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Wednesday
August 19, 1992

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: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404–639–3528 (Atlanta area)]
1–800–347–1997 (outside Atlanta area)

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 575

RIN 3206–AF10

Pay Under the General Schedule; Supervisory Differentials

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations authorizing agencies to pay supervisory differentials under the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final rule allows the head of an agency to pay a differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule who, in the absence of such a differential, would be paid more than the supervisory employee.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald, (202) 606–2858.

SUPPLEMENTARY INFORMATION: Section 211 of FEPCA (Pub. L. 101–509, November 5, 1990) replaces the previous authority, 5 U.S.C. 5333(b), to adjust the pay of a General Schedule (GS) employee who supervises one or more prevailing rate employees. The new authority, 5 U.S.C. 5755, applies to a GS employee who has supervisory responsibility for one or more employees not under the General Schedule.

On May 3, 1991, (56 FR 20336) OPM published interim regulations on supervisory differentials authorized by section 211 of FEPCA. The 60-day comment period ended on July 2, 1991. Comments were received from three agencies and one individual. Comments, as well as certain modifications of the interim regulations, are summarized below.

Supervisory Responsibility

Section 575.402(a)(2) of the interim regulations provides that a supervisor must be responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule in order to be eligible for a supervisory differential. One agency commented that it would like to have the flexibility to pay a supervisory differential to all supervisors in a technical supervisory role above prevailing rate (wage) employees, since, unlike the previous authority, supervisory differentials under 5 U.S.C. 5755 are not part of the basic pay of an employee. OPM has not amended § 575.402(a)(2) in this regard, since most agencies were satisfied with the existing criteria.

Part-time Supervisors

An individual asked whether a part-time GS supervisor could receive a supervisory differential on the basis of a comparison of his or her part-time salary with the full-time salary of a non-GS subordinate. Calculations of the continuing pay of both the supervisor and the subordinate must be made on an annual basis for the purpose of all comparisons required by these regulations, without regard to whether the supervisor and/or subordinate is part-time or full-time. A new paragraph (e) has been added to § 575.405 to clarify this matter.

Time Limit for Adjustment or Termination

Section 575.406(d) of the interim regulations requires that the effective date of a reduction or termination of a supervisory differential be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs. One agency commented that this requirement is impractical, because its data system does not link the pay of the supervisor and subordinate, and suggested that the time period be extended to 60 days.

Under 5 U.S.C. 5755(b)(1), a supervisory differential may not cause the supervisory employee's pay to exceed the pay of the highest paid subordinate employee by more than 3 percent. The effective date of a reduction or termination of a supervisory differential could be established on the same date as the effective date of the event necessitating the reduction or termination—e.g., the effective date of a decrease in a subordinate's pay or of an increase in the supervisor's pay. However, in order to allow the adjustment or termination to be effective on the first day of a pay period, the regulations provide 30 calendar days as a reasonable time period within which to establish an effective date.

OPM cannot justify extending this time period to 60 days. Agencies should adjust their data systems to incorporate this requirement. Should an agency be unable to process such an action within 30 calendar days, an employee receiving an overpayment must reimburse the agency for payment(s) made beyond the effective date. Therefore, if an agency determines that these actions might not be processed within 30 calendar days, it should inform supervisory employees, before paying the differential, that the effective date of any adjustment necessitated by this provision will be within 30 calendar days after the date on which the event that necessitates the reduction or termination occurs and that appropriate repayment by the employee will be required when the reduction or termination is processed.

Appeal Rights

An agency requested clarification of appeal rights concerning the reduction or termination of a supervisory differential. Section 575.406(f) of the interim regulations reflects the statutory provisions that the reduction or termination of a supervisory differential may not be appealed and that this does not extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any law referred to in 5 U.S.C. 2302(d).

The provisions in subchapter II of chapter 12 of title 5, United States Code, cover the authority of the Office of Special Counsel of the Merit Systems Protection Board regarding prohibited personnel practices, disclosures of violations of law, gross mismanagement, gross waste of funds, abuse of authority, substantial and specific danger to public health or safety, and other matters. The provisions of 5 U.S.C. 2302(d) relate to equal employment opportunity through

affirmative action and to rights of employees or applicants for employment in the civil service regarding prohibition of discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.

Since the authority to pay a supervisory differential is discretionary, § 575.406(a) of the interim regulations provides that an agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so. Although such an adjustment or termination may not in itself be appealed to the Merit Systems Protection Board, an employee exercising his or her appeal rights under subchapter II of chapter 12 or 5 U.S.C. 2302(d) is not barred from claiming that the adjustment or termination of the supervisory differential is linked to the prohibited personnel practice or practices that form the basis for the appeal. The final regulations have not modified § 575.406(f) in this regard.

Miscellaneous

Section 575.402(a)(2) of the interim regulations has been revised to clarify that for purposes of comparing the pay of a supervisor and subordinate, continuing pay should be used. Sections 575.402(b) and 575.405(d)(2) have been revised to include a reference to a special law enforcement adjusted rate of pay under section 404 of FEPCA, since this pay is treated in the same manner as a locality-based comparability payment or an interim geographic adjustment in determining the amount of a supervisory differential. Sections 575.403 and 575.405(c)(2) were revised by the final rule for Special Pay Adjustments for Law Enforcement Officers in Selected Cities published on January 22, 1992, at 57 FR 2431, to include a reference to a special law enforcement adjusted rate of pay. Section 575.402(b) has been revised to clarify that in determining a supervisor's eligibility for payment of a supervisory differential, the maximum dollar amount of the subordinate's continuing pay may not exceed the maximum rate for GS–15 on the pay schedule applicable to the supervisor, regardless of the supervisor's grade level. Finally, a typographical error has been corrected in § 575.406(f).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM's interim regulations under parts 531 and 575 published on May 3, 1991, at 56 FR 20336, as amended by final rules published on January 22, 1992, at 57 FR 2431, are adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104 (a) (2), 5753, 5754, and 5755; sec. 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466; E.O. 12748.

2. In § 575.402, paragraphs (a) (2) and (b) are revised to read as follows:

§ 575.402 Delegation of authority.

(a) * * *

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under § 575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS–15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable locality-based comparability payment under 5 U.S.C. 5304; an interim geographic adjustment or special law enforcement adjusted rate of pay under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; or a schedule for any applicable special rate of pay under 5 U.S.C. 5305.

3. In § 575.405, paragraph (d)(2) is revised; paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively; and a new paragraph (e) is added to read as follows:

§ 575.405 Calculation and payment of supervisory differential.

* * * * *

(d) * * *

(2) A locality-based comparability payment under 5 U.S.C. 5304; an interim geographic adjustment or special law enforcement adjusted rate of pay under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; or another locality-based payment under similar authority;

* * * * *

(e) For the purpose of making any of the comparisons required by this subpart, continuing pay shall be calculated on an annual basis for both the supervisor and the subordinate.

* * * * *

4. In § 575.406, the first sentence of paragraph (f) is revised to read as follows:

§ 575.406 Adjustment or termination of supervisory differential.

* * * * *

(f) The reduction or termination of a supervisory differential may not be appealed. * * *

[FR Doc. 92–19616 Filed 8–18–92; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 575

RIN 3206—AE35

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules to authorize the payment of recruitment and relocation bonuses and retention allowances under the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final regulations revise the interim regulations by (1) providing an exception to case-by-case determinations to pay relocation bonuses when it is necessary for an agency to promote mobility or when a function is transferred to another commuting area; (2) allowing payment of relocation bonuses and retention allowances to employees on temporary appointments of at least 2 years; (3) requiring an employee to establish a residence in the new commuting area in order to receive a relocation bonus; (4) removing the 1-year break in service

requirement for recruitment bonuses for certain former students; and (5) establishing procedures for requesting authority to pay recruitment and relocation bonuses and retention allowances to employees not otherwise covered by sections 5753 and 5754 of title 5, United States Code, and these regulations.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Bernadette Christie, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On March 28, 1991, the Office of Personnel Management (OPM) published interim regulations to authorize the payment of recruitment and relocation bonuses and retention allowances in the **Federal Register** (56 FR 12833). The 60-day public comment period ended on May 28, 1991. OPM received comments from 14 agencies and 1 labor organization. The comments are summarized below, along with a description of the changes in, or clarifications of, the interim regulations that have been adopted.

General Comment

One agency commented that, although recruitment and relocation bonuses and retention allowances will assist Federal agencies in recruiting and retaining qualified staff, the unique pay comparability problems faced by some agencies that must compete for employees with highly specialized skills that exist in a highly-compensated sector of the labor market will not be eliminated through the implementation of these flexibilities alone. OPM is aware that there always will be some markets in which Federal agencies cannot compete for high quality employees on precisely equal terms with employers in the private sector. Nevertheless, the flexibilities provided by FEPCA, including recruitment and relocation bonuses and retention allowances, provide managers with many new tools to build and maintain a quality work force. OPM plans to issue additional guidance to agencies on using these flexibilities effectively and efficiently.

Documentation and Reporting Requirements

One agency judged the documentation requirements to be so excessive that they reduce the benefits of the authorities. Another agency indicated that the reporting requirements would prevent certain agencies from taking advantage of the authorities because of the requirement to reveal, in some cases, sensitive or classified information. OPM is sensitive to agencies' concerns that unnecessary record-keeping requirements be avoided. However, since the authorities to pay recruitment and relocation bonuses and retention allowances are new, it will not be possible, without adequate documentation, to assess their usefulness and cost or to ensure that they are administered equitably. Nevertheless, OPM will not require agencies to divulge information protected from disclosure by statute or otherwise require agencies to disclose classified information inappropriately. Such agencies will not be prevented from paying recruitment and relocation bonuses or retention allowances.

The labor organization and two agencies suggested that justifying a recruitment and relocation bonus on the basis of difficulty in filling a position with a "high quality" candidate imposes an additional requirement not supported by the statute. The term "high quality" does not impose an additional requirement not contemplated by Congress. Rather, it reinforces Congress' clearly expressed concern about the quality of new candidates for Federal service. The conference report on FEPCA (House Report 101–906, October 20, 1990, page 87) clearly demonstrates this concern by pointing out the greater costs Americans will suffer "when the Federal Government is unable to attract and retain those dedicated workers necessary to the delivery of services to all citizens."

Consistent with the conference report, therefore, OPM has promulgated regulations that protect merit principles and, at the same time, ensure that managers use resources judiciously to recruit and retain candidates of high quality to accomplish the agency's mission. OPM has retained the regulation permitting payment of a bonus only when it would be difficult to fill a position with a high quality candidate.

The interim regulations concerning internal evaluation of recruitment and relocation bonuses and retention allowances require agencies to evaluate the usefulness of bonuses and/or allowances in filling "key positions." One agency pointed out that the term "key position" is not used elsewhere in the regulations and questioned the need for a new, undefined term. The final regulations require agencies to evaluate the usefulness of bonuses and allowances in filling "positions."

Comments on the Requirement for Making Case-By-Case Determinations To Pay Bonuses and Allowances

The interim regulations require that decisions to pay an employee a bonus or an allowance be made and documented on a case-by-case basis. A labor organization suggested that case-by-case determinations could lead to inequitable treatment of employees and agreed with the approach suggested by two agencies that agencies be given the authority to pay similar bonuses to employees in similar situations without making case-by-case determinations. An agency argued that an agency should be allowed to use these authorities based on a manager's perception of need for an individual's services and an organization's budgetary constraints, as opposed to difficulty in filling a position, without higher level approval. OPM believes the requirement for case-by-case determinations, except in unusual circumstances, is necessary to prevent any possibility of abuse. The final regulations, like the interim regulations, allow payment of recruitment bonuses without case-by-case approval at a higher level when it is necessary to make a timely offer of employment. When such offers are made, a higher level agency official may establish criteria in advance based on qualifications typically possessed by high quality candidates for a specific position or other similar positions and authorize the recommending official to offer a recruitment bonus (in an amount within a pre-established range).

Comments on Rules Concerning Relocation Bonuses

Similar concerns about the need for case-by-case determinations to pay relocation bonuses were raised by two agencies. They concluded that this requirement would diminish their ability to promote mobility and build a flexible work force. The agencies suggested establishing a policy to pay a relocation bonus to any employee who must move to a high cost area or move as a result of transfer of function without additional documentation. In response to these concerns, the final regulations provide that an agency may request OPM approval of an exception to the requirement for case-by-case approval for payment of relocation bonuses to enhance the agency's ability to retain high quality employees (1) who are subject to mobility agreements, or (2) whose function is transferred to another commuting area.

Two agencies employing law enforcement officers objected to the provision permitting payment of a relocation bonus only when the position would otherwise be difficult to fill. Citing section 407 of FEPCA, which provides relocation payments of up to $15,000 to law enforcement officers whose annual rates of basic pay are less

than $60,000, one agency indicated that a requirement that the position be difficult to fill was too restrictive and that it was not the intent of Congress to link the payment of relocation bonuses to law enforcement officers to any condition other than the necessity to maintain a flexible and mobile work force. Section 407 of FEPCA provides that a law enforcement officer whose rate of basic pay is less than $60,000 may receive a relocation payment of up to $15,000 under section 5753. Therefore, while section 407 clearly authorizes payment of a more generous relocation bonus for certain law enforcement officers, the requirement that the position be difficult to fill applies to law enforcement officers, as well as other employees covered by 5 U.S.C. 5753 and 5754.

The labor organization suggested that the agency's need for an employee at the full performance level be among the factors used to determine whether to pay a relocation bonus. We have not adopted this suggestion. A decision about the level at which a position should be filled reasonably should be made before the vacancy is posted—far in advance of the need to consider offering a relocation bonus.

An agency noted that although the interim regulations bar payment of relocation bonuses to employees with time-limited appointments, recruitment bonuses can be paid to employees with appointments of at least 2 years. The agency suggested that the same rule should apply in the case of relocation bonuses. The final regulations allow employees with appointments of at least 2 years to be paid relocation bonuses or retention allowances.

