work or work-like settings.

D. *Documentation:* The presence of a mental disorder in a child must be documented on the basis of reports from acceptable sources of medical evidence. See §§ 404.1513 and 416.913. Descriptions of functional limitations may be available from these sources, either in the form of standardized test results in other medical findings supplied by the sources, or both. (Medical findings consist of symptoms, signs, and laboratory findings.) Whenever possible, a medical source's findings should reflect the medical source's consideration of information from parents or other concerned individuals who are aware of the child's activities of daily living, social functioning, and ability to adapt to different settings and expectations, as well as the medical source's findings and observations on examination, consistent with standard clinical practice. As necessary, information from nonmedical sources, such as parents, should also be used to supplement the record of the child's functioning to establish the consistency of the medical evidence and longitudinality of impairment severity.

For some newborn and younger infants, it may be very difficult to document the presence or severity of a mental disorder. Therefore, with the exception of some genetic diseases and catastrophic congenital anomalies, it may be necessary to defer making a disability decision until the child attains 3 months of age in order to obtain adequate observation of behavior or affect. See, also, 110.00 of this part. This period could be extended in cases of premature infants depending on the degree of prematurity and the adequacy of documentation of their developmental and emotional status.

For infants and toddlers, programs of early intervention involving occupational, physical, and speech therapists, nurses, social workers, and special educators, are a rich source of data. They can provide the developmental milestone evaluations and records on the fine and gross motor functioning of these children. This information is valuable and can complement the medical examination by a physician or psychologist. A report of an interdisciplinary team that contains the evaluation and signature of an acceptable medical source is considered acceptable medical evidence rather than supplemental data.

In children with mental disorders, particularly those requiring special placement, school records are a rich source of data, and the required reevaluations at specified time periods can provide the longitudinal data needed to trace impairment progression over time.

In some cases where the treating sources lack expertise in dealing with mental disorders of children, it may be necessary to obtain evidence from a psychiatrist, psychologist, or pediatrician with experience and skill in the diagnosis and treatment of mental disorders as they appear in children. In these cases, however, every reasonable effort must be made to obtain the records of the treating sources, since these records will help establish a longitudinal picture that cannot be established through a single purchased examination.

A reference to standardized psychological testing indicates the use of a psychological test that has appropriate characertistics of validity, reliability, and norms, administered individually by psychologist, psychiatrist, pediatrician, or other physician specialist qualified by training and experience to perform such an evaluation. Psychological tests are best considered as sets of tasks or questions designed to elicit particular behaviors when presented in a standardized manner.

The salient characteristics of a good test are: (1) Validity, i.e., the test measures what it is supposed to measure, as determined by appropriate methods; (2) reliability, i.e., the consistency of results obtained over time with the same test and the same individual; and (3) appropriate normative data, i.e., individual test scores must be comparable to test data from other individuals or groups of a similar nature, representative of that population. In considering the validity of a test result, any discrepancies between formal test results and the child's customary behavior and daily activities should be duly noted and resolved.

Tests meeting the above requirements are acceptable for the determination of the conditions contained in these listings. The psychologist, psychiatrist, pediatrician, or other physician specialist administering the test must have a sound technical and professional understanding of the test and be able to evaluate the research documentation related to the intended application of the test.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. The IQ scores in listing 112.05 reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15, e.g., the Wechsler series and the Revised Stanford-Binet scales. Thus, IQ's below 60 reflect a level of intellectual functioning below 99.5 percent of the general population, and IQ's of 70 and below are characteristic of approximately the lowest 2 percent of the general population. IQ's obtained from standardized tests that deviate significantly from a mean of 100 and standard deviation of 15 require conversion to the corresponding percentile rank in the general population so that the actual degree of impairment reflected by the IQ scores can be determined. In cases where more than one IQ is customarily derived from the test administered, e.g., where verbal, performance, and full scale IQ's are provided, as on the Wechsler series, the lowest of these is used in conjunction with listing 112.05.

IQ test results must also be sufficiently current for accurate assessment under 112.05. Generally, the results of IQ tests tend to stabilize by the age of 16. Therefore, IQ test results obtained at age 16 or older should be viewed as a valid indication of the child's current status, provided they are compatible with the child's current behavior. IQ test results obtained between ages 7 and 16 should be considered current for 4 years when the tested IQ is less than 40, and for 2 years when the IQ is 40 or above. IQ test results obtained before age 7 are current for 2 years if the tested IQ is less than 40 and 1 year if at 40 or above.

Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not covered under the provisions of listings 112.05A, 112.05B, and 112.05F. Listings 112.05A 112.05B, and 112.05F may be the bases for adjudicating cases where the results of standardized intelligence tests are unavailable, e.g., where the child's young age or condition precludes formal standardized testing.

In conjunction with clinical examinations, sources may report the results of screening tests, i.e., tests used for gross determination of level of functioning. These tests do not have high validity and reliability and generally are not considered appropriate primary evidence for disability determinations. These screening instruments may be useful in uncovering potentially serious impairments, but generally must be supplemented by the use of formal, standardized psychological testing for the purposes of a disability determination, unless the determination is to be made on the basis of findings other than psychological test data; however, there will be cases in which the results of screening tests show such obvious abnormalities that further testing will clearly be unnecessary.

Where reference is made to developmental milestones, this is defined as the attainment of particular mental or motor skills at an age-appropriate level, i.e., the skills achieved by an infant or toddler sequentially and within a given time period in the motor and manipulative areas, in general understanding and social behavior, in self-feeding, dressing, and toilet training, and in language. This is

sometimes expressed as a developmental quotient (DQ), the relation between developmental age and chronological age as determined by specific standardized measurements and observations. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, and the Revised Stanford-Binet. Formal tests of the attainment of developmental milestones are generally used in the clinical setting for determination of the developmental status of infants and toddlers.

Formal psychological tests of cognitive functioning are generally in use for preschool children, for primary school children, and for adolescents except for those instances noted below.

Exceptions to formal standardized psychological testing may be considered when a psychologist, psychiatrist, pediatrician, or other physician specialist who is qualified by training and experience to perform such an evaluation is not readily available. In such instances, appropriate medical, historical, social, and other information must be reviewed in arriving at a determination.

Exceptions may also be considered in the case of ethnic/cultural minorities where the native language or culture is not principally English-speaking. In such instances, psychological tests that are culture-free, such as the Leiter International Performance Scale or the Scale of Multi-Culture Pluralistic Assessment (SOMPA) may be substituted for the standardized tests described above. Any required tests must be administered in the child's principal language. When this is not possible, appropriate medical, historical, social, and other information must be reviewed in arriving at a determination. Furthermore, in evaluating mental impairments in children from a different culture, the best indicator of severity is often the level of adaptive functioning and how the child performs activities of daily living and social functioning.

"Neuropsychological testing" refers to the administration of standardized tests that are reliable and valid with respect to assessing impairment in brain functioning. It is intended that the psychologist or psychiatrist using these tests will be able to evaluate the following functions: Attention/concentration, problem-solving, language, memory, motor, visual-motor and visual-perceptual, laterality, and general intelligence (if not previously obtained).

E. *Effect of Hospitalization or Residential Placement*: As with adults, children with mental disorders may be placed in a variety of structured settings outside the home as part of their treatment. Such settings include, but are not limited to, psychiatric hospitals, developmental disabilities facilities, residential treatment centers and schools, community-based group homes, and workshop facilities. The reduced mental demands of such structured settings may attenuate overt symptomatology and superficially make the child's level of adaptive functioning appear better than it is. Therefore, the capacity of the child to function outside highly structured settings must be considered in evaluating impairment severity. This is done by determining the degree to which the child can function (based upon age-appropriate expectations) independently, appropriately, effectively, and on a sustained basis outside the highly structured setting.

On the other hand, there may be a variety of causes for placement of a child in a structured setting which may or may not be directly related to impairment severity and functional ability. Placement in a structured setting in and of itself does not equate with a finding of disability. The severity of the impairment must be compared with the requirements of the appropriate listing.

F. *Effects of Medication*: Attention must be given to the effect of medication on the child's signs, symptoms, and ability to function. While psychoactive medications may control certain primary manifestations of a mental disorder, e.g., hallucinations, impaired attention, restlessness, or hyperactivity, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the psychoactive medications, particular attention must be focused on the functional limitations which may persist. These functional limitations must be considered in assessing impairment severity.

Psychotropic medicines used in the treatment of some mental illnesses may cause drowsiness, blunted affect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity.

112.01 Category of Impairments, Mental

112.02 *Organic Mental Disorders*: Abnormalities in perception, cognition, affect, or behavior associated with dysfunction of the brain. The history and physical examination or laboratory tests, including psychological or neuropsychological tests, demonstrate or support the presence of an organic factor judged to be etiologically related to the abnormal mental state and associated deficit or loss of specific cognitive abilities, or affective changes, or loss of previously acquired functional abilities.

The required level of severity for those disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence of at least one of the following:

1. Developmental arrest, delay or regression; or

2. Disorientation to time and place; or

3. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or

4. Perceptual or thinking disturbance (e.g., hallucinations, delusions, illusions, or paranoid thinking); or

5. Disturbance in personality (e.g., apathy, hostility); or

6. Disturbance in mood (e.g., mania, depression); or

7. Emotional liability (e.g., sudden crying); or

8. Impairment of impulse control (e.g., disinhibited social behavior, explosive temper outbursts); or

9. Impairment of cognitive function, as measured by clinically timely standardized psychological testing; or

10. Disturbance of concentration, attention, or judgment;

AND

B. Select the appropriate age group to evaluate the severity of the impairment:

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the following:

a. Gross or fine motor development at a level generally acquired by children no more than one-half the child's chronological age, documented by:

(1) An appropriate standardized test; or

(2) Other medical findings (see 112.00C); or

b. Cognitive/communicative function at a level generally acquired by children no more than one-half the child's chronological age, documented by:

(1) An appropriate standardized test; or

(2) Other medical findings of equivalent cognitive/communicative abnormality, such as the inability to use simple verbal or nonverbal behavior to communicate basic needs or concepts; or

c. Social function at a level generally acquired by children no more than one-half the child's chronological age, documented by:

(1) An appropriate standardized test; or

(2) Other medical findings of an equivalent abnormality of social functioning, exemplified by serious inability to achieve age-appropriate autonomy as manifested by excessive clinging or extreme separation anxiety; or

d. Attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in two or more areas covered by a., b., or c., as measured by an appropriate standardized test or other appropriate medical findings.

2. For children (age 3 to attainment of age 18), resulting in at least two of the following:

a. Marked impairment in age-appropriate cognitive/communicative function, documented by medical findings (including consideration of historical and other information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized psychlogical tests, or for children under age 6, by appropriate tests of language and communication; or

b. Marked impairment in age-appropriate social functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized tests; or

c. Marked impairment in personal/behavioral function, as evidenced by:

(1) Marked restriction of age-appropriate activities of daily living, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, appropriate standardized tests; or

(2) Persistent serious maladaptive behaviors destructive to self, others, animals, or property, requiring protective intervention; or

d. Deficiencies of concentration, persistence, or pace resulting infrequent failure to complete tasks in a timely manner.

112.03 *Schizophrenic, Delusional (Paranoid), Schizoaffective, and Other Psychotic Disorders:* Onset of psychotic features, characterized by a marked disturbance of thinking, feeling, and behavior, with deterioration from a previous level of functioning or failure to achieve the expected level of social functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, for at least 6 months, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or

2. Catatonic, bizarre, or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech; or

4. Flat, blunt, or inappropriate effect; or

5. Emotional withdrawal, apathy, or isolation;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.04 *Mood Disorders:* Characterized by a disturbance of mood (referring to a prolonged emotion that colors the whole psychic life, generally involving either depression or elation), accompanied by a full or partial manic or depressive syndrome.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Major depressive syndrome, characterized by at least five of the following, which must include either depressed or irritable mood or markedly diminished interest or pleasure:

a. Depressed or irritable mood; or

b. Markedly diminished interest or pleasure in almost all activities; or

c. Appetite or weight increase or decrease, or failure to make expected weight gains; or

d. Sleep disturbance; or

e. Psychomotor agitation or retardation; or

f. Fatigue or loss of energy; or

g. Feelings of worthlessness or guilt; or

h. Difficulty thinking or concentrating; or

i. Suicidal thoughts or acts; or

j. Hallucinations, delusions, or paranoid thinking;

OR

2. Manic syndrome, characterized by elevated, expansive, or irritable mood, and at least three of the following:

a. Increased activity or psychomotor agitation; or

b. Increased talkativeness or pressure of speech; or

c. Flight of ideas or subjectively experienced racing thoughts; or

d. Inflated self-esteem or grandiosity; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high potential of painful consequences which are not recognized; or

h. Hallucinations, delusions, or paranoid thinking;

OR

3. Bipolar or cyclothymic syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently or most recently characterized by the full or partial symptomatic picture of either or both syndromes);

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.05 *Mental Retardation:* Characterized by significantly subaverage general intellectual functioning with deficits in adaptive functioning.

The required level of severity for this disorder is met when the requirements in A, B, C, D, E, or F are satisfied.

A. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02;

OR

B. Mental incapacity evidenced by dependence upon others for personal needs (grossly in excess of age-appropriate dependence) and inability to follow directions such that the use of standardized measures of intellectual functioning is precluded;

OR

C. A valid verbal, performance, or full scale IQ of 59 or less;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing additional and significant limitation of function;

OR

E. A valid verbal, performance, or full scale IQ of 60 through 70 and:

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in either paragraphs B1a or B1c of 112.02; or

2. For children (age 3 to attainment of age 18), resulting in at least one of paragraphs B2b or B2c or B2d of 112.02;

OR

F. Select the appropriate age group:

1. For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in paragraph B1b of 112.02, and a physical or other mental impairment imposing additional and significant limitations of function;

OR

2. For children (age 3 to attainment of age 18), resulting in the satisfaction of 112.02B2a, and a physical or other mental impairment imposing additional and significant limitations of function.

112.06 *Anxiety Disorders:* In these disorders, anxiety is either the predominant disturbance or is experienced if the individual attempts to master symptoms, e.g., confronting the dreaded object or situation in a phobic disorder, attempting to go to school in a separation anxiety disorder, resisting the obsessions or compulsions in an obsessive compulsive disorder, or confronting strangers or peers in avoidant disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. Excessive anxiety manifested when the child is separated, or separation is threatened, from a parent or parent surrogate; or

2. Excessive and persistent avoidance of strangers; or

3. Persistent unrealistic or excessive anxiety and worry (apprehensive expectation), accompanied by motor tension, autonomic hyperactivity, or vigilance and scanning; or

4. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

5. Recurrent severe panic attacks, manifested by a sudden unpredictable onset of intense apprehension, fear, or terror, often with a sense of impending doom, occurring on the average of at least once a week; or

6. Recurrent obsessions or compulsions which are a source of marked distress; or

7. Recurrent and intrusive recollections of a traumatic experience, including dreams, which are a source of marked distress;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.07 *Somatoform, Eating, and Tic Disorders:* Manifested by physical symptoms for which there are no demonstrable organic findings or known physiologic mechanisms; or eating or tic disorders with physical manifestations.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of one of the following:

1. An unrealistic fear and perception of fatness despite being underweight, and persistent refusal to maintain a body weight which is greater than 85 percent of the

average weight for height and age, as shown in the most recent edition of the *Nelson Textbook of Pediatrics*, Richard E. Behrman and Victor C. Vaughan, III, editors, Philadelphia: W. B. Saunders Company; or

2. Persistent and recurrent involuntary, repetitive, rapid, purposeless motor movements affecting multiple muscle groups with multiple vocal tics; or

3. Persistent nonorganic disturbance of one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures); or

f. Sensation (diminished or heightened); or

g. Digestion or elimination; or

4. Preoccupation with a belief that one has a serious disease or injury;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.08 *Personality Disorders:* Manifested by pervasive, inflexible, and maladaptive personality traits, which are typical of the child's long-term functioning and not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior, associated with one of the following:

1. Seclusiveness or autistic thinking; or

2. Pathologically inappropriate suspiciousness or hostility; or

3. Oddities of thought, perception, speech, and behavior; or

4. Persistent disturbances of mood or affect; or

5. Pathological dependence, passivity, or aggressiveness; or

6. Intense and unstable interpersonal relationships and impulsive and exploitative behavior; or

7. Pathological perfectionism and inflexibility;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.09 *Psychoactive Substance Dependence Disorders:* Manifested by a cluster of cognitive, behavioral, and physiologic symptoms that indicate impaired control of psychoactive substance use with continued use of the substance despite adverse consequences.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least four of the following:

1. Substance taken in larger amounts or over a longer period than intended and a great deal of time is spent in recovering from its effects; or

2. Two or more unsuccessful efforts to cut down or control use; or

3. Frequent intoxication or withdrawal symptoms interfering with major role obligations; or

4. Continued use despite persistent or recurring social, psychological, or physical problems; or

5. Tolerance, as characterized by the requirement for markedly increased amounts of substance in order to achieve intoxication; or

6. Substance taken to relieve or avoid withdrawal symptoms;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.10 *Autistic Disorder and Other Pervasive Developmental Disorders:* Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

a. Qualitative deficits in the development of reciprocal social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and

c. Markedly restricted repertoire of activities and interests;

OR

2. For pervasive developmental disorders, both of the following:

a. Qualitative deficits in the development of social interaction; and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraphs B2 of 112.02.

112.11 *Attention Deficit Hyperactivity Disorders:* Manifested by developmentally inappropriate degrees of inattention, impulsiveness, and hyperactivity.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of all three of the following:

1. Marked inattention; and

2. Marked impulsiveness; and

3. Marked hyperactivity;

AND

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraph B2 of 112.02.

112.12 *Developmental and Emotional Disorders of Newborn and Younger Infants (Birth to attainment of age 1):* Developmental or emotional disorders of infancy are evidenced by a deficit or lag in the areas of motor, cognitive/communicative, or social functioning. These disorders may be related either to organic or to functional factors or to a combination of these factors.

The required level of severity for these disorders is met when the requirements of A, B, C, D, or E are satisfied.

A. Cognitive/communicative functioning generally acquired by children no more than one-half the child's chronological age, as documented by appropriate medical findings (e.g., in infants 0–6 months, markedly diminished variation in the production or imitation of sounds and severe feeding abnormality, such as problems with sucking swallowing, or chewing) including, if necessary, a standardized test;

OR

B. Motor development generally acquired by children no more than one-half the child's chronological age, documented by appropriate medical findings, including if necessary, a standardized test;

OR

C. Apathy, over-excitability, or fearfulness, demonstrated by an absent or grossly excessive response to one of the following:

1. Visual stimulation; or

2. Auditory stimulation; or

3. Tactile stimulation;

OR

D. Failure to sustain social interaction on an ongoing, reciprocal basis as evidenced by:

1. Inability by 6 months to participate in vocal, visual, and motoric exchanges (including facial expressions); or

2. Failure by 9 months to communicate basic emotional responses, such as cuddling or exhibiting protest or anger; or

3. Failure to attend to the caregiver's voice or face or to explore an inanimate object for a period of time appropriate to the infant's age;

OR

E. Attainment of developmental or function generally acquired by children no more than two-thirds of the child's chronological age in two or more areas (i.e., cognitive/communicative, motor, and social), documented by appropriate medical findings, including if necessary, standardized testing.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

15. The authority citation for subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1169, 1631 (a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 99-460, 98 Stat. 1794, 1801, 1802, and 1808.

16. Section 416.920a is amended by revising the second sentence of paragraph (a) introductory text to read as follows:

§ 416.920a Evaluation of mental impairments

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 when part A of the Listing of Impairments is used, a special procedure must be followed by us at each level of administrative review. * * *

* * * * * *

[FR Doc. 90-28744 Filed 12-11-90; 8:45 am]
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Federal Register

Wednesday
December 12, 1990

Part III

Department of Education

34 CFR Part 222

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Education; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 222

RIN 1810-571

Assistance for Local Educational Agencies in Areas Affected by Federal Activities and Arrangements for Education of Children Where Local Educational Agencies Cannot Provide Suitable Free Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Impact Aid maintenance and operations assistance program (sections 2, 3, and 4 of Pub. L. 81-874). These final regulations implement one of the technical amendments made to Pub. L. 81-874 by the 1992 National Assessment of Chapter 1 Act, Pub. L. 101-305. These provisions may affect the amount of a school district's payment.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hansen, Director, Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2077, Washington, DC 20202-6272. Telephone: (202) 401-3637.

SUPPLEMENTARY INFORMATION:

Background

Regulations governing the Impact Aid maintenance and operations assistance program are in 34 CFR part 222. On May 30, 1990, the President signed into law the 1992 National Assessment of Chapter 1 Act, Public Law 101-305, which also contains a number of amendments to Public Law 81-874. The final regulations in this document implement one of the changes made by the amendments in Pub. L. 101-305.

Section Requiring Changes as a Result of Public Law 101-305

Technical changes to § 222.12 of the regulations as a result of Public Law 101-305 are described below. In addition, other minor editorial and technical revisions to that section and to §§ 222.10 and 222.16 are made.

Section 222.12 Applications under Sections 2, 3, and 4 Received after Deadlines

A new paragraph (b) is added to implement that portion of section 3(c) of Public Law 101-305 that authorizes the Secretary, beginning with fiscal year 1991, to accept an otherwise approvable application received up to 60 days after the established deadline for the receipt of applications, but requires the Secretary to reduce the payment based on such a late application by 10 percent of the amount that would otherwise be paid.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. Because these regulations merely incorporate statutory changes and make minor editorial and technical revisions, however, public comment could have no effect. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These amendments merely conform the existing regulations to new statutory requirements and make other minor editorial and technical revisions.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 222

Education, Education of the handicapped, Elementary and secondary education, Federally affected areas, Grant programs—education, Public housing, Reports and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.041, Impact Aid—Maintenance and Operation)

Dated: November 7, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Part 222 of title 34 of the Code of Federal Regulations as follows:

PART 222—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITIES AND ARRANGEMENTS FOR EDUCATION OF CHILDREN WHERE LOCAL EDUCATIONAL AGENCIES CANNOT PROVIDE SUITABLE FREE PUBLIC EDUCATION

1. The authority citation for part 222 continues to read as follows:

Authority: 20 U.S.C. 236-241-1 and 242-244, unless otherwise noted.

§ 222.10 [Amended]

2. In § 222.10 the introductory text in paragraph (f) is amended by removing "must be" and adding in its place, "must", and paragraph (f)(1) is amended by removing "Received" and adding, in its place, "Be received".

3. Section 222.12 is revised to read as follows:

§ 222.12 Applications under sections 2, 3, and 4 received after deadlines.

(a) Except as provided in paragraph (b) of this section, the Secretary does not accept or approve for payment any application for assistance under sections 2, 3, and 4 of the Act that is not timely filed with the Secretary in accordance with the applicable filing dates established by §§ 222.10 and 222.11.

(b)(1) Beginning with fiscal year 1991, the Secretary accepts and approves for payment any otherwise approvable application filed within 60 days after January 31 of the fiscal year for which assistance is sought.

(2) Such a late application must be received on or before the 60th day after January 31, or bear a U.S. Postal Service postmark dated on or before the 60th day after that date, unless the 60th day falls on a Saturday, Sunday, or Federal holiday, in which case the deadline referred to in this paragraph is the next succeeding business day.

(3) For any application accepted under paragraph (b)(1) of this section, the Secretary reduces the payment based on the application by 10 percent of the amount that would have been paid if the application had been filed by January 31.

(Authority: 20 U.S.C. 240(a)(2))

§ 222.16 [Amended]

4. Section 222.16 is amended by removing "§ 222.111(b)(1)" in paragraph (d) and adding, in its place, "§222.11(b)(1)."

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Wednesday
December 12, 1990

Part IV

Department of Education

Regional Resource Centers Program for Fiscal Year 1991; Notice Inviting Applications for New Awards

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.028]

Notice Inviting Applications for New Awards for the Regional Resource Centers Program for Fiscal Year 1991

PURPOSE OF PROGRAM: To provide Federal support for a variety of activities designed to assist State and local entities in providing early intervention, special education, and related services for infants, toddlers, children, and youth with disabilities and their families. Activities include technical assistance, training, and consultation.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: February 15, 1991.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: April 16, 1991.

APPLICATIONS AVAILABLE: December 14, 1990.

AVAILABLE FUNDS: $6,400,000.

ESTIMATED RANGE OF AWARDS: $800,000–1,200,000.

ESTIMATED AVERAGE SIZE OF AWARDS: $1,000,000.

ESTIMATED NUMBER OF AWARDS: 6.

NOTE: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

PROJECT PERIOD: Up to 24 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR part 305, except that, with regard to 34 CFR 305.40(c), each Regional Resource Center is not required to assure that services provided are consistent with the findings of the Secretary in monitoring reports prepared by the Secretary under section 617 of the Individuals with Disabilities Education Act. This change is a result of the Education of the Handicapped Act Amendments of 1990, Public Law 101–476, enacted on October 30, 1990.

PRIORITY: This priority supports six Regional Resource Centers (RRC) designed to provide consultation, technical assistance, and training, as requested, to State educational agencies, and through such agencies to local educational agencies and to other appropriate public agencies who provide special education, related services, and early intervention services.

The Secretary particularly invites applications that address new and emerging issues, such as (1) meeting the needs of a diverse group of students with disabilities including but not limited to, minority and medically fragile children, (2) the retention and recruitment of special education personnel, and (3) improving the outcomes for students with disabilities as they make the transition from school to the work place, i.e., employment, independent living. The Secretary also invites applications that propose to network with other Regional Resource Centers, technical assistance providers, clearinghouses, and dissemination projects regarding sound educational practices. Regional Resource Centers activities may be determined in part by conducting an annual needs assessment and technical assistance activity plan in conjunction with appropriate Federal officials and each State educational agency in the region served by a RRC.

However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

FOR FURTHER INFORMATION CONTACT: Marie Roane, Division of Assistance to States, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3630–2644), Washington, DC 20202. Telephone: (202) 732–1051.