An agency asked OPM to clarify the rate of basic pay to use as a basis for calculating a relocation bonus when an employee is on grade or pay retention. The interim regulations provide that an employee may receive a relocation bonus of up to 25 percent of the rate of pay fixed by law or administrative action for the position to which the employee is being relocated. For an employee on grade or pay retention, the amount of the allowance is based on the employee's retained rate of pay. OPM has revised the final regulations on relocation bonuses and retention allowances to clarify the basis for calculating the amount of such a bonus or allowance.

An agency suggested that the interim regulations were unclear about whether a relocation bonus could be paid to an employee who was transferring between agencies to a position in a different commuting area. Since the definition of employee in § 575.201 of the interim regulations is not limited to an employee of the agency paying the bonus, but allows a bonus to be paid to an employee in or under an agency transferring to a position in a different commuting area, OPM does not believe further clarification is necessary.

An agency inquired as to whether a relocation bonus could be paid to an employee as an incentive to remain in a position when the position was relocated out of the commuting area and the employee's commuting distance increased substantially, but the employee chose for personal reasons to commute, rather than relocate to the new commuting area. Payment of a relocation bonus under these conditions would not be consistent with the intent of the law. To receive a relocation bonus, an employee need not physically move his or her family, household goods, etc., from the "old" commuting area; however, the employee must establish a residence (e.g., rent an apartment) in the "new" commuting area. Therefore, the final regulations require that the employee establish a residence before the bonus may be paid. Additional guidance on this topic will be provided through the Federal Personnel Manual system.

Comments on Rules Concerning Recruitment Bonuses

For a variety of reasons, four agencies opposed the restriction on the payment of recruitment bonuses to employees who have not had a break in service of at least 1 year. One agency said the break-in-service restriction should parallel the 90-day break-in-service restriction on making superior qualifications appointments. Three agencies said the 1-year restriction would damage college recruitment programs by (1) preventing recruiters from offering bonuses to students who have had temporary appointments during previous school vacations or law clerk trainees appointed under 5 CFR 213.3102(e) pending admission to the bar, and (2) limiting an agency's ability to convert co-op students appointed under 5 CFR 213.3202 to career-conditional appointments. Another agency objected to the restriction because it bars the payment of bonuses to experts and consultants. Finally, an agency noted that the break-in-service requirement prevents employees serving under temporary appointments—especially those pending completion of the competitive examining process—from receiving bonuses.

OPM has not reduced the length of the break-in-service requirement for eligibility to receive a recruitment bonus, nor are exceptions provided for non-student temporary appointments or experts and consultants. Although a superior qualifications appointment may result in an employee receiving a greater long-term entitlement, its use does not share the same potential for abuse that is possible with the recruitment bonus, where a short break-in-service requirement might encourage an employee to resign for a short period in order to receive a large lump-sum bonus. The required year-long break in service is intended to minimize this possibility. In addition, the fact that a candidate accepts employment at the outset without a bonus indicates that it was not necessary to offer a recruitment incentive. However, we agree that, in some situations, this restriction may interfere with an agency's ability to recruit high quality candidates in whom it has invested substantial resources. Therefore, we have provided exceptions to allow the payment of recruitment bonuses to co-op students, former students with prior Federal summer or vacation employment who are receiving their first permanent appointment, and law clerk trainees.

Comments Concerning Service Agreements and Repayment of Bonuses

A prospective employee may be paid a recruitment bonus before he or she actually enters on duty. An agency commented that it would be difficult to recoup a bonus if, after receiving the bonus, the employee did not enter on duty. Although the agency's concern is a legitimate one, the statute allows this flexibility, and it may be especially useful in attracting entry-level employees. Therefore, agencies should pay a recruitment bonus before an individual actually enters on duty only in rare instances where unusual circumstances warrant accepting the risk that the agency may have difficulty recouping the bonus. Nevertheless, it is possible that an agency also could have difficulty recouping a recruitment bonus if an employee were to remain on board for a very short period before leaving for non-federal employment. OPM believes that, by signing a service agreement before receiving a recruitment bonus, the individual recognizes that a legal obligation has been established. If the individual does not honor the obligation, there are procedures for agencies to collect bona fide debts.

One agency suggested that the period of employment required by a service agreement for a recruitment or relocation bonus should begin after the completion of the period of employment required by a service agreement for any other benefit, such as training. Bonuses

are intended to assist agencies in recruiting and relocating employees, while service agreements are intended to ensure that the employee remains in the position for a reasonable period. Consecutive agreements could be a disincentive to an employee, or prospective employee, because of the lengthy period he or she would be required to remain in one location or employed with one agency or organization. Therefore, OPM has not adopted this change.

The labor organization noted that the interim regulations establish a minimum period of employment under a service agreement, but do not establish a maximum period or provide criteria to assist agencies in establishing a maximum period. The labor organization commented that, in order to receive a relatively small bonus, an employee may be required to sign an unreasonably long service agreement and suggested that the length of the service agreement should be linked to the percentage of basic pay used to calculate the amount of the bonus. OPM believes the percentage of the bonus and the length of the service agreement are best resolved by mutual agreement between the employee and the agency involved. Therefore, OPM has not established a maximum period for service agreements.

The labor organization also questioned the need to complete a service agreement with the appointing agency, arguing that if the employee were forced to move to a different agency because of a transfer of function, he or she would be required to repay the bonus. In response to this concern, OPM has revised the final regulations to make clear that repayment of a bonus will not be required under these circumstances.

One agency disagreed with the requirement that an employee receiving a relocation bonus agree to remain at the new duty station for a specified time period. The agency feels that the requirement discourages mobility. OPM believes that the provision in § 575.207(d) of the interim regulations that removes the requirement to repay a bonus when it is necessary to relocate an employee to a position in a different commuting area will allow agencies to foster mobility.

Several agencies have informally raised the issue as to whether, in large organizations, an employee should be required to remain with the "employing activity" for the duration of the agreement. The statute provides that an employee must agree to complete a period of employment with the "agency." OPM does not believe an additional requirement that the employee remain with a subcomponent of an agency would be consistent with the statute.

The labor organization and an agency believe that an employee should be considered involuntarily separated for purposes of repaying a recruitment or relocation bonus if, after becoming subject to a written mobility agreement, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment. OPM did not adopt any change in the final regulations. An employee who accepts a mobility requirement by accepting a reassignment outside the commuting area should be treated like any other employee subject to a mobility agreement. This provision parallels the definition of involuntary separation in the severance pay regulations (5 CFR 550.703).

Typically, recruitment bonuses will be paid to new Federal employees who must serve probationary periods. During the probationary period an employee has no appeal rights to challenge his or her removal from employment. Under these circumstances, the labor organization maintained that requiring an employee to return a bonus would constitute an improper "fine" or "penalty." It is not the intent of FEPCA to extend to probationers any additional due process rights beyond those they already have. In addition, OPM believes that the provision permitting the payment of a recruitment bonus only to a high quality employee in a difficult to fill position will provide an adequate safeguard against the arbitrary termination of an employee during his or her probationary period.

When an employee fails to complete a period of employment established under a service agreement and must repay a recruitment or relocation bonus, the interim regulations require the employee to repay the bonus on a pro rata basis. The employee receives credit for each full month of employment completed under the service agreement. The labor organization objected to this formula, preferring that service be credited by rounding to the nearest full month or that it be credited on a partial month basis. OPM declines to accept this recommendation because of the administrative complexity of crediting less than a full month of service toward the completion of a service agreement. Also, OPM believes the formula is appropriate because it encourages employees to complete more rather than less service under the agreement.

Comments on Retention Allowances

One agency suggested that payment of a retention allowance be permitted when an employee would otherwise move to another Federal agency. OPM declines to make this change because paying a retention allowance to prevent an employee from transferring to another Federal agency would encourage agencies to compete with one another for an employee's services.

Two agencies proposed that, in order to receive a retention allowance, an employee must have a firm offer of employment outside the Federal service. Although a firm offer of employment may be a prime indicator that an employee is likely to leave the Federal service, OPM does not believe that it is necessary or desirable to specify the exact type of documentation necessary to approve the payment of such an allowance.

One agency suggested that OPM establish rules to recoup a retention allowance when the allowance was paid under fraudulent circumstances. Agencies may establish criteria to authenticate offers of employment outside the Federal Government. However, if an employee falsifies such an offer, we believe the existing mechanisms for recouping losses incurred through fraudulent means are adequate to recover any portion of a retention allowance paid under such circumstances.

The labor organization voiced concerns about the potential abuse of the retention allowance authority and about the relationship between retention allowances and the requirement for substantially equal pay for equal work in 5 U.S.C. 5101(1)(A). To ensure that employees are equitably treated and paid, the labor organization recommended that OPM establish objective definitions of the phrases (1) "unusually high or unique qualifications," (2) "special need for an employee's services," and (3) "would be likely to leave in the absence of a retention bonus." OPM believes the criteria for the payment of retention allowances should be clearly defined by each agency, taking into account unique factors such as the agency's mission and organizational characteristics. OPM does not believe that it would be practical or useful to attempt to prescribe such definitions by regulation.

Finally, the regulations have been amended to establish procedures under which the head of an Executive agency may request authority to pay such bonuses and allowances to employees not otherwise covered by sections 5753

and 5754 of title 5, United States Code, and to make certain technical and conforming changes, including the addition of a requirement that agencies track and report on the number of relocation bonuses and retention allowances offered to employees during a fiscal year. Under the interim regulations, agencies were required to report only the number of recruitment bonuses offered each fiscal year.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal agencies and Federal employees.

List of Subjects in 5 CFR Part 575

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, the interim rule establishing 5 CFR part 575, which was published at 56 FR 12833 on March 28, 1991, is adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) 104 Stat. 1462 and 1466, respectively; E.O. 12748.

2. In § 575.102, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 575.102 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a recruitment bonus to an employee who is newly appointed to—

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a recruitment bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

* * * * *

3. In § 575.103, the definitions of the terms *employee, newly appointed,* and *rate of basic pay* are revised to read as follows:

§ 575.103 Definitions.

* * * * *

Employee means an employee in or under an agency who is newly appointed without time limitation or for a minimum period of at least 2 years or an individual who has received a written offer of employment without time limitation or for a minimum period of at least 2 years.

* * * * *

Newly appointed refers to—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) An appointment following a break in service of at least 1 year; or

(c) A permanent appointment received within 1 year after termination of—

(1) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter;

(2) Employment under the Stay-in-School program, in accordance with § 213.3102(w) of this chapter;

(3) Employment as a law clerk trainee under § 213.3102(e) of this chapter; or

(4) Employment while a student during school vacations under a short-term temporary appointing authority.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

4. In § 575.106, paragraph (a) is revised to read as follows:

§ 575.106 Service agreement.

(a) Before a recruitment bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified number of months of employment with the appointing agency (or successor agency in the event of a transfer of function).

* * * * *

5. In § 575.108, paragraph (b) is revised to read as follows:

§ 575.108 Internal evaluation.

* * * * *

(b) Before January 1st of each year, each agency shall prepare a written report on its use of recruitment bonuses during the previous fiscal year. Each report shall include the number of employees to whom a recruitment bonus was offered during the fiscal year, the percentage of salary offered, the number of employees who accepted the offer of a recruitment bonus during the fiscal year, and an evaluation of the overall effect of the payment of recruitment bonuses on the ability of the agency to fill positions with high quality candidates. Each agency shall make its annual report available for review upon request by OPM.

6. In § 575.202, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 575.202 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a relocation bonus to an employee appointed to—

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a relocation bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

* * * * *

7. In § 575.203, the definitions of the terms *employee* and *rate of basic pay* are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Employee means an employee in or under an agency who is appointed without a break in service and without time limitation or for a minimum period of at least 2 years to a position in a different commuting area or an employee who is serving under an appointment without time limitation or for a minimum period of at least 2 years and whose duty station is changed temporarily to a different commuting area.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated or, in the case of an employee who is entitled to grade or pay retention, the employee's

retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

8. In § 575.204, the section heading and paragraphs (b) and (c)(1) are revised, and a new paragraph (d) is added to read as follows:

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

* * * * *

(b) *Higher level review and approval.* Except as provided in paragraph (d) of this section, each determination to pay a relocation bonus, including the amount of such bonus, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position with a high quality candidate. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. In determining which employee may receive a relocation bonus, an agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, except as provided in paragraph (d) of this section, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

* * * * *

(d) *Exceptions to case-by-case approval.* With the prior approval of OPM, the head of an agency may authorize, for a specified period of time, the payment of a relocation bonus to any employee whose rating of record is at least fully successful without the requirement for case-by-case approval when—

(1) The employee is a member of a specified group of employees subject to a mobility agreement, and the head of an agency, in consultation with OPM, determines that relocation bonuses are necessary to ensure the agency's ability to retain high quality employees subject to such an agreement; or

(2) A major organizational unit of an agency is relocated to a different commuting area, and the head of an agency, in consultation with OPM, determines that relocation bonuses are necessary for specified groups of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission and/or without undue disruption of service to the public.

9. In § 575.205, paragraph (c) is added to read as follows:

§ 575.205 Payment of relocation bonus.

* * * * *

(c) Before a relocation bonus may be paid to an employee, the employee must establish a residence in the new commuting area.

10. In § 575.206, paragraph (a) is revised to read as follows:

§ 575.206 Service agreement.

(a) Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified number of months of employment with the appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

11. In § 575.208, paragraph (b) is revised to read as follows:

§ 575.208 Internal evaluation.

* * * * *

(b) Before January 1st of each year, each agency shall prepare a written report on its use of relocation bonuses during the previous fiscal year. Each report shall include the number of employees to whom a relocation bonus was offered during the fiscal year, the percent of salary offered, the number of employees who accepted the offer of a relocation bonus during the fiscal year, and an evaluation of the overall effect of the payment of relocation bonuses on the ability of the agency to fill positions with high quality candidates. Each agency shall make its annual report available for review upon request by OPM.

12. In § 575.302, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and the introductory language of paragraph (d) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a retention allowance to an employee who holds—

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to an employee of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

(d) When OPM finds that an agency is not paying retention allowances in conformance with the agency's retention allowance plan and the criteria established under § 575.305 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

* * * * *

13. In § 575.303, the definitions of the terms *employee* and *rate of basic pay* are revised to read as follows:

§ 575.303 Definitions.

* * * * *

Employee means an employee in or under an agency who is serving under an appointment without time limitation or for a minimum period of at least 2 years.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

14. In § 575.308, paragraph (b) is revised to read as follows:

§ 575.308 Internal evaluation.

* * * * *

(b) Before January 1st of each year, each agency shall prepare a written report on its use of retention allowances during the previous fiscal year. Each report shall include the number of employees to whom a retention allowance was offered, the percentage of salary received by each employee, the number of employees who accepted the offer of a retention allowance, and an evaluation of the overall effect of the payment of retention allowances on the ability of the agency to retain high quality employees. Each agency shall

make its annual report available for review upon request by OPM.

[FR Doc. 92-19617 Filed 8-18-92; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1941

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Programs Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Farmers Home Administration (FmHA) corrects an interim rule published September 14, 1988, in the **Federal Register** (53 FR 35638-35798) on certain provisions of the Agricultural Credit Act of 1987 and additional amendments of portions of the FmHA regulations. Portions of this interim rule were adopted unchanged as a final rule on May 25, 1990, (55 FR 21517-21533). Unfortunately an error in this unchanged portion was not discovered at that time. The intent of this action is to correct that typographical error.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Boyles, Farmer Programs Loan Making Division, Farmers Home Administration, U.S. Department of Agriculture, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 720-1360.

SUPPLEMENTARY INFORMATION:

List of Subjects in 7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is corrected by making the following technical amendment:

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.18 [Amended]

2. Section 1941.18(b)(3) is amended by changing the word "rescheduled" to "scheduled."

Dated: July 16, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-19681 Filed 8-18-92; 8:45 am]

BILLING CODE 3410-07-M

RESOLUTION TRUST CORPORATION

Office of Inspector General

12 CFR Part 1680

Privacy Act Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Notice of interim rulemaking with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC or Corporation) Office of Inspector General (OIG) is adopting an interim rule for the processing of requests for access to or amendment of records pursuant to the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act). Also, RTC OIG is exempting a new system of records from certain provisions of the Privacy Act to the extent the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records, entitled "Office of Inspector General Investigative Files," includes OIG's investigative files. This new system of records appears in an accompanying notice.

DATES: This interim rule is effective August 19, 1992. Comments must be received by October 19, 1992.

ADDRESSES: Comments must be sent to: Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, room 1122, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsman, Senior Assistant Counsel to the Inspector General, at 703-908-7812.

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Background

On December 23, 1991, the Board of Directors of the Resolution Trust Corporation adopted a Resolution authorizing the Inspector General to promulgate policies and regulations necessary to administer OIG records pursuant to the Privacy Act of 1974. The Resolution also recognized the authority of the Secretary of the Corporation to authorize release of Corporation documents not developed by OIG which are contained in OIG files. This rule sets forth the procedures to be used in requesting records from RTC OIG, the procedures for contesting the content of records, and the identification of systems of records that are exempt from the access, amendment, and disclosure accounting provisions of the Privacy Act. Also a new Privacy Act system of records is being established. The system, entitled Office of Inspector General Investigative Files, contains investigatory material compiled for law enforcement purposes and investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. A separate regulation implements the Privacy Act for non-OIG RTC systems of records.

B. Requests for Information in Records

The rule provides that all written requests for records under the control of the Inspector General of RTC should be sent to the OIG in Rosslyn, VA. It further permits individuals to appear in person at OIG Headquarters, in Rosslyn, VA, to inspect non-exempt records pertaining to themselves which are covered by the Privacy Act. Requests for records must reasonably describe the record desired. The rule also provides for adequate identification to be submitted for both written and oral requests.

C. Initial and Final Decisions

The rule delegates to the Assistant Inspectors General and Regional Inspectors General for Audit, if the inquiry involves an audit issued in the Region, authority to make initial determinations concerning requests for access to or amendment of records. It should be noted that at the present time there are no audit systems of records subject to the Privacy Act, but regulatory provision is being made should the need for such a system arise in the future. The concurrence of the Secretary is required for initial determinations concerning requests for access to or amendment of records involving Corporation documents not developed by OIG but which are contained in OIG files. Final decisions on an appeal of an initial denial of access or a determination not to amend will be made by the Inspector General or Deputy Inspector General for records under the control of the OIG with the concurrence of the General Counsel with respect to Corporation documents not developed by OIG.

D. Exemption From Disclosure

RTC OIG proposes to exempt the new OIG Investigative Files system of records from specified provisions of the Privacy Act. Subsection (j)(2) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a except subsections (b), (c)(1), and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), provided that the system of records is maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws" and includes: "(A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision." Section 552a(k) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from sections 552a(c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f) of the Act, pursuant to 5 U.S.C. 552a(k)(2), if the system of records is "investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2)," and also, pursuant to 5 U.S.C. 552a(k)(5), if the system of records consists of "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, * * * Federal contracts, or access to classified information."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Make an accounting of disclosures to the individual named in the record at their request; permit individuals access to their records; permit individuals to request amendment to their records; maintain only necessary or relevant information in its system of records; publish certain information in the **Federal Register**; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

Exemptions under subsections 552a(j)(2), (k)(2) and (k)(5) are necessary to maintain the integrity and confidentiality of the investigative files. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations and put confidential sources at risk. Knowledge of such investigations also could enable suspects to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses, investigative personnel and their families. The imposition of certain restrictions on the manner in which information is collected, verified or retained could significantly impede the effectiveness of OIG investigations and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

OIG Investigative Files will contain information of the type described in the (j)(2), (k)(2), and (k)(5) exemptions of the Privacy Act. The Inspector General Act, as amended, 5 U.S.C. App. 3, authorizes OIG to conduct investigations to detect fraud and abuse in the programs and operations of the Corporation and to assist in the prosecution of participants in such fraud or abuse. OIG will maintain information in this system of records pursuant to its law enforcement and criminal investigative functions including, background employment, personnel and contractor investigative material which may be necessary for OIG to maintain in order to carry out these functions. Further, the (j)(2), (k)(2) and (k)(5) exemptions will be narrowly applied.

E. Fees

The rule provides that copies of records will be provided at $.20 per page. It also provides that fees may be waived if the total cost of complying with the request for records is less than $25.00.

Request for Public Comment

RTC OIG is seeking comments on all aspects of this interim rule. Comments will be carefully reviewed for the purpose of developing final regulations.

Administrative Procedure Act

The Resolution Trust Corporation is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the usual notice-and-comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause."

The Resolution Trust Corporation was created in August 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. (Pub. Law No. 101–73, 103 Stat. 183). Since that time it has used regulations adopted by the Federal Deposit Insurance Corporation to process requests it receives under the Privacy Act. Those regulations, drafted before the existence of the OIG, do not adequately address the needs of OIG. With the establishment of OIG, there is a need for it to have its own regulations implementing the Privacy Act.

In addition, the substance of much of the rule, including those portions concerning method and timing of release of records and exemption of records are largely mandated by the Privacy Act or by the Office of Management and Budget regulations promulgated pursuant to statute and already subject to public comment. In the case of these portions of the rule, the need for public comment is reduced since the Resolution Trust Corporation has little discretion in adopting these provisions.

Therefore, the benefits to the public in adopting the interim regulations outweigh any harm from the delay in seeking public comment.

Regulatory Flexibility Act

The undersigned hereby certifies that the interim regulations, and any final regulations that may be adopted following comment on the interim regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

List of Subjects in 12 CFR Part 1680

Privacy Act.

For the reasons set out in the preamble, the Resolution Trust Corporation amends part 1680 to title 12, chapter XVI of the Code of Federal Regulations as follows:

PART 1680—OFFICE OF INSPECTOR GENERAL DISCLOSURE OF INFORMATION

Subpart A—Freedom of Information Act Regulations

1. The authority citation for part 1680, Subpart A, continues to read as follows:

Authority: 5 U.S.C. 552, 5 U.S.C. App.; 12 U.S.C. 1441(a)(b).

§§ 1680.1–1680.17 [Redesignated as Subpart A]

2. The existing §§ 1680.1 through 1680.17 are redesignated as Subpart A with the heading of Subpart A added as set forth above.

3. Subpart B is added as follows:

SUBPART B—PRIVACY ACT REGULATIONS

Sec.

1680.21 Purpose and scope.
1680.22 Definitions.
1680.23 Procedures for requests pertaining to individual records in a system of records.
1680.24 Times, places and requirements for identification of individuals making requests.
1680.25 Disclosures of requested information to individuals.
1680.26 Special procedures for medical records.
1680.27 Requests for amendment of records.
1680.28 Agency reviews of requests for amendment of records.
1680.29 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.
1680.30 Preservation of records.
1680.31 Disclosures of a record to a person other than the individual to whom the record pertains.
1680.32 Fees.
1680.33 Penalties.
1680.34 Exemptions.

Subpart B—Privacy Act Regulations

Authority: 5 U.S.C. 552a, 5 U.S.C. App., 12 U.S.C. 1441a(b).

§ 1680.21 Purpose and scope.

This regulation sets forth the basic policies of the Resolution Trust Corporation (RTC) that implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) regarding the protection of the privacy of individuals on whom the Corporation's Office of Inspector General (OIG) maintains information which is retrieved by reference to an individual's name or an identifying particular assigned to the individual. This regulation also sets forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him/her, may request correction or amendment of such records, or may seek an accounting of disclosures of such records maintained by the Office of Inspector General.

§ 1680.22 Definitions.

For the purposes of this part:

(a) *Corporation* means the Resolution Trust Corporation.

(b) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, disseminate, or control.

(d) *Record* means any item, collection or grouping of information about an individual that is maintained by the Office of Inspector General and contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(e) *System of records* means a group of any records under the control of the Office of Inspector General from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

(f) *Designated system of records* means a system of records which has been listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was created.

(h) *Amend* and *amendment* mean any correction, addition to or deletion from a record.

(i) *System manager* means the agency official responsible for a designated system of records, as denominated in the **Federal Register** publication of "Systems of Records Maintained by the Resolution Trust Corporation."

(j) *Inspector General* means the Inspector General or Deputy Inspector General of the Resolution Trust Corporation.

(k) *Assistant Inspector General* means the Assistant Inspector General for Audit, Assistant Inspector General for Investigation, Assistant Inspector General for Policy, Planning and Resources, or Assistant Inspector General for Oversight and Quality Assurance.

§ 1680.23 Procedures for requests pertaining to individual records in a system of records.

Written requests by individuals for access to records pertaining to them and maintained within an Office of Inspector General's designated system of records should be signed by the requester and submitted in writing to the Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209. Each such request should contain a reasonable description of the record(s) sought, the system or systems in which such record may be contained, and any additional identifying information, as specified in the Corporation's **Federal Register** "Notice of Systems of Records" for that particular system, copies of which are available upon request from the Office of Inspector General and the FOIA/PA Branch, Office of the Secretary.

§ 1680.24 Times, places and requirements for identification of individuals making requests.

(a) Individuals may request access to records pertaining to themselves by submitting a written request by mail as provided in § 1680.23 of this subpart. Before information is given or access to records is granted, the Office of Inspector General may require reasonable identification of the person making the request to ensure that information is given and records are disclosed only to the proper individual.

(b) Individuals submitting written requests seeking access to or amendment of records pertaining to themselves shall include copies of reasonable identification which contain the signatures of the individuals such as driver's licenses, employment identification cards or passports. The identification shall bear the individual's current residence or business address. Except for records that must be publicly disclosed pursuant to the Freedom of Information Act (5 U.S.C. 552), where the Office of Inspector General determines it to be necessary for the individual's protection, a certification of a duly commissioned notary public, of any state or territory, attesting to the requesting individual's identity may be required before a written request seeking access to or amendment of a record will be honored.

(c) Nothing in this section shall preclude the Office of Inspector General from requiring such other proof of identity as it deems satisfactory in the circumstances of a particular request for Office of Inspector General investigative files.

§ 1680.25 Disclosures of requested information to individuals.

(a) Except to the extent that records pertaining to an individual:

(1) Are exempt from disclosure under § 1680.33 of this subpart, or

(2) Were compiled in reasonable anticipation of a civil action or proceeding,

The Office of Inspector General will make such records available upon request for purposes of inspection and copying by the individual (after proper identity verification as provided in § 1680.24) and, upon the individual's request and written authorization, by another person of the individual's own choosing.

(b) The Assistant Inspector General or Regional Inspector General for Audit,

where a request involves an audit issued in the region, for those systems of records under the control of the Office of Inspector General, will notify, in writing, the individual making a request, within ten business days following receipt of the request, whether any specified, designated system of records maintained by the Office of Inspector General contains a record pertaining to the individual. Where such a record does exist, the Assistant Inspector General or if appropriate, Regional Inspector General for Audit, for those systems of records under the control of the Office of Inspector General, will inform the individual of the decision whether to grant or deny, in whole or in part, the request for access. The release of any Corporation documents not developed by OIG which are contained in OIG files requires the concurrence of the Secretary of the Corporation (or designee). In the event existing records are determined not to be disclosable, the notification will inform the individual of the reason(s) for which disclosure will not be made and will provide a description of the individual's right to appeal the denial, as more fully set forth in § 1680.28 of this subpart.

(c) Individuals will be granted access to records disclosable under this part 1680, subpart B as soon as is practicable. The Assistant Inspector General, or Regional Inspector General for Audit, if appropriate, for those systems of records under the control of the Office of Inspector General, will give written notification of a reasonable period within which individuals may inspect disclosable records pertaining to themselves at the headquarters of the Office of Inspector General, if appropriate, or the Region in which an audit was issued, during normal business hours. Alternatively, individuals granted access to records under this subpart may request that copies of such records be forwarded to them. Fees for copying such records will be assessed as provided in § 1680.31 of this subpart.

§ 1680.26 Special procedures for medical records.