Program Authority: 20 U.S.C. 1421

Dated: December 6, 1990.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

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federal register

Wednesday
December 12, 1990

Part V

Department of Transportation

Coast Guard

46 CFR Part 67

Documentation of Vessels; Controlling Interest; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 88-031]

RIN 2115-AC99

Documentation of Vessels; Controlling Interest

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its vessel documentation regulations regarding citizenship requirements for vessel owning individuals, or entities, applying to document vessels or qualify for certain trade endorsements. The amended regulations implement the American control provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, and conform the controlling interest requirements for partnerships to those for corporations. Other amendments will result in regulations which are more informative and will assist vessel owners in understanding the applicable citizenship requirements.

EFFECTIVE DATE: January 11, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Willis, Chief, Vessel Documentation Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security, and Environmental Protection, (202) 267–1492.

SUPPLEMENTARY INFORMATION: The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on October 20, 1988 (53 FR 41211), proposing to amend the vessel documentation regulations to implement the American control provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100–239, 101 Stat. 1778 (1988)) (the "Anti-Reflagging Act"). The rulemaking also proposed conforming controlling interest requirements for partnerships to the Anti-Reflagging Act's requirements for corporations. A total of 7 comments were received in response to the NPRM. Based on those comments, and its own administrative experience, the Coast Guard determined that a complete revision of subpart 67.03, concerning citizenship requirements for vessel documentation, was needed. The proposed revision of subpart 67.03, and related amendments, were published on October 13, 1989 (54 FR 41992), in a Supplemental Notice of Proposed Rulemaking (SNPRM), followed by a comment period through December 12, 1989. The Coast Guard has received 9 comments in response to the SNPRM, eight of which were received during the comment period. A public hearing was not held, nor was one requested.

Drafting Information

The principal persons involved in drafting this regulation are Commander Robert Bruce, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's nationality and qualification to be employed in specified trades. The evidence of nationality is the Certificate of Documentation. One or more endorsement on the Certificate of Documentation serve as evidence of the vessel's qualification to engage in the specified trade. The Coast Guard is the agency which (a) accepts applications for documentation of vessels; (b) determines whether a vessel which is the subject of application is eligible for documentation generally and eligible for the endorsement or endorsements requested; and (c) issues Certificates of Documention to eligible vessels.

Eligibility requirements for documentation are set out at 46 U.S.C. Chapter 121. One of the eligibility requirements for documentation is United States citizenship. For corporation and partnerships, citizenship requirements include certain American control provisions. For example, the earliest American control provisions applied to corporations seeking to document vessels for coastwise trade. A requirement that at least 75 percent of its stock be owned by U.S. citizens, found in 46 U.S.C. app. 802, was made applicable to such corporations by 46 U.S.C. app. 883. Coastwise trade is, more or less, domestic transportation of passengers and merchandise.

Until 1982, this American control requirement had little practical effect on partnerships because unless all of the partners, general or limited, were U.S. citizens the partnership was not eligible to document vessels. This requirement was relaxed by section 10 of the Coast Guard Authorization Act of 1982 (Pub. L. 97–136) which amended 46 U.S.C. 12102(a)(3), permitting partnerships to document vessels if all general partners were U.S. citizens and the controlling interest in the partnership was owned by U.S. citizens. The 75 percent American control requirement for a coastwise endorsement remained and, to this extent, the American control requirements for corporations and partnerships were already alike. As a matter of administrative practice, the Coast Guard took the position that, when it was reasonable to do so, the same meaning would be given to "controlling interest" in both the corporate and partnership contexts. A final rule was published (53 FR 17469, May 17, 1988) revising 46 CFR 67.03–5 to implement the American control requirements for partnerships in 46 U.S.C. 12102(a)(3).

On January 11, 1988, the President signed the Anti-Reflagging Act into law. Among other things, this law adds a new American control provision for corporations seeking to document fishing vessels. The new requirement is retroactively effective from July 28, 1987, but includes savings provisions exempting many vessels operating, or under contract for purchase, as fishing industry vessels prior to that date. The statue superseded certain regulations in 46 CFR part 67 that were directly in conflict with it and, to carry out the purpose of the statute, the Coast Guard has been applying the standards in the statute as a matter of administrative practice. All of the changes to documentation regulations mandated by the Anti-Reflagging Act, not relating to controlling interest, have been implemented by prior rulemaking (53 FR 41166, October 20, 1988).

Discussion of Comments

Eight comments regarding the SNPRM were received during the comment period. Comments were received from an association of fishing vessel owners, members of the committee on marine financing of an association of maritime lawyers, a shipping company, and five law firms. None of the comments expressed dissatisfaction with the rulemaking as a whole. All the comments focused on one or more specific items of concern to the submitter. The comments related to (1) the way "control" is defined in § 67.03–2(a)(1); (2) the practice explained in § 67.03–2(b) of counting only the share of an entity's stock or equity and belongs to citizens capable of documenting a vessel in their own right, with the trade endorsement sought, toward meeting the stock or equity requirements for citizenship; (3) the difference between the controlling interest requirements in § 67.03–5 for a partnership seeking to document a vessel for recreation or registry and a partnership seeking to document a vessel for the fishery trade; (4) the meaning of "minority" in § 67.03–9(a)(4); (5) the requirement in § 67.03–9(d)(2)

that more than 50 percent of all the stock, not just voting stock, be owned by citizens; (6) the exceptions in § 67.03–9(f) to the requirement for evidence of Maritime Administration approval in § 67.03–9(e); (7) the Coast Guard's position that the citizenship savings provision for fishing vessels in § 67.03–15 should run with the vessel; (8) possible modification of the requirements for qualification by partnerships for the citizenship savings provisions in § 67.03–15; and, (9) the statement in § 67.17–9(d) of the circumstances under which a vessel may temporarily lose fishery privileges.

a. *Section 67.03–2(a)(1).* Comments from members of the committee on marine financing of an association of maritime lawyers, and from a law firm, expressed concern that the Coast Guard's explanation of control in proposed § 67.03–2(a)(1) is inconsistent with the definition of control in 46 CFR 221.13(a)(2)(i), which was published by the Maritime Administration (MARAD) as an interim final rule (54 FR 5389, February 2, 1989), and will deter non-citizen lenders from investing in the U.S. flag merchant marine. Both comments cite common covenants included in loan agreements for the protection of the lender that might be construed as granting a non-citizen lender control.

The Coast Guard does not agree that the regulation should be changed. The Coast Guard and MARAD have differing statutory responsibilities with respect to documented vessels. As a result, each agency must define control in a way suggested by its experience and expertise in carrying out its own responsibilities.

The definition of control, for purposes of the Coast Guard regulations, properly encompasses control of the vessel owning entity and not just control of the vessel. The Coast Guard must be concerned with whether the vessel owning entity meets the American control requirements. The citizenship provisions in 46 U.S.C. chapter 121 require that vessel owning entity be American controlled to be eligible to document vessels or to qualify for certain trading privileges. Therefore, control of the entity itself, and not just the vessels it owns, is relevant for purposes of the Coast Guard rule.

On the other hand, the Coast Guard's definition of control generally applies only to parties with an ownership interest in a vessel. For purposes of documentation, citizenship requirements apply to those parties having an ownership interest in a vessel or the entity that owns the vessel. Agreements that vessel owners may have with third parties without any ownership interest are not normally of concern to the Coast Guard, unless the agreement grants so many incidents of ownership to the third party that it must be considered a *de facto* owner. The MARAD definition of control, however, may apply to non-citizens whether or not they have an ownership interest in a vessel because, for certain U.S. vessels, any transfer of control over the vessel to non-citizens may require MARAD approval.

The Coast Guard definition of control will not prevent non-citizen lenders from including common covenants for their protection in loan agreements, unless the lender has an ownership interest in a vessel or a vessel owning entity. The Coast Guard must be concerned about agreements which grant control over the vessel or the vessel owning entity to non-citizens have an ownership interest. In some cases this may mean that certain covenants that grant control to protect the non-citizen's investment will be inconsistent with the non-citizen's participation in the ownership of vessels. However, that limitation is what the law requires.

b. *Section 67.03–2(a)(1).* Comments from members of the committee on marine financing of an association of maritime lawyers, and from a shipping company, suggested that the Coast Guard adopt the "fair inference" test of 46 CFR part 335—pursuant to which MARAD permits corporations to establish that they meet the citizen stock ownership requirements of 46 U.S.C. app. 802—or some similar rule. They assert that it would be difficult for corporations whose stock is publicly traded to establish that 75 percent or more of their stock is owned by U.S. citizens.

The Coast Guard does not agree that a "fair inference" test should be adopted for purposes of vessel documentation. Minimizing the paperwork burden associated with documentation of vessels is a goal supported by the Coast Guard. Accordingly, vessel owning corporations are not routinely required to provide evidence that their stock is owned by U.S. citizens, even to establish eligibility for coastwise or fisheries endorsements. The application for documentation (Form CG–1258), requires only that a vessel owner state, within broad ranges, the amount of stock owned by U.S. citizens.

In the relatively few cases where corporations are required to provide evidence establishing their eligibility, because the Coast Guard has reason to suspect they do not meet stock interest requirements, a presumption in favor of eligibility would not fully satisfy the purpose of the documentation laws. Those laws are meant to be restrictive; they are intended to limit the persons who are eligible to document vessels under U.S. flag and acquire trading privileges. The restrictive purpose of the law would not be well served by a presumption or inference that a corporation is eligible for documentation although it cannot establish that it actually meets all the statutory requirements. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, and any corporation that is unwilling to subject itself to the possibility of having to prove that it qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard should not be bound by any presumptions or inferences in making eligibility determinations for documentation purposes, and none have been incorporated in the final rule.

c. *Section 67.03–2(b).* Two law firms commented that the Coast Guard should modify its practice of counting only the share of an entity's stock or equity that belongs to citizens capable of documenting a vessel in their own right, with the trade endorsement sought, toward meeting the stock or equity requirements for citizenship. They assert that the statutory citizenship requirements do not expressly require the Coast Guard to follow the practice described in § 67.03–2(b). Additionally, House Report 101–487, 101st Congress, 2d Session at 11–12, contains a statement questioning the legal basis for the Coast Guard's practice as it applies to partnership stockholders of a vessel owning corporation.

The comments and the statement in House Report 101–487 only take issue with the rule in question as it applies to corporations seeking to document vessels for the coastwise trade. The comments suggest that the citizenship requirements of proposed subpart 67.03 should be applied only to corporations which own vessels directly, and not to corporations or partnerships which own stock in the vessel owning corporation. With respect to the corporations or partnerships without a direct ownership interest in the vessel, they suggest that only the applicable requirement for citizen ownership of stock or equity should apply.

These suggestions are based on the fact that, for purposes of documenting vessels for coastwise trade, a corporation must meet two distinct statutory citizenship tests. In order to document vessels for any purpose, a corporation must meet the citizenship requirements of 46 U.S.C. 12102. By virtue of provisions in 46 U.S.C. 12106 and 46 U.S.C. app. 883, to document

vessels for coastwise trade the corporation must also meet the citizenship requirements of 46 U.S.C. app. 802. House Report 101–487 asserts that 46 U.S.C. 12102 applies only to the vessel owning entity, but that the proposed rule improperly mixes the requirements of 46 U.S.C. 12102 with the requirements of 46 U.S.C. app. 802. The comments take essentially the same position.

One of the comments states, in effect, that a corporation, 75 percent of the stock of which is owned by U.S. citizens as 46 U.S.C. app. 802(c) requires, but which otherwise does not meet the citizenship requirements for documentation of vessels for coastwise trade in 46 U.S.C. 12102 and 46 U.S.C. app. 802(a), should be able to own stock in a vessel owning corporation that would count toward meeting the vessel owner's controlling interest requirements. The other comment states that a partnership which is owned 75 percent by citizens, as required by 46 U.S.C. 802(a), but does not qualify to document vessels for coastwise trade because its general partners are not all citizens as required by 46 U.S.C. 12102(a)(3), should be able to own stock in a vessel owning corporation that would count toward meeting the vessel owner's controlling interest requirements.

The Coast Guard does not agree with the assertion that it should not require the corporations owning stock that counts toward meeting American control requirements of a vessel owning corporation to meet citizen officer and director requirements. The Coast Guard does not agree with the assertions that it should not require the partnerships owning stock that counts toward meeting American control requirements of a vessel owning corporation to meet citizen general partner requirements. The Coast Guard does not agree that its practice in this respect is contrary to either 46 U.S.C. 12102 or 46 U.S.C. app. 802.

The fact that, under Coast Guard practice, the citizenship requirements based on 46 U.S.C. app. 802 are essentially the same as the citizenship requirements based on 46 U.S.C. 12102, for corporations documenting vessels for coastwise trade, does not mean that one of the statutes is being misapplied. This is equally true with regard to the citizenship requirements for partnerships documenting vessels for coastwise trade. Although the terms of the two statutory provisions are different, each provides authority for the citizenship requirements contained in the Coast Guard's implementing regulations, which apply equally to a vessel owning corporation and to the owners of the corporation's stock that is counted toward meeting American control requirements. With respect to corporate stockholders, 46 U.S.C. app. 802 expressly requires that they meet officer and director requirements that are the same as those in 46 U.S.C. 12102(a)(4), in addition to the controlling interest test. Regarding partnership stockholders, 46 U.S.C. app. 802 does not expressly require that all general partners of a partnership be citizens of the United States, as 46 U.S.C. 12102(a)(3) does, but it includes general provisions that authorize such a requirement.