Medical records shall be disclosed on request to individuals to whom they pertain, except, if in the judgment of the Corporation or the Office of Inspector General, depending on the manner by which the record was generated, the transmission of the medical information directly to the requesting individual could have an adverse affect upon such individual. In the event medical information is withheld from the requesting individual because of any possible adverse affect such information may have upon the individual, the Corporation or the Office of Inspector General shall transmit such information to a licensed medical doctor named by the requesting individual.

§ 1680.27 Requests for amendment of records.

The Office of Inspector General will maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Inspector General amend any portion of a record pertaining to that individual which the Office of Inspector General maintains in a designated system of records. Such a request should be submitted in writing to the Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209, and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system and category thereof) sufficient to enable the Inspector General to identify the particular record or portion thereof with respect to which amendment is sought. If an individual has a copy of the record he/she wishes to have amended, it should be attached to the request for amendment and the specific portion of the record sought to be amended should be clearly identified. The individual making the request may be required to provide the information specified in § 1680.24 of this subpart to permit verification of the identity of the individual making the request for amendment.

§ 1680.28 Agency reviews of requests for amendment of records.

(a) Requests by individuals for the amendment of records will be acknowledged by the Assistant Inspector General or Regional Inspector General for Audit, if appropriate, within ten business days following receipt of such requests. Promptly thereafter, the Assistant Inspector General or Regional Inspector General for Audit for records contained within a system of records under the control of the Office of Inspector General, will notify the individual of the decision to grant or deny the request to amend. The amendment of any Corporation documents not developed by OIG which are contained in OIG Files requires the concurrence of the Secretary of the Corporation (or designee). If the request to amend is granted, in whole or in part the Assistant Inspector General or Regional Inspector General for Audit will effect the appropriate amendment.

(b) If the Assistant Inspector General or Regional Inspector General for Audit for records contained within a system of records under the control of the Office of Inspector General, denies a request to amend a record, the notification of such denial shall contain the reason(s) for the denial and a description of the individual's right to appeal the denial as more fully set forth in § 1680.28 of this subpart.

§ 1680.29 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.

(a) For records contained within a system of records under the control of the Office of Inspector General, the initial denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Inspector General, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209, within 30 business days following receipt of notification of the denial. Such appeals should contain all the information specified for requests for access in § 1680.23 of this subpart or for initial requests to amend in § 1680.26 of this subpart, as well as any other additional information the individual deems relevant for the consideration by the Inspector General of the appeal. Both the envelope and the appeal letter should have written on them "Privacy Act Appeal." The appeal letter should also enclose a copy of the initial denial letter.

(b) The Inspector General will normally make a final determination with respect to an appeal made under this subpart within 30 business days following receipt of the appeal. The concurrence of the General Counsel of the Corporation (or designee) is required for Corporation documents not developed by OIG which are contained in OIG files. The Inspector General may extend the 30-day time period for good cause. When such an extension is required, the individual making the appeal will be notified of the reason for the extension and the expected date upon which a final decision will be given.

(c) If the Inspector General affirms the initial denial of a request for access or to amend, he or she will inform the individual affected by the decision, the reason(s) therefor, and the right of judicial review of the decision. With respect to a decision to sustain the initial refusal to amend a record the Inspector general will also inform the

individual of the right to submit a "Statement of Disagreement" under paragraph (d) of this section.

(d) Upon receipt of a determination to affirm the initial denial of a request to amend records, the individual may submit to the Inspector General a concise statement ("Statement of Disagreement") setting forth his or her reasons for disagreeing with the Inspector General's determination not to amend. Such a "Statement of Disagreement" will be attached to the record which was the subject of the request to amend. The Inspector General may, if deemed appropriate, prepare a concise statement ("Statement of Explanation") of the reason(s) why the requested amendment or correction was not made. Any Inspector General "Statement of Explanation" will be included in the system of records in the same manner as the "Statement of Disagreement." A copy of the "Statement of Explanation" and of the notation of the dispute as marked on the original record will be provided to the individual who requested correction or amendment of the record.

(e) When a record has been amended or corrected or when a "Statement of Disagreement" has been filed, the Inspector General will advise all prior recipients of the affected record whose identities may be determined pursuant to the disclosure accountings required by the Privacy Act (5 U.S.C. 552a(c)), or any other accounting previously made, of the amendment or correction or the filing of the "Statement of Disagreement." Any disclosure of disputed information occurring after a "Statement of Disagreement" has been filed will clearly identify the specific information disputed and be accompanied by a copy of the "Statement of Disagreement" and a copy of the "Statement of Explanation," if any, as set forth in § 1680.30 of this subpart.

§ 1680.30 Preservation of records.

The Inspector General will preserve all correspondence relating to the written requests it receives under this subpart and all records processed pursuant to such requests, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records, or General Records Schedule 22 for Office of Inspector General records. Under no circumstances will records be destroyed while they are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

§ 1680.31 Disclosures of a record to a person other than the individual to whom the record pertains.

(a) Except as provided in paragraph (b) of this section, the Inspector General will not disclose any record contained in a designated system of records to any person or agency except without the prior written consent of the individual to whom the record pertains.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to any disclosures:

(1) To those officers and employees of the Corporation who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use listed with respect to a designated system of records;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Corporation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States (or designee) to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Corporation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31 of the United States Code.

(c) Any "Statement of Disagreement" with the Inspector General's determination not to amend a record, filed with the Inspector General by an individual pursuant to § 1680.28(d) of this subpart, will be included in the disclosure of the record under authority of paragraph (b) of this section. The Inspector General may, in his or her discretion, also include a copy of the Inspector General's "Statement of Explanation."

(d) The Inspector General, with respect to each system of records under his or her control shall:

(1) except for disclosures made under paragraphs (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under paragraph (b) of this section; and

(2) Retain the accounting made under paragraph (d)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting made under paragraph (d)(1) of this section available to the individual named in the record at his/her request; and

(4) Inform any person or other agency about any correction or Statement of Dispute made by the agency in accordance with paragraph (b) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1680.32 Fees.

The Inspector General, upon a request for records disclosable pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), shall charge a fee of $.20 per page for duplicating, except as follows:

(a) If the Inspector General determines that he or she can grant access to a record only by providing a copy of the record, no fee will be charged for providing the first copy of the record or any portion thereof;

(b) Whenever the aggregate fees computed under this section do not exceed $25.00 for any one request, the fee will be deemed waived by the Inspector General.

§ 1680.33 Penalties.

Subsection (i)(3) of the Privacy Act of 1974 (5 U.S.C. 552a (i)(3)) imposes criminal penalties for obtaining Inspector General or Corporation records on individuals under false pretenses. The subsection provides as follows: "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000."

§ 1680.34 Exemptions.

These provisions authorize the Inspector General to exempt certain OIG Privacy Act systems of records from portions of the requirements of this regulation. For those OIG systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons. The Inspector General has determined that the following systems of records are exempt to the extent provided hereinafter.

(a) *Office of Inspector General Investigative Files*—(1) *Sections of the Act from which exempted.* (i) The Office of Inspector General Investigative Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(6), (7), (9), (10), and (11) relating to dissemination and maintenance of records, and (i) relating to criminal penalties. This system of records is also exempt from 12 CFR 1680.23 through 1680.28 and 1680.30(d) (3) and (4). This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(ii) To the extent that there may exist within this system of records investigative files compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, the Inspector General Investigative Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552(a)): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections. This system of records is also exempt from 12 CFR 1680.23 through 1680.28 and 1680.30(d)(3).

(2) *Reason for exemptions.* (i) The Office of Inspector General is an office of RTC a component of which performs, as its principal function, activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(ii) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2); *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(F) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement systems.

(G) To prevent disclosure of law enforcement techniques and procedures.

(H) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) Records within this system of records comprised of investigatory material compiled solely for the purpose of determining suitability or eligibility for Federal civilian employment, Federal contractors, or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

Issued at Washington, DC, this 7th of August, 1992.

Office of Inspector General

John J. Adair,

Inspector General, Resolution Trust Corporation.

[FR Doc. 92–19375 Filed 8–18–92; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-42; Special Conditions No. 25-ANM-58]

Special Conditions; McDonnell Douglas MD-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to the Douglas Aircraft Company for the Model MD-11 series airplanes. These airplanes have a novel or unusual design feature associated with the installation of an Autoflight System Windshear Function, for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The design adds a special function to the existing autothrottle requirements. These special conditions contain the additional safety standards which the Administrator considers necessary, because of the added design feature, to establish a level of safety equivalent to that established by the airworthiness standards of part 25.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Roscoe Van Dyke, FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, 3229 East Spring Street, Long Beach, California, 90806-2425; telephone (213) 988-5254.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1985, the Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, California 90846, applied to the FAA for a change in the type design for the MD-11 series airplanes to incorporate an Autoflight System Windshear Function (ASWF).

The autoflight system windshear function installation is designed to assist the flightcrew in the detection, warning, and escape of windshear conditions during the takeoff roll, takeoff, approach, and "go-around" phases of airplane operation. The automatic flight system integrates data from on-board airplane sensors with windshear-detection and control-law logic in the computer to provide a windshear visual annunciation, audible alert, and windshear guidance using the primary flight display for pitch axis guidance. In addition, the computer provides a command to the autothrottle and resets, as appropriate, the engine pressure ratio (EPR) or engine fan rotor speed (N1) bugs to the takeoff go-around (TOGA) setting.

The windshear system is designed in accordance with the criteria defined in Advisory Circular (AC) 25-12, Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes. That AC states that the system should: (1) Demonstrate adequate reliability, (2) provide annunciation and checkability, which includes indication of failure/fault of the system and sensors and computers, and (3) follow the identified flight profiles for operation to 1,000 feet above ground level (AGL) for the takeoff case, and from 1,000 feet AGL to 50 feet AGL for the approach to landing case (as defined in the AC).

Section 25.111(c) of the FAR requires that the airplane configuration remain fixed during a critical portion of the takeoff, and no changes in power or thrust that require action by the pilot may be made. This and other regulations (§§ 25.901 and 25.903) did not envision a system that would automatically advance the throttles during takeoff under specific conditions, and they did not identify the required reliability requirements for such a system. These regulations are therefore considered inadequate to provide an acceptable level of safety for the unusual or novel design features of the autoflight system windshear function. The additional requirements presented in these special conditions are for the installation of that part of the autoflight system windshear function that automatically signals the autothrottle to increase engine thrust whenever a windshear condition is detected during takeoff. The system constitutes that portion of the autoflight system windshear function which, for "reduced thrust" takeoff operations, will unclamp the locked autothrottle, upon a signal from the computer, and command the autothrottle to increase engine thrust to the maximum go-around thrust allowed for the ambient conditions. If the takeoff is initiated with the autothrottle "off," the windshear initiated command will activate the autothrottle and increase the thrust to the maximum go-around thrust level. The system involved includes those portions of all devices, both mechanical and electrical, that allow the flightcrew to determine the status of the system that increases the thrust on windshear command.

These special conditions, beyond requiring that the windshear system must meet all applicable requirements of part 25, require that an appropriate level of system reliability be shown. It must be demonstrated that no hazardous airplane or engine characteristics will exist during or from the operation of this system, that manual override provisions be provided, and that suitable operation and system enunciation be provided. Compliance with these special conditions would ensure that the operation of the autoflight system windshear function will achieve a level of safety at least equal to that otherwise required by part 25.

Under the provisions of § 21.101 of the FAR, an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (i.e., the original type certification basis), or with the applicable regulations in effect on the date of the application for change. In addition, if the proposed change consists of a new design or a substantially complete redesign of a component, equipment installation, or system installation, and the regulations incorporated by reference do not provide adequate standards with respect to the proposed change, the applicant must comply with regulations in effect on the date of the application for the change, and special conditions established under the provisions of § 21.16, as necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference.

The type certification basis for the McDonnell Douglas MD-11 series airplanes is part 25 of the FAR effective February 1, 1965, as amended by Amendments 25-1 through 25-61, with certain exceptions and additions which are not pertinent to the subject of these special conditions. These exceptions and additions are identified in the Model MD-11 Type Certificate Data Sheet No. A22WE.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Feature

The type design of the Model MD-11 series airplanes, with the autoflight system windshear function installed, will incorporate a novel or unusual design feature associated with the installation of a windshear detection-initiated autothrottle activation system.

The windshear system will, for a reduced thrust takeoff, provide automatic autothrottle advance to "go-around" thrust on detection of a windshear condition

Since the original type certification basis does not have adequate or appropriate safety standards for this unique and novel design feature, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

The FAA considers the automatic advance of the autothrottle on detection of a windshear condition during takeoff to be a special emergency operation what would enhance safety in windshear conditions during takeoff.

During takeoff, the only options available to the pilot, once windshear is encountered, are to rapidly advance and set engine thrust and trade aircraft kinetic energy, as necessary, to maintain a positive climb gradient. Normally the optimum strategy is to delay reducing airspeed until at least level flight is no longer possible at the existing pitch attitude and airspeed with maximum rated thrust applied. This procedure saves the available kinetic energy as long as possible in the event the windshear becomes more severe.

Automatic advance of the engine throttles by the autothrottle system to increase thrust permits the pilot to concentrate on the critical airplane parameters of airspeed and pitch angle. This is especially essential in reducing the workload in the two-man crew cockpit environment of the MD–11 airplanes. The windshear condition might persist for a relatively long period, and the instensity of this condition would require extensive pilot concentration. With this system (automatic power advancement), the pilot still retains the option to manually override the autothrottle in the event of either its failure to respond, or to an inappropriate autothrottle response.

These special conditions apply only to the takeoff phase of the airplane operation and only to those functions and components that (with an initiated command) would increase engine thrust, using the autothrottle, to the maximum go-around thrust level.