According to 46 U.S.C. app. 802(a), no corporation or partnership "shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States." Moreover, "no corporation * * * shall be deemed a citizen of the United States * * * unless its president or other chief executive officer and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are non-citizens." Therefore, the terms of 46 U.S.C. app. 802(a) clearly support application of the officer, director, and controlling interest requirements to the parent corporation of a vessel owning corporation. Accordingly, for the controlling interest in a subsidiary corporation to be owned by a citizen of the United States, the parent corporation must meet both the controlling interest and the officer and director requirements. That is exactly the result achieved by the Coast Guard regulation at issue.

With respect to partnerships, 46 U.S.C. app. 802(a) provides less detailed guidance than it does for corporations. It specifies only a controlling interest test. The controlling interest test for partnerships is not defined as it is for corporations in 46 U.S.C. app. 802 (b) and (c). Therefore, the statute grants the administrating agencies considerable discretion to decide how the controlling interest test should be applied to partnerships, to ensure American control. Although not expressly applicable to partnerships, 46 U.S.C. 802 (b) and (c) are generally helpful in determining how the controlling interest requirements should be applied to partnerships.

In its discretion, the Coast Guard has determined that the factors which may appropriately be considered in deciding if a partnership meets the controlling interest test are not limited to legal ownership of equity. A partnership that, as a matter of form, meets the requirement for 75 percent ownership of equity by citizens may still fail the controlling interest test because, in substance, control is vested in non-citizens. As with the definition of controlling interest for purposes of corporations in 46 U.S.C. app. 802(c), which affirmatively requires consideration of factors other than legal ownership of stock, the definition of controlling interest for purposes of partnerships may properly include consideration of factors other than legal ownership of equity. In the case of a corporation, the Coast Guard must consider "if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States" or "if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States." 46 U.S.C. app. 802(c). The Coast Guard construes the controlling interest requirement for partnerships in 46 U.S.C. app. 802(a) as similarly limiting noncitizen control. Considering the degree of control general partners can exercise in a partnership, there is a rational basis for the Coast Guard's rule that a partnership with a noncitizen general partner exceeds these limits on noncitizen control.

The rule that a partnership, even a partnership that only owns stock in a vessel owning corporation, does not qualify as a citizen if there are any noncitizen general partners, is not a new Coast Guard position. A final rule published May 17, 1988 (53 FR 17467) stated that a partnership would qualify to document vessels for coastwise trade if "all its general partners are citizens and the controlling interest in the partnership is owned by citizens of the United States" and "at least 75 per cent of the equity in the partnership is owned by and under the control of a partner or partners who, if applying for a license to engage in (that trade), would each qualify as a citizen under this subpart." 53 FR 17470. In substance, that regulation—which is presently in effect (see 46 CFR 67.03–5(a) (1989))—is identical to the rule in question. The preamble to that rulemaking states:

> The final rule makes it clear that a coastwise or Great Lakes license will not be granted for a vessel owned by a partnership unless all of the general partners are U.S. citizens and at least 75 per cent of the equity

in the partnership is owned by and under the control of a partner or partners who could each qualify for a coastwise license in their own right. This approach does not detract from the requirements of 46 app. U.S.C. 802 in any way and *reflects the same policy which the Coast Guard and its predecessor agency have followed since the Shipping Act of 1916, as amended, was enacted.*

53 FR 17468 (emphasis added). This final rule, therefore, is consistent with the Coast Guard's longstanding construction of 46 U.S.C. app. 802 and is the same, in substance, as the regulation it supersedes.

In addition to the fact that these citizenship requirements are consistent with longstanding practice and are not contrary to 46 U.S.C. app. 802, they prevent easy circumvention of the requirements of 46 U.S.C. 12102. Were the Coast Guard to adopt the position the comments suggest, a corporation with 75 percent of its stock owned by citizens, that is ineligible to document vessels for any purpose because it does not meet the citizen officer and director requirements of 46 U.S.C. 12102(a)(4), would be able to document vessels for coastwise trade by the simple expedient of setting up a wholly owned subsidiary corporation that meets the citizen officer and director requirements. Similarly, a partnership with 75 percent of its equity owned by citizens, that is ineligible to document vessels for any purpose because all of its general partners are not citizens as required by 46 U.S.C. 12102(a)(3), would be able to document vessels for coastwise trade by the simple expedient of setting up a wholly owned subsidiary corporation that meets the requirements of 46 U.S.C. 12102. Such a loophole would make the citizenship requirements of 46 U.S.C. 12102(a)(3) and 12102(a)(4) so easy to evade that they would be virtually meaningless as a practical matter. Neither the comments nor the statement in House Report 101–487 provides good reasons for the Coast Guard to change ist longstanding practice in favor of a practice which would render these provisions largely ineffective.

The final rule will continue to adhere to the Coast Guard's practice of counting only the share of an entity's stock or equity that belongs to citizens capable of documenting a vessel in their own right, with the trade endorsement sought, toward meeting the stock or equity requirements for citizenship.

d. *Section 67.03–5.* A comment from a law firm questioned the small difference between the controlling interest test partnerships must meet to qualify as a citizen for documentation purposes generally, and the controlling interest test partnerships must meet to qualify as a citizen that may document vessels for the fisheries. As § 67.03–5(a)(1) states, at least 50 percent of the equity in a partnership must be owned by citizens for it to be eligible to document vessels for any purpose. However, to document vessels for the fisheries, § 67.03–5(a)(3) requires that more than 50 percent of the equity in the partnership be owned by citizens. The comment suggests that there is no good reason for this small difference.

The Coast Guard considered changing the controlling interest requirement for partnerships generally to more than 50 percent in this rulemaking. It is a change the Coast Guard is likely to propose in the future. However, the at least 50 percent controlling interest rule is an existing rule that has been in effect since May 17, 1988 (53 FR 17469). This rulemaking was intended to make only substantive changes required, or suggested, by the Anti-Reflagging Act. The Anti-Reflagging Act suggested the more than 50 percent controlling interest test for partnerships seeking to document vessels for the fisheries, because it prescribed a similar test for stock ownership of corporations. It did not address the broader issue of controlling interest beyond eligibility for a fisheries endorsement. Therefore, the Coast Guard determined not to propose other changes to the controlling interest tests for partnerships in this rulemaking.

e. *Section 67.03–9(a)(4).* An association of fishing vessel owners commented that under one meaning of the word "minority" § 67.03–9(a)(4) might be construed to permit up to one-half the total number of directors to be non-citizens. The comment encourages the Coast Guard to change the rule to avoid any possibility of misinterpretation. The Coast Guard does not agree that the rule should be changed. A corporation will qualify as a citizen if it meets other requirements and, as § 67.03–9(a)(4) states, "[n]o more of its directors are non-citizens than a minority of the number necessary to constitute a quorum." This language was taken verbatim from 46 U.S.C. 12102(a)(4) and is sufficient to inform the public of what the statute requires. The statute and the regulation are both based on the premise that the board of directors, and any quorum, will consist of a group of citizens and a group of non-citizens. When a quorum is made up from these two groups, the group which is smaller in number will constitute a minority. If the two groups are equal there is no minority. Therefore, whatever number is required for a quorum, less than half that number will constitute a minority of the number required for a quorum. For example, if the number required for a quorum is six, a minority of the number required for a quorum is two. If there were three directors in each group their numbers would be even and there would be no minority. Consequently, for the citizenship requirments to be met in such a case, no more than two directors of the corporation could be non-citizens. In the context in which it applies, the rule is clear.

f. *Section 67.03–9(d).* A comment from a law firm states that § 67.03–9(d) is confusing because while it emphasizes the requirement for citizen ownership of a majority of voting stock, it also requires citizen ownership of a majority of all categories of stock; voting and non-voting. Addtionally, § 67.03–2 states that the stock interest requirements apply to all categories of stock. The comment asserts that only voting shares should be subject to the requirement for majority ownership by citizens, in this instance.

The Coast Guard does not agree. Section 67.03–9(d) is intended to require that more than 50 percent of the stock interest in the corporation be owned by citizens, and it states this requirement clearly. In accordance with § 67.03–2(a), stock interest includes all classes of stock as a whole, not just voting stock. As the comment suggests, 46 U.S.C. 12102(c)(1) and (2)—the provisions this regulation implements—are contradictory on this point. Section 12102(c)(1) suggests that the requirement for majority ownership of stock applies only to voting stock. However, section 12102(c)(2) requires application of restrictions on non-citizen stock ownership that include all classes of stock as a whole. The Coast Guard has concluded that the intent of sections 12102(c)(1) and (2) can be effectuated by requiring that both a majority of voting stock and a majority of the stock of the corporation as a whole be owned by citizens. The Coast Guard recognizes that Congress could have achieved this result without including the parenthetical language in section 12102(c)(1), which suggests a type of qualified controlling interest that only requires citizen ownership of a majority of voting stock. On the other hand, the Coast Guard would not be applying "the restrictions on controlling interest in (46 U.S.C. app. 802(b))", as section 12102(c)(2) requires, if it read out the provisions dealing with ownership of all stock. The Coast Guard has determined that 46 U.S.C. 12102(c) can reasonably be interpreted to require compliance with both the qualified controlling interest standard of section 12102(c)(1) and the longstanding controlling interest

standard of 46 U.S.C. app. 802(b). Proposed § 67.03–9(d) reflects this determination and no change is made in the final rule.

g. *Sections 67.03–9(e) and (f).* A comment from a law firm stated that the exceptions in § 67.03–9(f) to the requirement for evidence of MARAD approval in § 67.03–9(e) give little guidance and leave many issues unresolved. The intent, of § § 67.03–9(e) and (f), is to ensure that statutory requirements for MARAD approval of certain vessel transactions are being complied with. MARAD has regulations in 46 CFR part 221 which fully explain these requirements. Therefore, the Coast Guard has determined that it is more appropriate to reference the MARAD regulations than to try to restate them. Moreover, the requirements for MARAD approval are not limited to transactions involving corporations. The Coast Guard's policy of obtaining evidence of MARAD approval, whenever required, is better served by a rule applicable to all types of vessel ownership. Accordingly, in the final rule § § 67.03–9(e) and (f) have been combined, revised, and moved to a new § 67.03–17.

h. *Section 67.03–15.* Comments from two law firms agreed with the Coast Guard's position that the citizenship savings provision for fishing vessels in § 67.03–15 should run with the vessel. Comments from another law firm disagreed with that position. The comments are similar to those received on this subject in response to the NPRM published October 20, 1988 (53 FR 41211). The Coast Guard's reasons for adhering to its position were explained at length in the SNPRM published October 13, 1989 (54 FR 41992, 41993–94), and are still valid. The Coast Guard is continuing to adhere to its position, because it remains convinced that the straightforward language of the Anti-Reflagging Act's citizenship savings clause correctly reflects Congress' intent and is determinative of the issue. In addition to being disputed in the rulemaking process, the Coast Guard's position has been challenged in court and is the subject of on-going litigation.

The plain language of the American control savings provision provides no basis for concluding that its protection should terminate because of a change of ownership or control, but the comment which disagrees with the Coast Guard's position asserts that the Coast Guard should not be guided by the provision's plain meaning. Instead, the Coast Guard is urged to read between the lines and administratively adopt a rule that the savings provision's protection terminates when there is a change of ownership or control. The comment states that the Coast Guard's interpretation of the American control savings provision is not a permissible construction because it makes no sense in light of the legislative purpose; that being to increase domestic control over U.S. fisheries resources and encourage displacement of foreign fishing activity. The comment also suggests that the legislative history does not permit the Coast Guard's position.

There are several reasons why the Coast Guard is unpersuaded by these arguments. In the first place, it is not proper to invoke the broad purposes of a statute to overrule a specific provision of that statute. This should be particularly true in the case of a grandfather provision. Grandfather provisions are intended to mitigate new statutory requirements and, by their nature, typically conflict with the broad purposes of the statutes they affect. Moreover, even if the Coast Guard had determined that it could not accurately discern the intent of Congress from the plain language of the American control savings provision, but needed to consider the legislative history as well, its position would still be reasonable. The legislative history does not compel the conclusion that Congress intended the protection of the savings provision to terminate when there is a change of ownership or control. The Coast Guard could also reasonably conclude from the legislative history that the protection should run with the vessel, in keeping with the plain language of the American control savings provision.

Although the Coast Guard has based its position on the plain language of the American control savings provision, it is very familiar with the legislative history of the Anti-Reflagging Act. The Coast Guard responded to questions at Senate Hearings on April 28, 1987, testified at House Hearings on April 29, 1987, and followed the progress of this legislation through to final enactment. The purpose of the Anti-Reflagging Act is not as clear cut as the comment which disagrees with the Coast Guard's position would make it seem. As Congressman Young of Alaska, one of the sponsors of the Anti-Reflagging Act stated, "this bill is a carefully crafted compromise between diverse interests in the fishing and maritime industries." 133 Cong. Rec. H9811 (daily ed. Nov. 9, 1987). There certainly were differences of opinion about what "Americanization" of the fishing industry meant and how it could best be achieved.

The need for an American control provision for fishing vessels was one of the most controversial issues. The bill considered in the Senate Hearing contained no American control provision. At the House Hearing, on a bill that included an American control provision which did not apply to vessels documented before November 1, 1986, the testimony included strong reservations about the need for an American control provision. Since the legislative history shows that the Anti-Reflagging Act was a carefully crafted compromise, the Coast Guard does not agree with the assertion that the plain language of the American control savings provision is necessarily inconsistent with the broad purposes of the statute, even though it would permanently exempt many existing U.S. fishing vessels from the new American control requirement.

The legislative history of the Anti-Reflagging Act does not require the Coast Guard to change its position. While it is true that the House Report states in one place that exemption from the American control requirements should terminate on a change of ownership or control, H.R. Rep. 423, 100th Cong., 1st Sess. 17 (1987), the legislative history also contains material which supports the plain language of the American control savings provision. For instance, the House Report states that a "Date Certain" Amendment was adopted which essentially established the effective date of the Anti-Reflagging Act as July 28, 1987. All of the savings provisions in the Anti-Reflagging Act reflect the choice of that date as the time from which the new law would take effect. Congressman Young described the purpose of the "Date Certain" Amendment as follows: "The Committee on Merchant Marine and Fisheries chose the date of July 28, 1987, as a cutoff in order to avoid any semblance of a taking of a vessel-owner's privileges under the law." 133 Cong. Rec. H9812 (daily ed. Nov. 9, 1987).

The original purpose of the Anti-Reflagging Act was to prevent foreign-built fish processing vessels from changing from foreign flag to U.S. flag, but the "Date Certain" Amendment makes it clear that the prohibition against documentation of foreign-built fish processing vessels only applies to vessels newly documented after July 27, 1987. Foreign-built processing vessels which were documented prior to July 28, 1987 are exempt from the new U.S.-built requirement, and that exemption does not terminate on a change of ownership or control. In this instance it is clear that when Congress limited the application of the new U.S.-built requirement to "newly documented" vessels it intended to include only vessels documented

under U.S. law for the first time after July 27, 1987. Vessels which had previously been documented under U.S. law, even if they were redocumented later—because of a change of ownership for example—are not subject to the new U.S.-built requirement. Similarly, the new American control requirements should be understood as applying only to "newly documented" vessels, and not to vessels that have qualified for grandfathering but later change ownership.

Statements made on the House floor, after the House Report was issued, indicate that, despite the contrary language in the House Report, the American control requirement would only apply to vessels that were newly documented after July 27, 1987. Congressman Young stated that the American control provision "requires as a condition of new documentation that a fishing industry vessel be owned in the majority by individuals who are citizens of the United States." 133 Cong. Rec. H9812 (daily ed. Nov. 9, 1987). Congressman Jones stated that "as a condition of new documentation [H.R. 2598] requires majority ownership of fishing industry vessels by individuals who are citizens of the United States." *Id.* at H9813.

The clearest exception to the "Date Certain" Amendment's rule that vessels documented before July 28, 1987 are exempt from the provisions of the Anti-Reflagging Act is the provision penalizing foreign rebuilding. In that case, there is support, both in the text of the rebuilding savings provision and in the legislative history, for the position that the new rebuilding requirements apply to all fishing vessels regardless of when they were first documented under U.S. flag, and only grandfathered rebuilding projects are exempt. The suggestion that there is an unexplained disparity between the Coast Guard's position on the rebuilding savings provision and the American control savings provision is answered by the fact that, in the case of the rebuilding savings provision, there is clear support in both the plain language of the provision and its legislative history for the limited scope of the exemption. That is not the case with the American control savings provision, and the difference in interpretation is, therefore, justified.

The explicit and detailed limitations on grandfathered rebuilding projects contained in the text of the rebuilding savings provision contrasts starkly with the lack of explicit language in the American control savings provision indicating that its protection is limited. Moreover, the legislative history for the rebuilding savings provision clearly limits its protection to "those who have relied on current laws and who have made certain identifiable commitments toward rebuilding fishing, fish processing, and fish tender vessels in foreign yards." H.R. Rep. 423, 100th Cong., 1st Sess. 12 (1987). This limiting language does not apply to the American control savings provision, although the comment disputing the Coast Guard's position seems to imply that it does.

Based on the plain language of the American control savings provision the Coast Guard's position that the exemption from the new American control requirement runs with the vessel is reasonable. It would be reasonable, even if the intent of Congress could not be accurately discerned from the plain language of the American control savings provision. Neither the broad purpose of the legislation, nor the legislative history, compels a different position. Therefore, it remains the Coast Guard's position that the citizenship savings provision for fishing vessels in § 67.03–15 runs with the vessel, and does not terminate because of a change in ownership or control.

i. *Section 67.03–15.* A comment from a law firm suggested that the criteria for eligibility for the savings provision in § 67.03–15 should be modified for vessels owned by partnerships, to reflect the date of publication of the final rule. If the suggestion were adopted, a vessel owned by a partnership would qualify for grandfathering under the regulation if it was documented and engaged in the U.S. fishery, or under contract for purchase for that use, when the final rule was published rather than as of July 28, 1967.

The Coast Guard does not agree that the regulation should be modified. Unlike corporations, partnerships seeking to document vessels for any purpose are required to meet a controlling interest test. This controlling interest requirement for partnerships pre-dates the Anti-Reflagging Act. Therefore, the controlling interest requirement for partnerships seeking to document vessels with a fisheries endorsement is not something newly imposed by the Anti-Reflagging Act. It is true, however, that with the Anti—Reflagging Act in mind the Coast Guard is changing the required citizen ownership of equity in a partnership for purposes of eligibility for fisheries endorsements from 50 percent to more than 50 percent. The Coast Guard has also proposed to exempt partnerships which own grandfathered vessels from the new requirement in the same manner that the Anti-Reflagging Act provides an exemption for corporations.

Since the controlling interest requirement for partnerships is not new, and the Coast Guard is merely reinterpreting a requirement that has been imposed on partnerships since 1982, there is no requirement for grandfather protection. The agency decision to reinterpret this statutory requirement in light of subsequent legislative developments is nothing so extraordinary that the new interpretation should not be applied to partnerships generally. The new regulatory requirement properly can, and will, apply from the effective date of this final rule. However, because the new requirement involves a change of less than one percent, the Coast Guard expects very few partnerships to have to restructure or surrender vessel documents as a result of the change. Partnerships, generally, will have to meet the requirements of the new controlling interest regulations. Only partnerships owning a vessel that qualifies for grandfathering under § 67.03–15 will be exempt from the new requirement.

Another law firm commented that a partnership owning a vessel that qualifies for grandfathering under § 67.03–15 should be able to document that vessel for the fisheries, even if one of the entities contributing to the equity interest requirements is a corporation whose stock is 100 percent foreign owned. The comment suggests that § 67.03–2(b) be changed to explicitly address this situation. The Coast Guard does not agree that this change is needed. Section 67.03–2(b) already states that an entity which is a citizen eligible to document a vessel in its own right with the endorsement sought can contribute to meeting equity interest requirements. In the case of a vessel grandfathered under § 67.03–15, the corporation certainly could be a citizen eligible to document the vessel with a fisheries endorsement. If it is, the corporation can contribute to meeting the partnership's equity interest requirements.

The final rule includes a minor change to § 67.03–05. This regulation was never intended to permit vessels to be documented without establishing that the vessel qualifies for the exemption. The change makes it clear that the section only applies if the Secretary of Transportation or the Secretary's delegate has determined that the vessel meets the specified requirements.

j. *Section 67.17–9(d).* A comment from a law firm stated that § 67.17–9(d) could be made more specific. That section is intended to describe the circumstances under which a vessel may temporarily lose its eligibility for a fisheries endorsement. That occurs when the vessel is owned by an entity which does not meet the citizenship requirements for documenting a vessel for the fisheries trade. However, the proposed regulation referred generally to the citizenship requirements of subpart 67.03, which include other unrelated citizenship requirements. The Coast Guard agrees that § 67.17–9(d) should be changed to more specifically identify the citizenship requirements to which it refers, and the final rule incorporates such a change.

k. A comment was received well after the comment period closed, from an attorney whose practice includes maritime issues. This comment asserts that the Coast Guard has provided no reason for its decision to propose a complete revision of subpart 67.03, and that the revision constitutes a reconsideration by the Coast Guard of all the citizenship requirements. The comment states that this raises questions about why the revision is needed, and requires review of all of the laws on which the citizenship requirements are based. The comment also suggests that in many instances the citizenship regulations do not properly interpret or implement statutory requirements. The comment also proposes several specific changes. This comment has been considered even though it was not received during the comment period.

Regarding the comment's general assertions, the Coast Guard has previously explained why a revision of subpart 67.03 was needed. In the SNPRM (54 FR 41992, 41995, October 13, 1989), the Coast Guard stated in response to a comment on the NPRM (53 FR 41211, October 20, 1988) that it had "determined that a thorough revision of subpart 67.03 is needed to better explain the American control requirements." Subpart 67.03 has not been comprehensively revised since 1982 (47 FR 35488, August 16, 1982), although there have been several statutory changes in the intervening period. The comments received in response to the NPRM, and the Coast Guard's own administrative experience, indicated that revision of the subpart could make the rules more informative and uniform.

By and large, the Coast Guard did not reconsider or make substantive changes to existing regulations. The changes made, and the reasons for them, were fully explained in the preamble to the SNPRM. The substantive changes made are those necessary to implement the Anti-Reflagging Act and some conforming changes suggested by the Anti-Reflagging Act's new requirements. Non-substantive revisions were made so that the regulations would better explain the Coast Guard's existing practice, to improve the organization of the subpart, and to make the regulations more uniform. Therefore, the broad assertion that the Coast Guard has reconsidered and changed citizenship requirements without any corresponding statutory changes is incorrect. The Coast Guard does not agree with the assertion that in many instances the proposed regulations do not properly interpret or implement the underlying statutes.

The comment suggests that § 67.03–1 should be changed to refer to "citizen of the United States" rather than "United States citizens" and to more clearly indicate that in subpart 67.03 "citizen" means a "United States citizen." The Coast Guard does not agree that the regulation needs to be changed. The documentation laws establish unique citizenship requirements. Those requirements are defined in subpart 67.03. If a person or entity meets the applicable requirements of subpart 67.03 it will be eligible to document vessels and obtain certain trading privileges, regardless of whether it is labelled a "citizen of the United States", a "United States citzen" or a "citizen." In fact, general use of the term "citizen of the United States" in this context might create confusion with other laws. For instance, a corporation whose stock is owned 100 percent by non-citizens may be a citizen for documentation purposes, although it would not qualify as a "citizen of the United States" for purposes of 46 U.S.C. App. 802. "Citizen" is generally used throughout subpart 67.03 to indicate a person or entity which meets the requirements of subpart 67.03.

The comment raises several objections to the guidance in § 67.03–2. The Coast Guard does not agree that this section needs to be changed. Some of the comments are similar to comments regarding the definition of control in § 67.03–2(a)(1) received during the comment period that have previously been addressed. Another comment is based on the mistaken impression that the guidance in § 67.03–2 would be repeated in other sections.

The definition of control in § 67.03–2(a)(1) does not simply repeat the pertinent parts of 46 U.S.C. chapter 121 verbatim, because the regulation is intended to give a fuller explanation of the controlling interest requirements. The Coast Guard interprets controlling interest, to the extent it reasonably can, in a manner that is consistent with 46 U.S.C. app. 802. That interpretation is properly reflected in the definition of control in § 67.03–2(a)(1).

The comment suggested changing § 67.03–3 to eliminate the catch-all phrase "or otherwise qualifies as a United States citizen" and replace it with other specific instances in which an individual may be a citizen of the United States. The Coast Guard prefers the current rule. The catch-all language permits the Coast Guard to determine, on a case-by-case basis, if an individual qualifies as a citizen, otherwise than as a native-born, naturalized or derivative citizen.

The comment raises several objections to the requirements of § 67.03–5. The comment suggests that equity owned by limited partners should not be considered in determining if the partnership meets American control requirements. That would be inconsistent with § 67.03–2(a) which states that the stock or equity interest requirements encompass ownership of equity, without exceptions. The Coast Guard does not agree that § 67.03–5 should be changed. The Coast Guard's interpretation of controlling interest is proper.

The comment suggests eliminating the requirement that the beneficiaries of a trust be citizens for the trust to qualify as a citizen. The Coast Guard does not agree. This has been Coast Guard's position on trusts since at least 1982 (47 FR 27490, 27496; 46 FR 56318, 56319). The comment presents no persuasive reasons for changing this longstanding rule.