Discussion of comments

Notice No. SC–90–1–NM for the McDonnell Douglas Model DC–11 series airplanes was published in the **Federal Register** on January 26, 1990 (55 FR 2665). Three commenters responded to the notice, offering the following comments:

One commenter expresses concern that the established means of certificating propulsion systems with the relevant FAR is becoming compromised. In the proposed special condition, any reduction in thrust due to a malfunction of the system must be "improbable." The commenter asserts that this requirement is counter to § 25.904 which states that, for an automatic takeoff thrust control system (ATTCS), any significant loss or reduction in thrust or power must be shown to be an "extremely improbable" event. The commenter believes that the propulsion design principle should not be compromised by the automation of propulsion control functions utilizing autothrottle systems.

The FAA does not agree. Section 25.904 deals specifically with an engine failure event. There is no presumption of engine failure associated with this special condition. Throttle "unclamp" only occurs coincident with visual and aural windshear alert warnings, and will only occur if engine thrust has been set at less than the maximum takeoff thrust value. The forewarning of windshear places the pilot in an alerted condition or "in-the-loop" of events to occur during and following the windshear warning. The addition of the requirement to provide a means to indicate the automatic actuation of the power levers is essential in continually keeping the pilot informed that the systems are properly responding to the alert condition. It is for these reasons that the inadvertent retard due to a system malfunction can be made an "improbable" rather than an "extremely improbable" event.

The same commenter further states that indication that a system is performing correctly is counter to flight deck design philosophy.

The FAA is not aware of a flight deck philosophy that does not keep the pilot informed of the correct response of essential and critical systems on the aircraft. Indeed, one of the primary needs for cockpit instrumentation is to keep the pilot informed of correct system operation. If the commenter is referring to the "dark cockpit" philosophy, the windshear warning is an alert annunciation, and the throttle advance is a part of that annunciation sequence.

Another commenter states that the captain of the airplane is in the best position to decide what to do with the throttles. The captain, not the "black box," is aware of meteorological conditions and other factors. It is this commenter's belief that windshear alerting devices should do just that—alert the crew; the pilot then makes a decision based on all of the information available. An automatic system that adds power when the captain has decided to abort only exacerbates the situation. If a pilot is near V_1 and decides to abort the takeoff, he should not have to fight the autothrottles. The commenter asserts that the automatic advance system is unnecessary since pilots are trained to advance power in a windshear encounter in order to escape.

The FAA agrees that the captain is the ultimate commander of the airplane. Any throttle advance or device must assist and not countermand the captain. For those infrequent situations where a takeoff abort may be necessary, the system must be easily and rapidly disengaged in order that the pilot does not have to fight the throttle control in addition to other necessary cockpit duties. In this regard, the system is easily disengaged via standard switches located on the No. 1 and No. 3 thrust levers. Either switch will independently disengage the system. Also, manually moving the throttles to the idle stop during takeoff roll will disable the windshear warning.

One commenter states that the requirement for the powerplant instruments to provide a means to indicate the automatic actuation of the fuel controls is inappropriate as it falls outside the scope of the application.

The FAA agrees, and this requirement has been removed from the final special condition.

Conclusion

This action affects only certain unusual or novel design features on the McDonnell Douglas MD–11 series airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of those features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to Douglas Aircraft Company as part of the type certification basis for the McDonnell Douglas MD–11 series airplanes incorporating a windshear-triggered autothrottle system.

1. All applicable requirements of part 25 and these special conditions must be met with no action by the crew to increase thrust for that portion of the windshear control system that advances engine thrust functioning normally as designed.

2. System Reliability Requirement. When the system is actuated during the takeoff interval between an airspeed of 80 knots during acceleration on the runway and an altitude of 400 feet above ground level (AGL), any reduction in thrust due to a malfunction of the system must be improbable.

3. Thrust Setting/System Operation. There must be no hazardous airplane characteristic or unsafe engine response when the system is actuated at any permissible reduced-thrust level, and with any permissible autothrottle operation to increase thrust, under any likely operating conditions.

4. Powerplant Instruments and Controls. In addition to the requirements of §§ 25.1141 and 25.1305 of the FAR, the System must be designed to:

a. Achieve the target thrust without exceeding engine operation limits and automatically reclamp throttles upon attainment of the target thrust.

b. Comply with the applicable V_{MC} requirements upon attainment of the target thrust.

c. Permit manual decrease or increase in thrust through the use of the power levers.

d. Provide a means to annunciate to the flightcrew, before reaching an airspeed of 80 knots, that the system has failed.

e. Prevent an autothrottle retard action until the airplane has reached an altitude of 400 feet AGL during takeoff, unless the action is pilot initiated.

f. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

g. Provide a means for the flightcrew to deactivate the windshear function by moving the throttles to the idle stop position.

h. Provide a means to indicate the automatic actuation of the throttles or any other means used to increase the thrust on all engines. Issued in Renton, Washington, on July 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19727 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-28-AD; Amendment 39-8356; AD 92-18-11]

Airworthiness Directives; Beech Models A36 and B36TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Models A36 and B36TC airplanes. This action requires sealing the cabin door upper hinge cavity. The Federal Aviation Administration (FAA) has received several reports of water leakage in this cavity on the affected airplanes, which could collect in the electrical wiring and inverted cover of the annunciator print board circuit and short out electrical circuits, including the circuit for operating the landing gear. The actions specified by this AD are intended to prevent failure of the landing gear circuit, which could result in the inability to extend the landing gear.

DATES: Effective October 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4122; Facsimile (316) 936-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Models A36 and B36TC airplanes was published in the **Federal Register** on May 11, 1992 (57 FR 20063). The action proposed to require sealing the cabin door upper hinge cavity in accordance with the instructions in Beech Service Bulletin No. 2437, dated April 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received from the manufacturer, Beech.

Beech states that there is an error in the serial number applicability of the AD, and that serial number EA-534 should be EA-524. The FAA concurs and has revised the AD accordingly.

In addition, Beech notes that the economic analysis paragraph in the preamble of the AD should mention that warranty credit for both parts and labor will be provided by the manufacturer. The FAA does not take warranty credit for labor into account when determining the cost of an AD upon the operators of the affected airplanes.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the serial number applicability and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 711 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $156,420.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-18-11 Beech: Amendment 39-8356; Docket No. 92-CE-28-AD.

Applicability: Model A36 airplanes (serial numbers E-1946, E-2104, and E-2111 through E-2682), and Model B36TC airplanes (serial numbers EA-320, and EA-389 through EA-524), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the landing gear circuit, which could result in the inability to extend the landing gear, accomplish the following:

(a) Seal the upper door upper hinge cavity in accordance with the Accomplishment Instructions section of Beech Service Bulletin No. 2437, dated April 1992.

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

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

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

(d) The modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2437, dated April 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8356) becomes effective on October 18, 1992.

Issued in Kansas City, Missouri, on August 13, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 92-19724 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-1]

Revocation of Transition Area; Lake Geneva, WI; Alteration of Transition Area; Delavan, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the 700 foot transition area established at Lake Geneva, WI, due to the deactivation of Americana Airport, previously named Playboy Airport. This action also revises the Delavan, WI, transition area description by deleting the words "excluding the Lake Geneva, WI, 700 foot transition area." No changes to the dimensions of the existing designated Delavan, WI, transition will result from this action.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 12, 1992, the Federal Aviation Administration proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot transition area established at Lake Geneva, WI, due to the deactivation of Americana Airport, previously named Playboy Airport, and to revise the published Delavan, WI, transition area description (57 FR 20216).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received from the City of Lake Geneva. The City of Lake Geneva objected to the revocation of the 700 foot transition area at Lake Geneva, WI, based on the possibility of reopening Americana Airport. The transition area at Lake Geneva, WI, was established to enhance safety for all users of the airspace by ensuring segregation of the aircraft using instrument flight rules (IFR) in instrument conditions from other aircraft operating in visual flight rules (VFR). When the deactivation of American Airport occurred the necessity for segregating IFR aircraft from VFR aircraft no longer existed and the transition area became unnecessary. If the airport was to reopen and the conditions for establishing a transition area were valid, at the appropriate times, the FAA would initiate action to establish a transition area.

Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Delavan, WI, transition area listed in this document will be published subsequently in the Handbook. The Lake Geneva, WI, transition area listed in this document will be removed subsequently from the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot transition area established at Lake Geneva, WI, due to the deactivation of Americana Airport, previously named Playboy Airport. This action also revises the published Delavan, WI, transition area description by deleting the words "excluding the Lake Delavan, WI, 700 foot transition area." No changes to the dimensions of the existing designated Delavan, WI, transition area will result from this action.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

Lake Geneva, WI [Removed]

* * * * *

AGL WI TA Delavan, WI [Revised]
Delavan, Lake Lawn Airport, WI
(lat. 42° 37' 55"N, long. 88° 36' 05"W)
That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Lake Lawn Airport.

* * * * *

Issued in Des Plaines, Illinois on July 21, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–19794 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B, Tylosin, Tylosin/Sulfamethazine—Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the reinstatement of approval of three new animal drug applications (NADA's) held by International Nutrition, Inc. Approval of the NADA's had been withdrawn at the request of the sponsor.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center For Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 1991 (56 FR 9622 and 9704), FDA published two documents reflecting its withdrawal of the approval of several NADA's as requested by their sponsors. Included were three NADA's sponsored by International Nutrition, Inc., 6664 L St., Omaha, NE 68117, specifically:
95–551 Tylosin (Tylan),
109–688 Hygromycin B (Hygromycin),
109–816 Tylosin/Sulfamethazine (Tylan Sulfa).
The withdrawal was effective March 18, 1991. By letter of March 13, 1991, the firm informed FDA that the request was in error and requested reinstatement of approval of the NADA's. In response to the firm's request, FDA reinstated its approval of the NADA's.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.274 [Amended]

2. Section 558.274 *Hygromycin B* is amended in paragraph (a)(2) by adding after "016968" the phrase "and 043733", in paragraph (a)(4) by adding "043733," after "017790," and in paragraph (c)(1), entries (i) and (ii) in the "Sponsor" column of the table by numerically adding "043733".

3. Section 558.625 is amended by adding paragraph (b)(3) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(3) To 043733: 20 and 40 grams per pound, paragraphs (f)(1)(i) through (vi) of this section.

* * * * *

§ 558.630 [Amended]

4. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by numerically adding "043733".

Dated: August 13, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–19735 Filed 8–18–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment, with certain exceptions, submitted by the State of Alaska as a modification to its permanent regulatory program (hereinafter referred to as the Alaska program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted to OSM on February 2, 1990, and addresses the following areas: permit application requirements, environmental resource information requirements, reclamation and operation plan, permit application review procedures, exploration activities, bonding requirements, performance standards, inspection and enforcement requirements, lands unsuitable for mining, and other provisions. The amendment revises the State program to be consistent with corresponding Federal standards required by SMCRA, incorporates the additional flexibility afforded by the revised Federal regulations, and improves the operational efficiency of Alaska's program.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On May 2, 1983, the Secretary of the Interior approved the Alaska program. Information pertinent to the general background, revisions and amendments to the Alaska program submission, as well as the Secretary's findings and the disposition of comments can be found in the March 23, 1983, **Federal Register** (48 FR 12274). Subsequent actions concerning the Alaska program and amendments to the program can be found at 30 CFR 902.15.

II. Submission of Proposed Amendment

By letter dated February 2, 1990, (Administrative Record No. AK–C–01), the State of Alaska submitted to OSM a proposed amendment to its program pursuant to SMCRA. The proposed

amendment was submitted in response to letters dated May 7, 1986, June 9, 1987, and December 16, 1988, sent by OSM in accordance with 30 CFR 732.17(d). By notice published in the February 14, 1990, **Federal Register** (55 FR 5226) OSM announced receipt of this proposed amendment and requested public comment on its adequacy (Administrative Record AK–C–05). The public comment period ended March 16, 1990.

By letter dated March 14, 1990, (Administrative Record No. AK–C–15) the Alaska Coal Association notified OSM of its opinion that certain portions of the proposed Alaska program amendment were not made available for adequate public review at the State level and requested that OSM extend the public comment period. On March 30, 1990, OSM published a notice in the **Federal Register** (55 FR 11958) that reopened the comment period for 15 days. The public comment period ended April 16, 1990. Since no requests for a public hearing were received, none was held.

The regulations that Alaska proposes to amend are: Article 3, General Permit Application Information Requirements; Article 4, Environmental Resource Information Requirements; Article 5, Reclamation and Operation Plan; Article 6, Processing of Permit Applications; Article 7, Permitting for Special Categories of Mining; Article 8, Exploration; Article 9, Small Operator Assistance Program; Article 10, Bonding; Article 11, Performance Standards; Article 12, Inspection and Enforcement; Article 13, Process for Identifying Land Unsuitable for Mining; and Article 17, General Provisions.

Alaska also submitted proposed policy statements addressing the following subjects: Policy Statement A, Maintenance of Records; Policy Statement B, Small Operator Assistance; Policy Statement C, Public Notice of Blasting; Policy Statement D, Surface Water Information; Policy Statement E, Scope of the Cumulative Hydrologic Impact Assessment; Policy Statement F, U.S. Fish and Wildlife Service Information Requests; and Policy Statement G, Determining Peak Discharge for Hydrologic Designs.

The amendment package also contains proposed Guidelines for Conducting Premining Vegetation Inventories and Determining Revegetation Success, and revised petition forms for designating lands as unsuitable for mining as well as terminating such designations.

Following a review of Alaska's proposed amendment, OSM notified the State on February 8, 1991, of concerns it had with the proposed regulations (Administrative Record No. AK–C–28). In a letter dated May 7, 1991, (Administrative Record No. AK–C–30) Alaska responded by submitting additional information to address some of the concerns raised by OSM. The additional explanatory information and revisions pertain to permit application requirements, environmental resource information requirements, reclamation and operation plan, permit application review procedures, exploration activities, performance standards, and general provisions. In the same May 7, 1991, document, Alaska stated that issues not addressed in the letter will be the subject of future amendatory proposals.