The comment approves § 67.03–9(a)(2) but not the Coast Guard's position that if a corporation has both a president and a chief executive officer both must be citizens. This requirement is based on 46 U.S.C. 12102(a)(4) which is properly construed as encompassing both the corporation's president and its chief executive officer, if there is a chief executive officer other than the president. The comment states that the regulation does not clearly encompass both. The Coast Guard agrees that the final rule should be changed to clearly state that if a corporation has both a president and chief executive officer, then both must be citizens for the corporation to meet citizenship requirements.

The comment suggests that § 67.03–9(b)(2) be changed to specifically include voting stock in the stock interest requirement. However, § 67.03–2(a)

already defines stock interest as including voting stock. Therefore, the suggested change would be redundant. The comment includes suggested changes to the stock interest requirements of § 67.03–9(d)(2) which are similar to changes suggested in comments received during the comment period that have previously been addressed.

The comment suggests adding to §§ 67.17–5(c)(1) and § 67.17–7(c)(1) language regarding the effect of placing a vessel under foreign registry. However, the additional language would be redundant with §§ 67.17–5(c)(2) and 67.17–7(c)(2). Otherwise, the suggested changes do not improve these sections and they have not been incorporated in the final rule.

E.O. 12291 and DOT Regulatory Policies and Procedures

The Coast Guard considers this rulemaking to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this rulemaking has been found to be so minimal that further evaluation is unnecessary. The only significant substantive changes in this rulemaking are changes in American control requirements for vessel documentation mandated by statute.

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Since the impact of this rulemaking is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. It is recognized that a substantial number of small entities are involved in the commercial fishing industry and other vessel operations within the ambit of these regulations. There is no significant economic impact, however, because this rulemaking implements the Anti-Reflagging Act's American control savings provisions. The savings provisions protect those who were operating fishing industry vessels under documentation in the United States fisheries, or who made verifiable commitments to purchase vessels for use as fishing industry vessels in the United States fisheries, based on the laws and regulations in existence prior to enactment of the Anti-Reflagging Act.

Paperwork Reduction Act

This rulemaking contains no collection of information requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that under section 2–B–2.1. of Commandant Instruction M16475.1B this rulemaking is categorically excluded from further environmental documentation. This rulemaking involves administrative and procedural regulations which clearly have no environmental impact. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 46 CFR Part 67

Vessels.

For the reasons set out in the preamble, 46 CFR part 67 is amended as follows:

PART 67—DOCUMENTATION OF VESSELS

1. The authority citation for part 67 continues to read as follows:

Authority: 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103; 46 U.S.C. App. 841a, 876; 49 U.S.C. 322; 49 CFR 1.46.

2. Subpart 67.03 is revised to read as follows:

Subpart 67.03—Citizenship Requirements for Vessel Documentation

Sec.

67.03–1 Requirement for citizen owner.
67.03–2 Stock or equity interest requirements.
67.03–3 Individual.
67.03–5 Partnership, association, or joint venture.
67.03–7 Trust.
67.03–9 Corporation.
67.03–11 Governmental entity.
67.03–13 Evidence.
67.03–15 Citizenship savings provision for fishing vessels.
67.03–17 Evidence of Maritime Administration Approval.

Subpart 67.03—Citizenship Requirements for Vessel Documentation

§ 67.03–1 Requirement for citizen owner.

Certificates of Documentation are available only to vessels which are wholly owned by United States citizens. For purposes of obtaining a Certificate of Documentation, the persons and entities discussed in §§ 67.03–3 through 67.03–9 of this subpart are citizens.

§ 67.03–2 Stock or equity interest requirements.

(a) The stock or equity interest requirements for citizenship under this subpart encompass: Title to all classes of stock as a whole; title to voting stock; and ownership of equity. An otherwise qualifying corporation or partnership may fail to meet stock or equity interest requirements because: Stock is subject to trust or fiduciary obligations in favor of [non-citizens; non-citizens exercise, directly or indirectly, voting power; or non-citizens, by any means, exercise control over the entity. The applicable stock or equity interest requirement is not met if the amount of stock subject to obligations in favor of non-citizens, non-citizen voting power, or non-citizen control exceeds the percentage of the non-citizen interest permitted.

(1) For the purpose of this section, control includes an absolute right to direct corporation or partnership business, to limit the actions of or replace the chief executive officer, a majority of the board of directors or any general partner, to direct the transfer or operations of any vessel owned by the corporation or partnership, or otherwise to exercise authority over the business of the corporation or partnership, but not the right to simply participate in these activities or the right to receive a financial return, i.e., interest or the equivalent of interest, on a loan or other financing obligations.

(b) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the trade endorsement sought.

§ 67.03–3 Individual.

An individual is a citizen if he is a native-born, naturalized, or derivative citizen of the United States, or otherwise qualifies as a United States citizen.

§ 67.03–5 Partnership, association, or joint venture.

(a) A partnership is a citizen if all its general partners are citizens, and:

(1) For the purpose of obtaining a registry or a recreational endorsement, at least 50 percent of the equity interest in the partnership is owned by citizens;

(2) For the purpose of obtaining a coastwise or Great Lakes endorsement, at least 75 percent of the equity interest in the partnership is owned by citizens;

(3) For the purpose of obtaining a fishery endorsement, more than 50 percent of the equity interest in the partnership is owned by citizens.

(b) An association is a citizen if each of its members is a citizen.

(c) A joint venture is a citizen if each of its members is a citizen.

§ 67.03-7 Trust.

A trust arrangement fulfills the citizenship requirements if each of its trustees and each of its beneficiaries is a citizen.

§ 67.03-9 Corporation.

(a) A corporation is a citizen for the purposes of obtaining a registry or a recreational endorsement if:

(1) It is incorporated under the laws of the United States or of a State;

(2) Its president and, if the president is not the chief executive officer, its chief executive officer, by whatever title, is a citizen;

(3) Its chairman of the board of directors is a citizen; and

(4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

(b) A corporation is a citizen for the purposes of obtaining a coastwise or Great Lakes endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(c) A corporation which does not meet the requirements of paragraph (b) of this section may qualify for limited coastwise trading privileges by meeting the requirements of subpart 68.01 of this subchapter.

(d) A corporation is a citizen for the purposes of obtaining a fishery endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

§ 67.03-11 Governmental entity.

A governmental entity is regarded as a citizen if it is a government of the United States as defined in § 67.01-1 of this part.

§ 67.03-13 Evidence.

An original Form CG-1258 establishes a rebuttable presumption that the applicant is a United States citizen.

§ 67.03-15 Citizenship savings provision for fishing vessels.

A corporation that meets the requirements of paragraph (d)(1) of § 67.03-9 of this subpart but does not meet the requirements of paragraph (d)(2) of that section, or a partnership that meets the requirements of paragraph (a)(1) of § 67.03-5 of this subpart but does not meet the requirements of paragraph (a)(3) of that section, may nonetheless be eligible to obtain a fishery endorsement for a vessel if the Secretary of Transportation, or the Secretary's delegate, determines that, prior to July 28, 1987, the vessel:

(a) Was documented under 46 U.S.C. chapter 121 and operating as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a); or

(b) Was contracted for purchase for use as a fishing, fish processing, or fish tender vessel in the navigable waters or the Exclusive Economic Zone of the United States, as defined by 46 U.S.C. 2101(10a), if the purchase is shown by the contract or similarly reliable evidence to have been made for the purpose of using the vessel in the fisheries.

§ 67.03-17 Evidence of Maritime Administration Approval.

Although meeting the citizenship requirements of this subpart, a vessel's owner may not document a vessel which is documented, or was last documented, under the laws of the United States if, since the vessel was last documented, any transaction requiring Maritime Administration approval in accordance with 46 CFR part 221 has occurred, unless it evidences that the Maritime Administration has approved the transaction.

3. Section 67.17-5 is amended by revising paragraph (c)(1) to read as follows:

§ 67.17-5 Coastwise license.

* * * * *

(c) * * *

(1) It is thereafter sold in whole or in part to an owner that is not a citizen as defined in §§ 67.03-3; 67.03-5(a)(1), (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * * * *

4. Section 67.17-7 is amended by revising paragraph (c)(1) to read as follows:

§ 67.17-7 Great Lakes license.

* * * * *

(c) * * *

(1) It is thereafter sold in while or in part to an owner that is not a citizen as defined in §§ 67.03-3; 67.03-5(a)(1), (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * * * *

5. Section 67.17-9 is amended by adding a new paragraph (d) to read as follows:

§ 67.17-9 Fishery license.

* * * * *

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section loses that eligibility during any period in which it is owned by any entity which does not meet the citizenship requirements of subpart 67.03 of this part for purposes of obtaining a fishery endorsement, except that a vessel eligible for a fishery endorsement in accordance with § 67.03-15 of this part does not lose its eligibility for a fishery endorsement during any period it is owned by an entity that fails to meet the stock or equity interest requirements of §§ 67.03-5(a)(3) or 67.03-9(d)(2) of this part but otherwise qualifies as a citizen.

6. Section 67.23-9 is amended by revising paragraph (a)(3) to read as follows:

§ 67.23-9 Requirement for deletion.

(a) * * *

(3) Any owner of the vessel ceases to be a citizen within the meaning of §§ 67.03-3; 67.03-5(a)(1) (b), (c); 67.03-7; 67.03-9(a); or 67.03-11 of this part;

* * * * *

Dated: June 18, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 800

Medical Devices; Patient Examination and Surgeon's Gloves; Adulteration; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 800

[Docket No. 88N-0443]

Medical Devices; Patient Examination and Surgeons' Gloves; Adulteration

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to: (1) Define adulteration for patient examination and surgeons' gloves; and (2) establish the sample plans and test method the agency will use to determine if these gloves are adulterated as defined by the rule. With the prevalence of human immunodeficiency virus (HIV) infection and the risk of clinical transmission of other infections, the importance of the quality of an effective barrier to the transmission of infection in health care settings is crucial. The public health will benefit through improved quality control of these protective barriers.

EFFECTIVE DATE: March 12, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: On November 21, 1989 (54 FR 48218), FDA published in the **Federal Register** a proposed rule to: (1) Define adulteration for patient examination gloves and surgeons' gloves; and (2) establish the sample plans and the test method the agency will use to determine if these gloves are adulterated as defined in the proposed rule. FDA invited interested persons to comment on the proposed rule by December 21, 1989. FDA received 10 comments. A summary of these comments and FDA's response to them is set forth below.

It is estimated that between 1 and 1.5 million persons in the United States are infected with the human immunodeficiency virus (HIV) (Ref. 1). HIV is transmitted primarily through sexual contact; however, nonsexual transmission has occurred in health care settings as a result of contact with infected blood. Additionally, HIV has been isolated from other body fluids in addition to blood. With the prevalence of HIV infection and the risk of clinical transmission of other infections, the importance of the quality of an effective barrier to the transmission of infection in health care settings is crucial.

The expectation of health care workers, as expressed by the Surgeon General, the Centers for Disease Control (CDC), and health professional organizations such as the American Medical Association, is that patient examination and surgeons' gloves, collectively referred to as medical gloves, will provide effective protection against exposure to the microorganisms in blood and other body fluids. Such reasonable expectations of barrier protection cannot be met if medical gloves contain rips, tears, small holes, or other defects, which allow the passage of fluids and fluid-borne microorganisms, and which ultimately permit exposure to health care workers and patients to pathogens that wearing of the gloves is intended to avoid.

On August 21, 1987, CDC published a report that emphasized the need for all health care workers to routinely use appropriate precautions when contact with blood or other body fluids of any patient is anticipated (Ref. 2). The CDC report recommends that health care workers wear medical gloves (1) when touching blood or other body fluids, mucous membranes, or nonintact skin of all patients, (2) in handling items or surfaces soiled with blood or other body fluids, and (3) in performing venipuncture and other vascular access procedures (Ref. 2).

Data are inconclusive regarding the relationship between leakage defects in medical gloves and transmission of HIV infection; however, the CDC recommendations clearly show that leakage defects in medical gloves have the potential for transmission of HIV between patients and health care workers.

Because of the emphasis in the CDC recommendations on medical gloves as a barrier to HIV, as well as to Hepatitis B virus and other blood-borne infectious agents, and the general need for greater assurance against transmission of pathogens between patients and health care workers, FDA believes it is imperative that the gloves worn by health care workers, including operating room personnel, provide an effective barrier to the transmission of infectious agents. Because medical gloves are intended as an effective barrier against the transmission of disease and because gloves labeled as medical gloves communicate that intended use to user, manufacturers should strive to produce medical gloves which are free from defects.

FDA has determined that glove defects, such as holes, which may not be readily detectable by the users of the gloves, can compromise the effectiveness of the glove barrier and result in patients and health care workers being exposed to infection. Articles written by health professionals who have studied the quality of gloves and their role as a barrier to infectious agents note that, although clinicians expect gloves to protect them, and routine appropriate use of gloves can reduce the risk of infections by blood or other body fluid-borne agents, this protection may not be provided by gloves with defects (Refs. 3 through 7).