In a May 30, 1991 **Federal Register** notice (56 FR 24358) OSM announced receipt of the additional information and invited public comment on its adequacy. The public comment period closed on June 14, 1991.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that Alaska's amendment, with certain exceptions, as submitted by Alaska on February 2, 1990, and amended on May 7, 1991, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

1. *Alaska Regulations That are Substantively the Same as Federal Regulations*

Alaska proposes revisions to its rules that are substantively identical or similar to the counterpart Federal regulations, are not substantive in nature, add specificity without adversely affecting other aspects of the program, or adopt by reference an existing Federal regulation. Provisions that are not discussed in this rulemaking contain language that meets the above requirements. These State provisions, with the Federal regulation counterpart rule in brackets, are; General Application Requirements, 11 AAC 90.021(c), [30 CFR 773.15(a)(2)]; Identification of Interests and Compliance Information, 11 AAC 90.023(a)(1), (2) (3), (b)(1), and (2), [30 CFR 778.13]; Authority to Enter and Ownership Information, 11 AAC 90.025(a)(1), (2), (b) and (c), [30 CFR 778.13(e) and (f)]; Cultural and Historic Information, 11 AAC 90.041(a) and (b), [30 CFR 779.12(b)(2) and 30 CFR 783.12(b)(2)]; Hydrology and Geology, 11 AAC.043(b) and (c) [30 CFR 780.22(b)(1) and 30 CFR 784.22(b)(1)]; Geology Description, 11 AAC 90.045(b)(4), [30 CFR 780.22(b)(1) and 784.22(b)(1)]; Fish and Wildlife Information, 11 AAC 90.057, [30 CFR 780.16 and 30 CFR 784.21]; Operation Plan, 11 AAC 90.071(2)(D), [30 CFR 780.11(b)(4) and 30 CFR 784.11(b)(4)]; Operation Maps, Planviews, and Cross Sections, 11 AAC 90.077(b)(5), (b)(11), and (d), [30 CFR 780.14(b)(11), (c) and 30 CFR 784.23(b)(10) and (c)]; Fish and Wildlife Protection Plan, 11 AAC 90.081(a)(1), (2), (3), (b) and (c) [30 CFR 780.16(a), 30 CFR 784.21(a)(1)(i), 30 CFR 772.12(b)(9), 30 CFR 816.97(b) and 30 CFR 817.97]; Plan for the Protection of the Hydrologic Balance, 11 AAC 90.085(a)(1), (2), (3)(A), (B), (C), (D), and (E), (4), (b)(3) and (4), (c)(3), (4), (5)(A), (B), (C) and (D), [30 CFR 780.21 and 30 CFR 784.14]; Plan for Ponds, Impoundments, Dams, and Embankments, 11 AAC 90.089(a) and (c), [30 CFR 780.25(a) and CFR 784.16(a)]; Return of Coal Mine Waste to Abandoned Underground Workings, 11 AAC 90.099(a), [30 CFR 784.25(a)]; Subsidence Control Plan, 11 AAC 90.101(c)(1), (2)(A), (B), (C), (D), (E), (F), (3)(A), (B), (C) (4), (5)(A), (B), and (6), [30 CFR 784.20(h)]; Transfer, Sale or Assignment of Permit Rights, 11 AAC 90.119(d) and (e), [30 CFR 774.17(d)(1) and (e)(2)]; Areas Where Mining May Be Limited, 11 AAC 90.121(c), [30 CFR 761.12(e)(1)]; Commissioner's Findings, 11 AAC 90.125(a)(7), (8), (9), (10), (11), (12), and (13), [30 CFR 773.15(c)(11) and (12)]; Permit Conditions, 11 AAC 90.127(4), (5)(A), (B), (C), and (6), [30 CFR 773.17(e) and (g)]; Permit Revisions and Renewals, 11 AAC 90.129(a)(6), (7) and (8), [30 CFR 780.21(f)(4)]; Mountaintop Removal Mining, 11 AAC 90.141(a)(1), [30 CFR 785.14(c)(1)(i)(ii)]; Exploration that Substantially Disturbs the Natural Land Surface, 11 AAC 90.163(a)(2)(A), (B), (C), (D), (E), (F) (G), (b)(2), (3), and (c)(1), (2), (3)(A), and (B), [30 CFR 772.12(b)(9) and 30 CFR 772.12(a)]; Eligibility for Assistance, 11 AAC 90.173(a)(1), (2), and (3), [30 CFR 795.6(a)(4)]; Filing for Assistance, 11 AAC 90.175(4)(D), [30 CFR 795.7(d)(4)]; Qualified Laboratories, 11 AAC 90.181(a)(5)(A), (B) and (6), [30 CFR 795.10(a)(5)]; Applicant Liability, 11 AAC 90.185(a)(3), (4) and (5), [30 CFR 795.12(a)(4) and (5)]; Requirements for Specific Types of Bonds, 11 AAC 90.207(c)(5)(C), [30 CFR 800.21(c)(3)]; Bond Forfeiture, 11 AAC 90.213(g) and (h), [30 CFR 800.50(d)(1) and (2)]; Water Quality Standards, 11 AAC 90.323(a), (b), (c), and (d), [30 CFR 816.46 and 30 CFR 817.46]; Diversions and Conveyance of Flow, 11 AAC 90.325(b), (c), (d)(1), (2), (3) and (g)(3), [30 CFR 816.43(a)(2) and 30 CFR 817.43(a)(2)]; Stream Channel Diversion, 11 AAC 90.327(b)(2), [30 CFR 816.43(b)(4) and 30 CFR 817.43(b)(4)]; Siltation Structures, 11

AAC 90.331(b)(1), (2), (3), (c) (d)(2), (3), (4), (e), (f), and (g), [30 CFR 816.46(a)(1) and (3)]; Discharge Structures, 11 AAC 90.333, [30 CFR 816.47 and 30 CFR 817.47]; Impoundments, Design and Construction, 11 AAC 90.336(a), (b)(1) and (2), (c)(1), (2), (3), (4), (5), (6), (7), (8), (9), (d)(1), (2), (3), (e) and (f), [30 CFR 816.49(a) and 817.49(a)(5)(i)]; Impoundments, Inspections, 11 AAC 90.337(a), (b), (c)(1), (2), (3), (4), (5), (6), (7), (d), (e) and (g), [30 CFR 816.49(a)(10), (11), and (12)]; and 817.49(a)(10), (11) and (12)]; Permanent Impoundments, Criteria, 11 AAC 90.338(1), (2), (3), (4), (5), (6), (7), [30 CFR 816.49(b) and 30 CFR 817.49(b)]; Protection of Ground Water Recharge Capacity, 11 AAC 90.343, [30 CFR 816.41(b)(2)]; Surface and Ground Water Monitoring, 11 AAC 90.345(a), (b)(1), (2), (3), (4), (5), (c), (d), (2), (3), (4), (5), (6), (f), (g), (h) and (i), [30 CFR 780.21(i) and (j) and CFR 784.14(h) and (i)]; Discharge of Water into a Mine, 11 AAC 90.349(2)(A), [30 CFR 816.42 and 30 CFR 817.42]; Stream Buffer Zones, 11 AAC 90.353(a)(1), (2) and (3), [30 CFR 816.57(a)(1), (2) and 30 CFR 817.57(a)(1) and (2)]; Use of Explosives, 11 AAC 90.371(d)(1), (2), (3), (4), [30 CFR 816.61(d)(i), (d)(3) and (4) and 30 CFR 817.61(d)(i), (d)(3) and (d)(4)]; Preblasting Survey, 11 AAC 90.373(b), (c) and (d), [30 CFR 816.62(c), (d) and (e) and 30 CFR 817.62(c), (d) and (e)]; Public Notice of Blasting, 11 AAC 90.375(b), (e), (f), (g) and (h), [30 CFR 816.64(b)(1) and (2) and 30 CFR 817.64(a)]; Control of Adverse Effects of Blasting, 11 AAC 90.379(b), (c), (e), (f), (g), (h), (i) and (j) [30 CFR 816.67 and 30 CFR 817.67]; Seismographic Measurements, 11 AAC 90.381(a) and (b), [30 CFR 816.67(d)(3)(ii) and 30 CFR 817.67(d)(3)(ii)]; Disposal of Excess Spoil and Coal Mine Waste, 11 AAC 90.391(b), (e), (g), (i), (k), (l), (m)(1), (2), (3), (4), (5), (6), (n), (o), (p)(3), (4), (5), (6), (7), (q) and (r), [30 CFR 816.71(b), (e) and (f), 30 CFR 816.72(a) and (b), 30 CFR 817(b), (e), (f) and 30 CFR 817.72(a) and (b)]; Coal Mine Waste, General Requirements, 11 AAC 90.395(a)(1), (2), (3), (4), (5), and (b), [30 CFR 816.81(a) and 30 CFR 817.81(a)]; Disposal Area Site Inspections, 11 AAC 90.397(a), (b), (c)(1), (2), (3), (4), (5), (d), (e), (f) and (g), [30 CFR 816.71(h) and 30 CFR 817.71(h)]; Hazardous Coal Processing Waste, Water Control Measures, 11 AAC 90.399, [30 CFR 816.71(f) and 30 CFR 817.71(f)]; Coal Mine Waste, Refuse Piles, 11 AAC 90.401(a), (b)(1), (2), (3), (c), (d) and (e), [30 CFR 816.83(a)(2), (c)(3) and (4) and 30 CFR 817.83(a)(2), (c)(3) and (4)]; Coal Mine Waste, Fires, 11 AAC 90.403, [30 CFR 816.87(a) and 30 CFR 817.87(a)]; Burned Waste Removal, 11 AAC 90.405, [30 CFR 816.87(b) and 30 CFR 817.87(b)]; Coal Mine Waste, Dams and Embankments, 11 AAC 90.407(a), (b), (c), (d), (f), (g), (h) and (i), [30 CFR 816.84(a), (b)(1), (2) and 30 CFR 817.84(a), (b)(1) and (2)]; Return to Underground Workings, 11 AAC 90.409, [30 CFR 816.81(f) and 30 CFR 817.81(f)]; Contemporaneous Reclamation, 11 AAC 90.435, [30 CFR 816.100 and 30 CFR 817.100]; Timing Requirements for Backfilling and Grading, 11 AAC 90.441(a), (b) and (c), [30 CFR 816.102 and 30 CFR 817.102]; Backfilling and Grading, 11 AAC 90.443(a), (b), (c)(1)(A), (B), (C), (D), (E), (F), (e)(2), (3) and (4), (f), (g), (h), (i), (j) and (k), [30 CFR 816.102, 30 CFR 816.106, 30 CFR 817.102 and 30 CFR 817.106]; Revegetation, 11 AAC 90.451(b)(1) and (5), [30 CFR 816.111(b) and 30 CFR 817.111(b)]; Revegetation, Mulching, 11 AAC 90.455(1), (2), (3), and (4), [30 CFR 816.114 and 30 CFR 817.114]; Standards for Revegetation Success, 11 AAC 90.457(b) and (c)(5), [30 CFR 816.116(a)(2) and (b)(5) and 30 CFR 817.116(a)(2) and (b)(5)]; Individual Civil Penalties, 11 AAC 90.635(a), (b)(1), (2), (c), (d)(1), (2), (3), (e)(1), (2), (3), (f), (g) and (h), [30 CFR 724]; Initial Processing of Petitions, 11 AAC 90.703(e); [30 CFR 764.17(e)]; Notification and Request for Information, 11 AAC 90.705(a), (b), (c), (d) and (e), [30 CFR 764.15(b)(1)]; General Provisions, Applicability, 11 AAC 90.901(c), 30 CFR 700.11(b)]; Public Participation, 11 AAC 90.907(b) and (i), [30 CFR 773.13(d)(1) and (d)(3)(iii)]; Definitions, 11 AAC 90.911, (18) Coal Mine Waste, [30 CFR 701.5]; (19) Coal Processing Plant, [30 CFR 90.701.5]; (20) Coal Processing Waste, [30 CFR 701.5]; (21) Collateral Bond, [30 CFR 800.5(b)(5)]; (51) Head-of-hollow Fill, [30 CFR 701.5]; (110) Surface Coal Mining Operations, [30 CFR 700.5]; (118) Underground Development Waste, [30 CFR 701.5]; (122) Valley Fill, [30 CFR 701.5], Petition form to designate an area as unsuitable for surface coal mining.

The Director, therefore, finds that these proposed revisions to Alaska's regulations are no less effective than the corresponding Federal regulations and is approving them.

2. *General Application Requirements*

Alaska proposes to amend its rules at 11 AAC 90.021(c) by adding a requirement that a permit application include not only descriptions, designs, maps and cross sections, but "all assumptions and analyses * * * necessary to demonstrate that the proposed operation will" meet all of the applicable requirements of the State regulations concerning special categories of mining and performance standards. The Federal regulations at 30 CFR 777.11 provide requirements for application format and content that are similar to application information requirements at 11 AAC 90.021(c). While the Federal regulation does not specifically include the requirement that "assumptions and analyses" be included in the application, the general nature of 30 CFR 777.11(a)(1) that requires an application to contain current information would not preclude "all assumptions and analyses".

The Director finds that the proposed requirements at 11 AAC 90.021(c) are not in conflict with and are no less effective than the Federal regulations at 30 CFR 777.11(a)(1), and is approving the proposed changes.

3. *Identification of Interests and Compliance Information*

Alaska proposes to amend its regulations at 11 AAC 90.023(f)(3) by making changes to its rule to more specifically identify, as a part of the application process, those entities with which an applicant may be in an ownership or control relationship when listing all notices of violations received. The May 7, 1986, 30 CFR part 732 notification pointed out that the counterpart Federal regulation at 30 CFR 778.14(c) required the applicant to list all notices of violation received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant during the 3-year period preceding the application date. The Alaska rule required a list of violations for the applicant only. In this amendment, Alaska proposes to add "for all operations owned or controlled by the applicant". The proposed addition still does not meet the Federal intent in that violations issued to an affiliate or persons under common control with the applicant are not required to be listed. However, this point is moot because the Federal regulation at 30 CFR 778.14(c) was again changed on March 2, 1989, (54 FR 8982) as a result of subsequent litigation. Alaska was notified of this additional regulation change in a May 11, 1989, 30 CFR Part 732 notification. Alaska's February 2, 1990, proposed amendment does not address the relationship consistent with Federal regulations. Alaska proposes to add "for all operations owned or controlled by the applicant". Whereas, the Federal regulations at 30 CFR 778.14(c) specify an "operation owned or controlled by either the applicant or by any person who owns or controls the applicant".

The State was again notified of the requirement in a February 8, 1991, issue letter. In Alaska's May 7, 1991, reply to

OSM's issue letter, Alaska stated that they intended to place this issue on hold pending the outcome of current litigation. This is unacceptable since the Federal regulations at 30 CFR 732.17(e) list the conditions under which a State will be required to amend its program, and under which, by Federal law, OSM is required to notify States when it determines that such amendments are necessary.

The Director is not approving Alaska's proposed amendment at 11 AAC 90.023(f)(3) and is requiring Alaska to amend its program in a manner that satisfies OSM's May 11, 1989, 30 CFR 732 notification.

. Geology Description

Alaska proposes to amend its regulations at 11 AAC 90.045(a) by requiring an application to contain a description of the geology "within the proposed permit and adjacent area down to and including the first aquifer to be affected below the lowest coal seam to be mined". The Federal regulations at 30 CFR 780.22(b)(1) and 30 CFR 784.22(b)(1) require that each application include a description of the geology within the permit and adjacent areas "down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining".

The Director finds that 11 AAC 90.045(a) is less effective than the Federal regulations at 30 CFR 780.22(b)(1) and 30 CFR 784.22(b)(1), and is not approving Alaska's proposed rule. To be no less effective than the Federal regulations, Alaska is required to amend its rule at 11 AAC 90.045(a) to provide a description of the geology within the permit and adjacent areas to include the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining.

5. *Exploration That Substantially Disturbs the National Land Surface*

Alaska proposes to amend its regulations at 11 AAC 90.163(a), (b) and (c) by adding requirements that must be met by applicants who intend to extract more than 250 tons of coal during exploration outside the permit area or on lands designated as unsuitable for surface mining.

Alaska's proposed rules are substantively the same as the Federal regulation requirements at 30 CFR 772.14 with the following exceptions. At 11 AAC 90.163(b)(1), Alaska proposes to require coal exploration permit applicants to demonstrate that

> coal testing is necessary for the development of a surface coal mining and reclamation operation for which a permit application will be submitted * * *

The corresponding Federal regulation at 30 CFR 772.14(b) provides that an applicant must demonstrate that

> coal testing is necessary for the development of a surface coal mining and reclamation operation for which a * * * "permit application is to be submitted in the near future * * *".

This Federal requirement that a "permit application is to be submitted in the near future" allows valid test burning of coal, while eliminating abusive practices whereby testing is used as a means to circumvent the prohibition of commercial use or sale of coal obtained during exploration by requiring that the operator affirm that a surface coal mining permit application will be submitted within a reasonable time.

Additionally, the Federal regulations at 30 CFR 772.14(b)(3) and (4) require that an application contain evidence that sufficient reserves of coal are available to demonstrate that the amount of coal to be removed for future use or sale is not the total reserve, but is a sampling of a larger reserve. The Federal rules further require that an application contain an explanation as to why the extraction of this amount of coal is necessary, and why other means of exploration are not adequate. The State's proposed rulemaking does not address these issues.

The Director finds that 11 AAC 90.163(a), (b) and (c) are no less effective than the Federal regulations at 30 CFR 772.14(b)(1), (3) and (4), and is approving the changes. However, the Director is requiring Alaska to further amend its rule to provide that an operator affirm that a permit application is to be submitted in the near future, as required at 30 CFR 772.14(b); to include provisions in the application for evidence to be presented that sufficient coal reserves are available for future use or sale; and that an application for an exploration permit to remove more than 250 tons of coal contain a statement of why extraction of more than that amount is necessary.

6. *Qualified Laboratories*

Alaska is proposing to amend its regulations at 11 AAC 90.181(a)(5)(A) by referencing the 17th edition of the Standard Methods for the Examination of Water and Waste Water publication as a standard by which water quality analyses will be performed. The Federal regulations at 30 CFR 780.21(a) et al., reference the 15th edition of the Standard Methods for the Examination of Water and Waste Water. While the State is correct in citing the 17th edition of the publication as the latest edition which may be referenced, that edition is not consistently referenced throughout the proposed regulations.

The Director finds that the proposed amendment at 11 AAC 90.181(a)(5)(A) is no less effective than the Federal rule. However, to be consistent throughout its rules, Alaska must further amend its regulations by including references to the 17th edition of the publication at 11 AAC 90.043, .047, .049, and .089.

7. *Removal of Topsoil*

Alaska proposes to amend its rules at 11 AAC 90.311(g) by withdrawing their intent to repeal subsection (g) which provides the commissioner the discretion to authorize an exemption from the requirements for the removal, stockpiling, and redistribution of topsoil and other materials. The rule allows the material to be handled as part of the backfilling and grading process when specific soils are not suitable for revegetation. The Federal regulations at 30 CFR 816.12 (a)(ii) do not provide the regulatory authority with the discretion to remove topsoil or topsoil and subsoil mixtures for use as backfill material, and specifically requires the removal and segregation of such materials.

By way of a 30 CFR 732 notification dated May 7, 1986, (Administrative Record No. AK–C–02) the State was notified of the deficiency and was asked to delete the provision. In their November 10, 1987, informal response to the 30 CFR 732 notification, the provision was deleted. Subsequently, the State reconsidered the decision to repeal 11 AAC 90.311(g) in response to comments received during public hearings, and requested an opinion from OSM as to whether the same flexibility to handle soils as part of the backfilling and grading process would exist without subsection (g). In a letter dated August 1, 1989, OSM indicated that the same flexibility would exist without subsection (g). As a result, in its formally-proposed program amendment package dated February 2, 1990, (Administrative Record No. AK–C–01) the State appropriately deleted subsection (g) of 11 AAC 90.311. In a March 14, 1990, letter to OSM, (Administrative Record No. AK–C–16) the State again reconsidered the decision to repeal the subsection and determined that it would be better served to retain it since it speaks to Alaska permafrost conditions and

clarifies the handling of soils when specific soils are of poor or undesirable quality and are not suitable for revegetation. OSM's issue letter dated February 8, 1991, (Administrative Record No. AK–C–28) reiterated that the desired flexibility existed elsewhere in the State's regulations addressing topsoil, specifically at 11 AAC 90.311(a) and 11 AAC 90.313(a), and again requested that subsection (g) be deleted. In Alaska's May 13, 1991, response to OSM's February 8, 1991, letter, the State continues to contend that 11 AAC 90.311(g) addresses a condition unique to Alaska, and insists on withdrawing the proposed repeal of the subsection.

The Director finds that 11 AAC 90.311(g) is less effective than the Federal regulation counterpart and, therefore, is not approving Alaska's proposed amendment. To be no less effective than the Federal regulation, Alaska is required to amend its rules at 11 AAC 90.311(g) to delete the subsection.

8. *Siltation Structures*

(a) Alaska proposes to amend its regulations at 11 AAC 90.331(a) by defining siltation structures "as sediment ponds and other chemical or mechanical treatment facilities with a point source discharge". The Federal rules at 30 CFR 816.46(a)(1) and 817.46(a)(1) define siltation structure as "a sedimentation pond, a series of sedimentation ponds, or other treatment facility". The proposed amendment does not restrict chemical and mechanical treatments to those used to prevent additional sediment contributions to stream flow. So, regardless of their specific use, all chemical treatments and mechanical structures with a point source discharge are considered as siltation structures, subject to the performance standards for siltation structures.

Alaska also proposes to amend its regulations at 11 AAC 90.331(b), (c), (d), (e), (f) and (g) by providing for the design, construction, and maintenance of siltation structures and sediment ponds. The State also proposes provisions for siltation structure removal, revegetation, pond removal or retention, operator compliance with applicable State and Federal water quality laws and regulations, and exemptions. Alaska's proposed amendment is substantively similar to the Federal regulation at 30 CFR 816.46.

However, Alaska does not propose a definition of "other treatment facilities" in its program. The Federal rules at 30 CFR 816.46(a)(3) and 817.46(a)(3) define other treatment facilities as "any chemical treatments, such as flocculation, or mechanical structures, such as clarifiers, that have a point-source discharge and that are used to prevent additional contribution of suspended solids to stream flow or runoff outside the permit area". Alaska also uses the term "treatment facility" at 11 AAC 90.325(a) and 11 AAC 90.341(b)(2); "water treatment facilities" at 11 AAC 90.321(d) and 11 AAC 90.327(c); and "erosion control structures" at 11 AAC 90.327(b)(1). These terms are not defined and, therefore, it is not clear whether they refer to treatments and structures that are different from the chemical treatments and mechanical structures as defined by Alaska at 11 AAC 90.331(a) as siltation structures. It is also not clear if these variously named facilities must meet any performance standards.

(b) Additionally, the proposed State rules lack counterpart language to the Federal requirements at 30 CFR 816.46(c)(1)(iii)(C) which require that sedimentation ponds are to be designed, constructed, and maintained to "Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of § 816.42 will be met". The State relies solely on sedimentation pond designs that will meet effluent limitations and water quality standards, with no design event or demonstration of a lesser event.

As discussed in the preamble language to the final rules at 30 CFR 816.46(c)(1)(iii)(C) the 10-year, 24-hour design event is a requirement unless demonstrated otherwise. "EPA, in its final effluent limitation rule for coal mining point source category (40 CFR 434), requires that specific settleable solids (SS) limitations be met for discharges caused by any precipitation event up to a 10-year, 24-hour event. (See 40 CFR 434.63 (47 FR 45382, October 13, 1982)). These limitations are based on the performance of properly designed sedimentation ponds capable of containing the runoff from a 10-year, 24-hour precipitation event. Therefore, unless the operator can satisfy the regulatory authority that a pond designed for a lesser event will satisfy EPA effluent limitations, a pond designed for a 10-year, 24-hour event will be required."

"Because the available data indicate that a sedimentation pond designed to contain the 10-year, 24-hour event will meet the EPA's limitations, OSM is using this event for its requirement for design of sedimentation ponds" (See 48 FR 44042, September 26, 1983).

Also, during its review, OSM noted that at 11 AAC 90–331(g), the State's proposed language omitted the word "drainage" from the phrase "disturbed area within the total disturbed area * * *" It should read instead, "disturbed drainage area within the total disturbed areas * * *" as contained at 30 CFR 816.46(e)(1).

Alaska also proposes to amend its regulations at 11 AAC 90.331(b)(1) by requiring that siltation structures be constructed "before beginning any disturbance of the area to be drained into the structure," while the Federal regulations at 30 CFR 816.46(b)(3) require that siltation structures shall be constructed "before beginning any surface mining activities in that area." The language of the State proposal tracks the language of the 1979 Federal regulations, which were revised to the current form in 1983 (see 44 FR 15395, March 13, 1979, and 48 FR 44051, September 28, 1983). Although textual changes occurred, the 1983 revision of the Federal regulations resulted in no substantive change to the effect of the Federal regulations. The State provision, based on the 1979 version of the Federal regulations is, thus, no less effective than the current Federal regulations.

The Director finds that 11 AAC 90.331 is no less effective than the Federal regulations at 30 CFR 816.46 and is approving the changes. However, the Director is requiring Alaska to further amend its rule to define "other treatment facilities"; to clarify the relationship of "treatment facility(ies)", "water treatment facilities", and "erosion control structures", relative to the term "siltation structure"; and to include the Federal requirements for a design event or demonstration of lesser events as contained at 30 CFR 816.46(c)(1)(iii)(C), in a manner that is no less effective than the Federal program requirements.

Also, with this rule notice the Director is notifying the State of the editorial error, and the need to include the word "drainage" at 11 AAC 331(g), as discussed above.

9. *Impoundments, Inspections*

Alaska proposes to amend its rules at 11 AAC 90.337(f) by requiring all impoundments to be examined by a qualified person on a bi-monthly basis during the seasonal period that the impoundment is receiving or discharging runoff. The word "bi-monthly" can mean "once every two months", it can also mean "occurring twice a month". With either meaning, the proposed examination frequency is greater than that required by the Federal regulations

at 30 CFR 816.49(a)(11) that require examinations of impoundments not subject to 30 CFR 77.216–3, at least quarterly. However, in the State proposal, examinations are limited to a vaguely defined "seasonal" portion of the year, without adequate justification as to why the limitation on impoundment examinations is warranted.

The Director finds that Alaska's proposed change at 11 AAC 90.337(f) is less effective than the Federal counterpart and is not approving it. Alaska is required to amend its rules at 11 AAC 90.337(f) to require that all impoundments be examined on a basis that is no less effective than the Federal regulation requirements at 30 CFR 816.49(a)(11).

10. *Surface and Ground Water Monitoring*

Alaska proposes to amend its regulations at 11 AAC 90.345 by repealing the section and readopting new language. At subsection (e) the State proposes that, "surface water monitoring must be adequate to measure accurately and record water quantity and quality of the discharges from the permit area. All streams, lakes, and other surface water bodies that may be impacted by the mining operation or which will receive discharges must be monitored". The Federal regulations at 30 CFR 780.21(j)(2)(i) and 30 CFR 784.14(i)(2)(i) specify that monitoring shall take place "at all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations * * * ". Unlike the Federal regulation, the State does not specify monitoring in upstream locations.

The Director finds that Alaska's proposed rule at 11 AAC 90.345(e) is no less effective than the Federal counterpart, with the exception that the State rule does not require "upstream" locations to be monitored. The Director is approving Alaska's proposed change with the requirement that Alaska further amend the regulations to have the surface-water monitoring plan include both upstream and downstream monitoring locations in all receiving bodies of water.

11. *Disposal of Excess Spoil and Coal Mine Waste*

Alaska proposes to amend its regulations at 11 AAC 90.391(h) by allowing the disposal of coal mine waste in excess spoil fills if the "operator demonstrates" that the placement is consistent with the design stability of the fill. Federal regulations at 30 CFR 816.71(i) provide that coal mine waste may be disposed of in excess spoil fills if "approved by the regulatory authority". While a demonstration by an operator may be construed to mean something requiring approval, it requires an interpretation and lacks the clarity and force of a specific approval by the regulatory authority.