Lots of gloves that are rejected based on FDA's sample plans and testing using the method in 21 CFR 800.20 would be adulterated within the meaning of section 501(c) of the act, and would be subject to regulatory action, such as detention of imported products, administrative detention of imported products held domestically, seizure, injunction, or criminal prosecution of manufacturers and individuals responsible for such adulterated products.

I. Acceptable Quality Level

1. One comment said that FDA should use the statistical lot tolerance per cent method (LTPD) series in MIL-STD-19500 as the basis of establishing the acceptance/rejection criteria. The comment suggested that this would provide greater protection to the consumer than acceptable quality levels (AQL).

Because the probability of acceptance for lots of a given quality can be determined from the operating characteristic curve, the consumer's risk for a given plan can be calculated. The limits were chosen in such a way that the results of FDA testing in its field laboratories would be reproducible. Medical gloves are a more heterogeneous product than some others which are being tested and the inherent variability is such that lower testing criteria are not reproducible. The limits chosen are intended to provide a standard level of quality which FDA can support through reproducible testing. Because the primary failure mode for gloves is a tear or puncture from external causes and because the percentage of such failures is much larger than the probability of leakage, FDA intends to test for leakage at a given rate to establish a baseline level of quality. The industry is encouraged to improve these limits as much as practical.

2. One comment said that the 4 percent AQL for examination gloves is too high and that it should be 2.5 percent. Another comment said that the

AQL should be reduced to 1 or 1.5 percent and that it should be the same for surgeons' and patient examination gloves.

As stated in the preamble to the proposed rule, FDA believes that the difference in the AQL for the two types of gloves is justified by the greater exposure of surgeons and their gloves to blood and the internal areas of the body and the longer periods of exposure to these conditions. FDA believes that the AQL's established by the proposed rule are appropriate at this time, when balancing the need for defect-free gloves against the need for continued availability of gloves. FDA will continue to monitor the situation and may change the AQL's in the future, if appropriate.

II. Sampling Plan

3. Several comments questioned the choice of a sampling plan. One comment asked generally what the basis was for the sampling plan chosen; another questioned what the basis was for choosing a multiple sampling plan. Another comment said that FDA should use the S–4 inspection level and one more said that level II should be used for visual defect inspection only, while level S–4 should be used for the watertight inspection.

FDA believes that it chose the sampling plan which provided the lowest probability of accepting defective lots. The probability of accepting lots far in excess of the AQL is much higher for inspection level S–4 than for inspection level II. The lower sample sizes of S–4 would increase the consumer risk. Multiple sampling plans frequently require less testing than single or double sampling plans because acceptance and rejection decisions may be made at the first, second, or third sample and so on. Sequential sampling plans, on the other hand, require extensive field work on the part of the FDA representative who gathers the samples. While the decisionmaking process is similar to the multiple sampling scheme, it is more time-consuming because test results from prior samples should be known before taking additional samples which becomes cumbersome in the sample gathering process. Also, in the sequential sampling process, the determination of consumer risk and average lot quality is more difficult than with multiple sampling plans. Therefore, FDA has retained the sampling plan as proposed. However, FDA has revised the regulation to reflect the updated MIL–STD–105E dated May 10, 1989. That update does not affect the sample plan and the AQL, which therefore remain unchanged.

III. Defects

4. One comment said that there should be a clear definition of a visual defect.

Section 800.20(b) says: "Defects are defined as leaks, tears, mold, embedded foreign objects, etc." FDA believes that this is a sufficiently clear definition.

5. One comment said that visual defects should include only those which would adversely affect the integrity of the glove and that defects which are only aesthetic or cosmetic in nature should not be counted.

"Defects", as defined in § 800.20 (set forth above), necessarily "affect the integrity of the glove." Therefore, no change in the rule is necessary.

6. One comment said that visual defects should also be subject to the water test.

FDA disagrees. It is not necessary for a glove to leak in order for it to be defective. The visual defects defined above are sufficient grounds for rejecting a glove.

7. One comment said that visual defects found in the top 1 and ½ inches of a glove should not be counted.

FDA agrees with this comment. Visual defects in the top 1 and ½ inches do not heighten the risk of transmission of HIV and other blood-borne infectious diseases. The rule (§ 800.20(b)(2)) has been revised accordingly.

IV. Test Method

8. Several comments questioned the appropriateness of certain aspects of the test method. One comment said that using 1,000 milliliters (mL) of water for the test is too stringent and suggested using 450 mL of water. One comment said that the test method is inappropriate for vinyl gloves because water pressure may be greater in vinyl gloves. Another comment said that the test should be based on a maximum water height rather than water volume.

FDA reviewed various existing test methodologies for medical gloves. From the review, FDA concluded that, while lesser volumes of water were moderately sensitive and relatively simple to perform, they were inadequate to evaluate the integrity of the entire glove, i.e., the palm and back surfaces. For that reason, FDA developed and validated a more sensitive 1,000 mL test method. Because latex is more compliant (i.e., vinyl stretches less), the water height in vinyl gloves may be greater causing higher pressure at the fingertips. Nevertheless, based on its review of test methods, FDA believes that the test method in the rule is appropriate for vinyl as well as latex gloves. FDA chose a specified water volume over a maximum water height, because differences in size and materials would make it difficult to define a maximum water height.

9. One comment suggested that there should not be a specified cylinder size for the water fill test.

FDA uses the 2 and ⅜-inch cylinder size in the water-fill test because it accommodates the various cuff diameters and any water above the glove. When necessary, other fill tubes may be used to test gloves. However, the tubes should accommodate both cuff diameter and any water in excess of glove capacity. The rule (§ 800.20(b)(1)) has been revised accordingly.

10. One comment said that the test method does not allow for new or different existing films.

The comment did not demonstrate a need to revise the regulation to accommodate any materials presently used. If necessary, FDA will revise the regulation to accommodate any new materials.

V. Other Comments

11. One comment said that the rule should state that manufacturers are required to pass a current good manufacturing practice (CGMP) inspection as well as pass the water-fill test.

FDA believes that such a requirement is neither necessary nor appropriate. Surgeons' gloves and patient examination gloves are class I (general controls) devices. Manufacturers of both devices must comply with the CGMP requirements and manufacturers will be inspected in the ordinary course of business.

12. One comment said that the rule should prohibit manufacturers from stating in their labeling that the product is FDA approved or making any similar claim.

Section 301(l) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331(l)) prohibits, among other things, using on the labeling of a device, any representation or suggestion that an approval of an application under section 515 (a premarket approval application) is in effect for the device. In addition, section 502(a) of the act (21 U.S.C. 352(a)), provides that a device is misbranded if its labeling is false or misleading in any particular. These provisions provide the protection suggested by the comment and therefore, the change suggested by the comment is not necessary.

13. One comment questioned how the agency planned to implement the rule fairly.

FDA has both a domestic and a foreign inspection program. Patient

examination and surgeons' gloves are a high priority. The regulations are applied equally to domestic and foreign products. The FDA field staff conducts foreign and domestic inspections. The testing procedures are the same for medical gloves of both foreign and domestic origin. Current field guidance directs sampling coverage of medical gloves in proportion to whether they are of domestic or foreign origin. When issuing future assignments, FDA will continue to ensure that the rule is fairly applied.

VI. Economic Impact

One company said that the rule would result in an increased labor cost of $35,000 for them with no increased public health benefit.

First, FDA disagrees that there is no public health benefit to the rule. The public health benefit of reducing the risk of transmission of HIV and other blood and fluid-borne infectious agents through improved quality control of protective barriers is well established in the preamble to the proposed rule and is outlined in paragraph (a) of the rule.

FDA believes that the economic assessment set forth in the preamble to the proposed rule is a reasonable assessment. The comment did not set forth the basis for its estimate of an increased labor cost of $35,000 or otherwise refute the agency's assessment. Based on a threshold assessment the agency determined that the economic effects of this action does not meet the criteria for a major rule in Executive Order 12291. Further, the final rule will not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. At the time the proposed rule was published, FDA filed a copy of this threshold assessment, with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, under the docket number appearing in the heading of this document.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) 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.

VIII. Effective Date

Several comments addressed the proposed effective date of 30 days after publication of the final rule. Two comments noted that there is a potential for "dumping" of foreign gloves on the market, because foreign gloves are considered "in commercial distribution" as soon as they are imported. One of these comments suggested that the effective date should apply to the date of manufacture and not the date the device is placed in commercial distribution. One comment suggested that sufficient notice should be given in advance of the effective date. Another comment suggested that the final rule should be effective immediately.

Independent of these comments, FDA has reconsidered and has determined that the rule should become effective for devices placed in commercial distribution 90 days after the date of publication of this final rule. FDA believes that this effective date, along with the publication of the proposed rule on November 21, 1989, constitute sufficient notice of FDA's intent to require improved quality of gloves and provide sufficient time for market adjustment.

With regard to the comments on the effective date, FDA notes that domestic manufacturers as well as foreign manufacturers have an opportunity to "dump" gloves on the market before the effective date. While the rule would not apply to gloves introduced into commercial distribution before the effective date, these gloves, whether of foreign or domestic manufacture, are still subject to the adulteration provisions of section 501 of the act (21 U.S.C. 351) and may be subject to seizure. Because section 301(a) of the act (21 U.S.C. 331(a)) prohibits "the introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded," FDA believes that it would be inappropriate to link the effective date to the date of manufacture. FDA also believes that it would be inappropriate and unnecessary to make the rule effective immediately. Therefore, § 800.20 is added to subpart B as set forth below.

IX. 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. CDC, "AIDS and Human Immunodeficiency Virus Infection in the United States: 1988 Update," Morbidity and Mortality Weekly Report Supplement, Vol. 38, No. S–4, May 12, 1989.

2. CDC, "Recommendations for Prevention of HIV Transmission in Health-Care Settings," Morbidity and Mortality Weekly Report, Vol. 36, No. 25, August 21, 1987, and "Update: Universal Precautions for Prevention of Transmissions of Human Immunodeficiency Virus, Hepatitis B Virus and Other Blood-Borne Pathogens in Health-Care Settings", Morbidity and Mortality Weekly Report, Vol. 37, No. 24, June 24, 1988.

3. Paulssen, J., T. Eiden, and R. Kristiansen, "Perforations in Surgeon's Gloves," *The Journal of Hospital Infections*, 11:82–85, January 1988.

4. Matta, H., A.M. Thompson and J.B. Rainey, "Does Wearing Two Pairs of Gloves Protect Operating Theater Staff from Skin Contamination?," *British Medical Journal*, 297:597–598, September 3, 1988.

5. Gonzalez, E., and C. Naleway, "Assessment of the Effectiveness of Glove Use as a Barrier Technique in the Dental Operatory," *Journal of the American Dental Association*, 117:407–469, September 1988.

6. Dalgleish, A.G., and M. Malkovsky, "Surgical Gloves as a Mechanical Barrier against Human Immunodeficiency Viruses," *British Journal of Surgery*, 75:171–172, February 1988.

7. Dascshner, D., and H. Habel, Letter to the Editor, Infection Control and Hospital Epidemiology, 9:184, 186, May 1988.

List of Subjects in 21 CFR Part 800

Administrative practice and procedure, Medical devices, Ophthalmic goods and services, Packaging and containers, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 800 is amended as follows:

PART 800—GENERAL

1. The authority citation for 21 CFR part 800 continues to read as follows:

Authority: Secs. 201, 304, 501, 502, 505, 506, 507, 515, 519, 521, 601, 602, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 334, 351, 352, 355, 356, 357, 360e, 360i, 360k, 361, 362, 371).

2. New § 800.20 is added to subpart B to read as follows:

§ 800.20 Patient examination gloves and surgeons' gloves; sample plans and test method for leakage defects; adulteration.

(a) *Purpose.* The prevalence of human immunodeficiency virus (HIV), which causes acquired immune deficiency syndrome (AIDS), and its risk of transmission in the health care context, have caused the Food and Drug Administration (FDA) to look more closely at the quality control of barrier devices, such as surgeons' gloves and patient examination gloves (collectively known as medical gloves) to reduce the risk of transmission of HIV and other blood-borne infectious diseases. The Centers for Disease Control (CDC) recommend that health care workers wear medical gloves to reduce the risk

of transmission of HIV and other blood-borne infectious deseases. The CDC recommends that health care workers wear medical gloves when touching blood or other body fluids, mucous membranes, or nonintact skin of all patients; when handling items or surfaces soiled with blood or other body fluids; and when performing venipuncture and other vascular access procedures. Among other things, CDC's recommendation that health care providers wear medical gloves demonstrates the proposition that devices labeled as medical gloves purport to be and are represented to be effective barriers against the transmission of blood- and fluid-borne pathogens. Therefore, FDA, through this regulation, is defining adulteration for patient examination and surgeons' gloves as a means of assuring safe and effective devices.

(1) For a description of a patient examination glove, see § 880.6250. Finger cots, however, are excluded from the test method and sample plans in paragraphs (b) and (c) of this section.

(2) For a description of a surgeons' glove, see § 878.4460 of this chapter.

(b) *Test method.* For the purposes of this regulation, FDA's analysis of gloves for leaks will be conducted by a water leak method, using 1,000 milliliters (mL) of water. Each medical glove will be analyzed independently. When packaged as pairs, each glove is considered separately, and both gloves will be analyzed. A defect on one of the gloves is counted as one defect; a defect in both gloves is counted as two defects. Defects are defined as leaks, tears, mold, embedded foreigh objects, etc. A leak is defined as the appearance of water on the outside of the glove. This emergence of water from the glove constitutes a watertight barrier failure. Leaks within 1 and ½ inches of the cuff are to be disregarded.

(1) The following materials are required for testing: A 2⅜-inch by 15-inch (clear) plastic cylinder with a hook on one end and a mark scored 1½ inches from the other end (a cylinder of another size may be used if it accommodates both cuff diameter and any water above the glove capacity); elastic strapping with velcro or other fastening material; automatic water-dispensing apparatus or manual device capable of delivering 1,000 mL of water; a stand with horizontal rod for hanging the hook end of the plastic tube. The support rod must be capable of holding the weight of the total number of gloves that will be suspended at any one time, e.g., five gloves suspended will weigh about 11 pounds.

(2) The following methodology is used: Examine the sample and identify code/lot number, size, and brand as appropriate. Examine gloves for defects as follows: carefully remove the glove from the wrapper, box, etc., visually examining each glove for defects. Visual defects in the top 1½ inches of a glove will not be counted as a defect for the purposes of this rule. Visually defective gloves do not require further testing but are to be included in the total number of defective gloves counted for the sample. Attach the glove to the plastic fill tube by bringing the cuff end to the 1½-inch mark and fastening with elastic strapping to make a watertight seal. Add 1,000 mL of room temperature water (i.e., 20 °C to 30 °C) into the open end of the fill tube. The water shall pass freely into the glove. (With some larger sizes of long-cuffed surgeons' gloves, the water level may reach only the base of the thumb. With some smaller gloves, the water level may extend several inches up the fill tube.)

(3) Immediately after adding the water, examine the glove for water leaks. Do not squeeze the glove; use only minimal manipulation to spread the fingers to check for leaks. Water drops may be blotted to confirm leaking. If the glove does not leak immediately, keep the glove/filling tube assembly upright and hang the assembly vertically from the horizontal rod, using the wire hook on the open end of the fill tube (do not support the filled glove while transferring). Make a second observation for leaks 2 minutes after addition of the water to the glove. Use only minimal manipulation of the fingers to check for leaks. Record the number of defective gloves.

(c) *Sample plans.* FDA will collect samples from lots of gloves to perform the test for defects described in paragraph (b) of this section in accordance with FDA's sampling inspection plans which are based on the tables of MIL–STD–105E (the military sampling standard, "Sampling Procedures and Tables for Inspection by Attributes," May 10, 1989). Based on the acceptable quality levels found in this standard, FDA has defined adulteration as follows: 2.5 or higher for surgeons' gloves and 4.0 or higher for patient examination gloves at a general inspection level II. FDA will use single normal sampling for lots of 1,200 gloves or less and multiple normal sampling for all larger lots. For convenience, the sample plans (sample size and accept/reject numbers) are shown in the following tables:

ADULTERATION LEVEL AT 2.5 FOR SURGEONS' GLOVES

Lot size	Sample	Sample size	Number examined	Number defective	
				Accept	Reject
35,001 and above	First	125	125	2	9
	Second	125	250	7	14
	Third	125	375	13	19
	Fourth	125	500	19	25
	Fifth	125	625	25	29
	Sixth	125	750	31	33
	Seventh	125	875	37	38
35,000 to 10,001	First	80	80	1	7
	Second	80	160	4	10
	Third	80	240	8	13
	Fourth	80	320	12	17
	Fifth	80	400	17	20
	Sixth	80	480	21	23
	Seventh	80	560	25	26
10,000 to 3,201	First	50	50	0	5
	Second	50	100	3	8
	Third	50	150	6	10
	Fourth	50	200	8	13
	Fifth	50	250	11	15
	Sixth	50	300	14	17
	Seventh	50	350	18	19

ADULTERATION LEVEL AT 2.5 FOR SURGEONS' GLOVES—Continued

Lot size	Sample	Sample size	Number examined	Number defective	
				Accept	Reject
3,200 to 1,201	First	32	32	0	4
	Second	32	64	1	6
	Third	32	96	3	8
	Fourth	32	128	5	10
	Fifth	32	160	7	11
	Sixth	32	192	10	12
	Seventh	32	224	13	14
1,200 to 501	Single sample		80	5	6
500 to 281	Single sample		50	3	4
280 to 151	Single sample		32	2	3
150 to 51	Single sample		20	1	2
50 to 0	Single sample		5	0	1

ADULTERATION LEVEL AT 4.0 FOR PATIENT EXAMINATION GLOVES

Lot size	Sample	Sample size	Number examined	Number defective	
				Accept	Reject
10,001 and above	First	80	80	2	9
	Second	80	160	7	14
	Third	80	240	13	19
	Fourth	80	320	19	25
	Fifth	80	400	25	29
	Sixth	80	480	31	33
	Seventh	80	560	37	38
10,000 to 3,201	First	50	50	1	7
	Second	50	100	4	10
	Third	50	150	8	13
	Fourth	50	200	12	17
	Fifth	50	250	17	20
	Sixth	50	300	21	23
	Seventh	50	350	25	26
3,200 to 1,201	First	32	32	0	5
	Second	32	64	3	8
	Third	32	96	6	10
	Fourth	32	128	8	13
	Fifth	32	160	11	15
	Sixth	32	192	14	17
	Seventh	32	224	18	19
1,200 to 501	Single sample		80	7	8
500 to 281	Single sample		50	5	6
280 to 151	Single sample		32	3	4
150 to 91	Single sample		20	2	3
90 to 26	Single sample		13	1	2
25 to 0	Single sample		3	0	1

(d) Lots of gloves which are tested and rejected using the test method according to paragraph (b) of this section, are adulterated within the meaning of section 501(c) of the Federal Food, Drug, and Cosmetic Act, and are subject to regulatory action, such as detention of imported products and seizure of domestic products.

Dated: June 6, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-29081 Filed 12-11-90; 8:45 am]

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federal register

Wednesday
December 12, 1990

Part VII

The President

Proclamation 6238—Human Rights Day, Bill of Rights Day, and Human Rights Week, 1990

Proclamation 6239—American Red Cross Month, 1991

Part VII

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6238 of December 10, 1990

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1990

By the President of the United States of America

A Proclamation

The first ten amendments to our Constitution, collectively known as the Bill of Rights, were intended as an additional safeguard to the liberty of Americans, which the Constitution already afforded great protection through its ingenious structure. As we enter the bicentennial year of our Bill of Rights, we celebrate more than the great freedom and security this document symbolizes for the American people—we also celebrate its seminal role in the advancement of respect for human dignity and individual liberty around the world.

In its Universal Declaration of Human Rights, adopted on December 10, 1948, the United Nations General Assembly affirmed to all mankind the noble ideals enshrined in our Bill of Rights. Noting that "recognition of the inherent dignity and of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world," signatories to the Declaration agreed to respect freedom of thought, freedom of association, as well as freedom of religion and belief. They also recognized an individual's right to own property, either alone or in association with others, and declared that "everyone has the right to participate in his government, directly or through freely chosen representatives." Stating that "human rights should be protected by the rule of law," signatories to the Declaration proclaimed this historic document "a common standard of achievement for all peoples and all nations."

That standard was reaffirmed and strengthened in 1975, when the United States, Canada, and 33 European states joined in adopting the Helsinki Final Act of the Conference on Security and Cooperation in Europe (CSCE). Participating states also recognized the right of self-determination and agreed to grant ethnic minorities equality before the law.

Recent events testify to the CSCE's effectiveness in advancing our goal of universal compliance with the human rights and humanitarian provisions of the Helsinki Final Act. The elimination of physical and ideological barriers that once divided postwar Europe dramatically illustrates the progress that has been made in promoting respect for human rights, building mutual trust, reducing the risk of conflict, and encouraging the development of democracy. Last month, the signing of the Charter of Paris—which added to existing CSCE principles new and sweeping commitments to political pluralism, free elections, free enterprise, and the rule of law—underscored its signatories' determination to consolidate and to build upon recent gains. Indeed, with the Charter of Paris we welcomed the emergence of a new transatlantic partnership of nations based on a mutual commitment to upholding human rights and the rule of law.

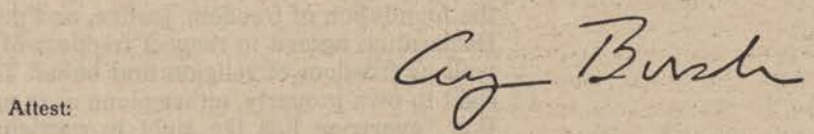
However, while we celebrate the remarkable developments reflected in the recent Charter of Paris, we must resist the notion that our work is now virtually finished. Tragically, in some countries, persecution of ethnic minorities, religious oppression, and restrictions on freedom of speech, information, and travel violate fundamental standards of morality and the letter and spirit of international human rights agreements.

The United States will continue to denounce contraventions of the Universal Declaration of Human Rights and will press for constructive change. And, at times, it is necessary to take a stand against aggression. Iraq's brutal subjugation and despoiling of Kuwait constitute an assault on the basic human values and freedoms we commemorate this week; thus the United States and other members of the world community are coalesced in an effort to achieve the complete and unconditional withdrawal of Iraqi forces from Kuwait. The United States also continues to assist the world's emerging democracies, not only in Europe, but also in Asia, Africa, and Latin America.

The documents we celebrate this week—the Bill of Rights, the Universal Declaration of Human Rights, and the more recent Helsinki accords—derive their value and promise from the timeless, immutable truths they contain and our solemn commitment to upholding them. As we reflect on the historic significance of these documents, let us vow to ensure that they remain meaningful guarantees of individual dignity and liberty.

NOW, THEREFORE, I, GEORGE BUSH, 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 December 10, 1990, as Human Rights Day and December 15, 1990, as Bill of Rights Day and call upon all Americans to observe the week beginning December 10, 1990, as Human Rights Week.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



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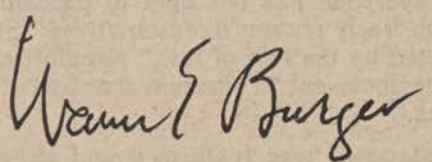

[FR Doc. 90-29328
Filed 12-11-90; 11:27 am]
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Editorial note: For the President's remarks of December 10 on signing Proclamation 6238, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 50). After signing the Proclamation, the President invited Warren E. Burger, Chairman of the Commission on the Bicentennial of the United States Constitution and former Chief Justice of the United States, to sign it as well

Presidential Documents

Proclamation 6239 of December 10, 1990

American Red Cross Month, 1991

By the President of the United States of America

A Proclamation

Millions of people around the Nation and the world take comfort in knowing that, wherever the bright banner of the American Red Cross flies, help is close at hand. For well over a century, this respected humanitarian organization has enabled individuals and their communities to cope with crisis.

While the Red Cross is most often associated with major emergencies such as those caused by floods, earthquakes, and military conflict, it also brings aid to those whose plight may never make the headlines—such as victims of industrial accidents, hunger, and house fires. The lifesaving activities of the Red Cross may vary, but in every case its staff and volunteers bring swift, compassionate assistance to needy persons without regard to race, religion, or national origin.

During a typical year, the Red Cross may respond to some 50,000 disastrous incidents, helping people not only to survive but also to rebuild.

While the work of the Red Cross in the face of disaster has been outstanding, its day-to-day efforts aimed at emergency prevention and preparedness have been equally remarkable. Today some 1.1 million trained Red Cross volunteers work at more than 2,700 chapters throughout the United States. These dedicated men and women help to instruct youths and adults alike in first aid, cardiopulmonary resuscitation, and water safety. In addition, the Red Cross is a leader in the campaign to stop the spread of AIDS. Across the country, trained Red Cross volunteers are teaching the public about this deadly disease and how it is prevented.

The Red Cross is also helping to prevent the spread of AIDS by ensuring the safety of our blood supply. Each year the Red Cross collects more than 6 million units of blood—half of the Nation's blood supply. Every unit of blood must pass seven tests to ensure its safety for transfusion. As a result of such careful screening, the Nation's blood supply is safer now than it has ever been.

The Red Cross, which formed the National Bone Marrow Donor Registry in 1986, also maintains a national registry of more than 20,000 volunteer donors of rare blood types and conducts vital research on blood at its Holland laboratory. The Red Cross also renders vital tissue transplantation services to help some 49,000 Americans a year live longer, fuller lives.

With so many American service men and women currently stationed abroad, the importance of the Red Cross' work in behalf of U.S. military personnel is more apparent than ever. For members of the Armed Services at both domestic and overseas military installations, the Red Cross provides valuable information, referral services, and emergency communications.

Through its outstanding humanitarian services, the American Red Cross has earned the respect and appreciation of millions of people throughout the United States and around the world. This month we gratefully salute its dedicated staff and volunteers.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the month of March 1991 as American Red Cross Month. I urge all Americans to continue their generous support of the Red Cross and its chapters nationwide.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-29329
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Note: The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102nd Congress, which convenes on January 3, 1991.

A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.