The Director finds that Alaska's proposed rule at 11 AAC 90.391(h) is less effective than the Federal regulation at 30 CFR 816.71(i), and is not approving the proposed change. To be no less effective than the Federal requirement, Alaska is required to amend its regulations by requiring that the actions set forth in subsection (h) of 11 AAC 90.391 be approved by the regulatory authority.

12. *Coal Mine Waste, Dams, and Embankments*

Alaska proposes to amend its regulations at 11 AAC 90.407(e) by requiring that coal mine waste impoundment structures have a combination of principal and emergency spillways that can safely pass a peak 100-year discharge, or larger event if required under Mine Safety and Health Administration (MSHA) rules at 30 CFR 77.216. The Federal regulations at 30 CFR 816.84(b)(20 require that coal mine waste impounding structures meeting the criteria of 30 CFR 77.216(a) have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the maximum runoff from the 6-hour probable maximum precipitation (PMP) event, or greater event as specified by the regulatory authority.

Alaska's proposed rule differs from the Federal regulation requirement in that its combination of principal and emergency spillways must be designed and constructed to pass safely, the peak 100-year discharge, whereas, the federal regulations require the spillway to pass a PMP of a 6-hour storm event.

The 6-hour PMP event is, in general, significantly larger than the 100 year event. As discussed in the October 27, 1988, Preamble to the Federal regulations at 30 CFR 816.84 (53 FR 43603):

> The design precipitation event is increased from a 100-year, 6-hour event to the probably maximum precipitation event (PMP) of a 6-hour duration event in order not to conflict with MSHA guidelines. The PMP is the amount of rainfall that has been determined by meteorologists to represent the maximum storm potential that can be expected for any specific area and in every instance in greater than a 100-year 6-hour storm".

The peak 100-year discharge proposed by Alaska does not include both the storm frequency and the duration that is necessary to specify the severity of a precipitation event, and is therefore, not equivalent to or greater than the maximum runoff from the 6-hour PMP event. The October 27, 1988, Preamble continues to state:

> OSMRE does not defer to MSHA in meeting its statutory responsibility. OSMRE has selected the PMP storm for the design of coal mine waste impounding structure spillways to provide protection to society and the environment in line with the mandate of SMCRA. Also, the minimum design storm in MSHA guidelines applies to both water and coal mine waste impounding structures and, thus, the MSHA guidelines address a wider range of design storms.

The Director finds that 11 AAC 90.407(e) is less effective than the Federal regulation at 30 CFR 816.84(b)(2). Therefore, the Director is not approving Alaska's proposed rule. Alaska is required to amend its rules at 11 AAC 90.407(e) to include a precipitation event no less effective than that of the corresponding Federal regulation, and to require the use of at least the 6-hour PMP event for structures meeting the criteria of 30 CFR 77.216(a).

13. *Protection of Fish and Wildlife*

Alaska proposes to amend its regulations at 11 AAC 90.423(b) by requiring consultation with "appropriate government agencies" before the commissioner determines whether and under what conditions an operator may proceed, after reporting the presence of a listed endangered or threatened species. The Federal regulations at 30 CFR 816.97(b) require regulatory authorities to consult with the appropriate State and Federal fish and wildlife agencies prior to making a determination as to whether and under what conditions an operator may continue with mining activities.

The wording of the State's proposed language is vague in that it does not specify that consultation with Federal and State fish and wildlife agencies will occur. While the State may wish to consult with other government agencies, regulatory agencies are required, under 30 CFR 816.97(b), to determine the scope and level of detail of resource information in consultation with State and Federal fish and wildlife agencies.

The Director finds that Alaska's regulation at 11 AAC 90.423(b) is less effective than the Federal counterpart at 30 CFR 816.97(b) and is not approving it. To be no less effective than the Federal

regulation, Alaska is required to #amend its rules at 11 AAC 90.423(b), to make consultation with Federal and State fish and wildlife agencies mandatory.

14. *Backfilling and Grading*

Alaska is proposing to amend its regulations at 11 AAC 90.443(d) by adding requirements for the handling and placing of spoil when reclaiming areas disturbed by a mining operation. Specifically, "Spoil shall be returned to the mined-out area, except for excess spoil disposed of in accordance with 11 AAC 90.391, and except for spoil necessary to blend regraded areas into the surrounding terrain". The Federal regulations at 30 CFR 816.102(b) require that, "Spoil, except excess spoil disposed of in accordance with Section 816.71 through 816.74, shall be returned to the mined-out area", as does the proposed Alaska rule. However, 30 CFR 816.102(d) allows that "Spoil may be placed on the area outside the mined-out area in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met". These requirements include the removal of all vegetative and organic material from the area; the removal, segregation, storage, and redistribution of the topsoil on the area; and the backfilling and grading of the spoil in accordance with requirements.

Alaska's proposed rule does not specify that blending spoil into the surrounding terrain outside the mined-out area is allowed only in non-steep slope areas, and then only if all vegetative and organic material is removed and State performance standards met.

The Director finds that Alaska's regulation at 11 AAC 90.443(d) is less effective than the Federal counterpart at 30 CFR 816.102(d) and is, therefore, not approving it. To be no less effective than the Federal regulation, Alaska is required to amend its rules at 11 AAC 90.443(d) to provide for the blending of spoil into the surrounding terrain in non-steep slope areas only, and to provide for the removal of all vegetative and organic material as a requirement for allowing spoil to be placed on the area outside the mined-out area.

15. *Backfilling and Grading*

Alaska proposes to amend its regulations at 11 AAC 90.443(e)(1) by addressing a requirement for the elimination of highwalls, regrading, and the handling of spoil in areas that have been previously mined. "All spoil generated by the remining operation and other spoil reasonably available in the immediate vicinity must be used to backfill the area". The Federal regulation at 30 CFR 816.106(b)(1) requires that all spoil generated by the remining operation and any other reasonably available spoil be used to backfill the area. It also requires that spoil in the immediate vicinity of the remining operation be included within the permit area as reasonably available spoil.

Alaska's proposed rule does not require that spoil in the immediate vicinity of a remining operation be considered as reasonably available spoil, and be included within the permit area.

The Director finds that the State's proposed rule at 11 AAC 90.443(e)(1) is less effective than the Federal counterpart regulation in that it would not require spoil in the immediate vicinity to be included in the permit area. To be no less effective than the Federal regulation, Alaska is required to further amend its regulations by requiring that spoil in the immediate vicinity of the remining operation be included in the permit area.

16. *Standards for Revegetation Success for Fish and Wildlife Habitat, Recreation, Shelterbelts, or Forest Products*

The State proposes to amend its regulations at 11 AAC 90.457(c)(3) by specifying the conditions that must be met to satisfy the requirements for determining standards for success for fish and wildlife habitat, recreation, shelterbelts, or forest products. The proposed rule is similar to the Federal regulations at 30 CFR 816.116(b)(3)(i) and 30 CFR 817.116(b)(3)(i) that require minimum stocking and planting arrangements for the above land uses. However, the Federal regulations additionally require consultation and approval of the stocking and planting arrangements by the State agencies responsible for the administration of forestry and wildlife programs. In its proposed rule, the State does not address the required consultation and approval provisions.

The Director finds that Alaska's proposed rule at 11 AAC 90.457(c)(3) is less effective than the Federal counterpart regulation, and is not approving it. To be no less effective than the Federal regulations, Alaska is required to further amend its proposed rule at 11 AAC 90.457(c)(3) by adding provisions for consultation with and approval by State forestry and wildlife agencies, of the minimum planting and stocking arrangements as specified by the regulatory authority.

17. *Definition of Previously Mined Area*

Alaska proposes to amend its regulations at 11 AAC 90.911(79) by adding a definition of previously mined area to read, "previously mined area means land previously mined on which there were no surface coal mining operations subject to the standards of the Surface Mining Control and Reclamation Act of 1977". The State's proposed definition of previously mined area is identical to the corresponding Federal definition at (30 CFR 701.5).

However, in the case of *National Wildlife Federation* v. *Lujan*, 21 ERC 1193, 14 ELR 20617 (D.D.C. February 12, 1990), (hereinafter referred to as *National Wildlife Federation)*, the court addressed two concerns pertaining to the Federal definition. The first was whether "previously mined" means that mining occurred (1) before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important because pursuant to 30 CFR 816.106(b), 817.106(b), and 819.19(b), operators remining previously mined areas do not need to completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do so. Rather, in such situations, the operator's responsibility is to eliminate the highwalls only to the "maximum extent technically practical." Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then to leave the area only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

In *National Wildlife Federation*, the court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue". Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured.".

With respect to the second issue, the court held, in *National Wildlife Federation*, that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible". Accordingly, the court remanded "the definition of previously

mined area to the Secretary to correct both of the flaws identified above".

Although OSM has not yet actually suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Alaska's proposed definition. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on the above discussion and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws identified" in the decision, the Director finds that to the extent Alaska's proposed definition of "previously mined area" at 11 AAC 90.911(79), (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed, such definition is less stringent than the general provisions of SMCRA.

The Director will, in the future, and pursuant to 30 CFR 732.17(d) and (e), notify Alaska of regulatory changes needed to amend this definition.

18. *Standards for Revegetation Success*

The Federal regulation at 30 CFR 816.116(a)(1) requires the State to select standards for success and valid sampling techniques for measuring success for inclusion in the State program. The Preamble to this Federal regulation (48 FR 40160, September 2, 1983) advises that the sampling techniques may appear as a rule or as a guideline that is incorporated into the regulatory authority are subject to review and public comment.

Alaska proposes to provide guidance entitled "Guideline for Conducting Premining Vegetation Inventories and Determining Revegetation Success" to assist permit applicants in designing appropriate vegetation sampling programs and in proposing revegetation success standards. OSM's review of the proposed guidelines identified a lack of specificity and consistency in the use of sampling methods as required at 30 CFR 816.116(a)(1). The State needs to specify sampling techniques for each parameter to be measured for revegetation success and, if needed, different techniques within each parameter for differences in vegetative structure (e.g., measuring cover for tundra versus shrubland types). The State may identify as many techniques as desired. However, the conditions under which they will be employed should be identified. Also, some of the mathematical formulas identified in the document were incomplete. Some of the symbols were omitted (e.g. square root, divided by, means, summation, etc.).

Until approved by OSM, Alaska's guidelines cannot be used to supplement or otherwise support the State's revegetation regulations at 11 AAC 90.457. The Director is not approving the proposed guidelines and is requiring Alaska to resubmit proposed guidelines in order to meet the requirements of 30 CFR 816.116(a)(1).

19. *Policy Statements*

By letter dated July 10, 1986, Alaska expressed a preference for dealing with certain issues as policy commitments rather than further expanding their regulations. In an October 7, 1986, correspondence to the State, OSM commented on a limited use of policy statements in lieu of revised regulations to address identified State program deficiencies. Five specific Federal regulation citations were given as candidates for being satisfied by policy statements instead of State regulations. If the State chose to address certain deficiencies through the development of policy statements, then the following requirements were to be met: (1) The requirements being implemented or enforced should be written in very specific terms; (2) Operators must clearly understand their obligations, as well as the repercussions of not complying with the provisions addressed; (3) Each policy statement should contain specific language concerning the State's method for enforcing the requirements being addressed.

Alaska is proposing seven policy statements in this program amendment. Of the five Federal regulations previously identified by OSM in its October 7, 1986, letter, Alaska submitted proposed policy for three. They are Policy Statements: A, Maintenance of Records; B, Small Operator Assistance; and D, Surface Water Information. The remaining four policies proposed by Alaska address: C, Public Notice of Blasting; E, Scope of the Cumulative Hydrologic Impact Assessment; F, United States Fish and Wildlife Service Information Requests; and G, Determining Peak Discharge for Hydrologic Designs. The proposed policy statements that place requirements on an operator do not fulfill the requirement concerning the State's method of enforcement. Instead Alaska provides that, "Since these policy statements do not directly alter the responsibilities of a permit applicant or operator, it is not necessary to define procedures for enforcement of these policies". Alaska further states that, "These policy statements relate only to internal management of the State, and to the interpretation of existing regulatory provisions where the commissioner has discretion".

The proposed policy statements submitted by Alaska would provide the following:

Policy Statement A: Maintenance of Records

Alaska would maintain copies of inspection reports, notices of violation cessation orders, and related records, reports, findings and decisions for at least five years after a performance bond release. The information would be made available to the public for review and copying.

Policy Statement B: Small Operator Assistance

The State proposes that if a direct or indirect relationship exists between an applicant and relatives or family members, the coal produced by operations owned by these relatives will be attributed to the applicant.

Policy Statement C: Public Notice of Blasting

The State would publish notices of blasting schedules in local newspapers and would provide for other alternative methods of notification, such as radio contact, and the posting of notices.

Policy Statement D: Surface Water Information

If there is a potential for acid drainage from a proposed mining operation, Alaska would require data on the baseline alkalinity of surface water bodies. The State does not require the collection of baseline acidity information, nor does it require the collection of baseline information on seasonal flow rates as part of the description of water quantity, as does the Federal regulation.

Policy Statement E: Scope of the Cumulative Hydrologic Impact Assessment

In conducting cumulative hydrologic impact assessments, the Commissioner would consider all areas, including the permit area, where the impacts from the proposed operations may interact with the impacts of all anticipated mining or surface and ground-water systems. Unlike the Federal regulation, Alaska does not require that an application for a permit revision be reviewed to

determine whether a new or updated CHIA is needed.

Policy Statement F: United States Fish and Wildlife Service Information Requests

Alaska would provide to the United States Fish and Wildlife Service, information pertaining to fish and wildlife resources or the fish and wildlife protection plan, for review and comment. The State would respond within ten days of receipt of a request from the Service.

Policy Statement G: Determining Peak Discharge for Hydrologic Designs

The commissioner would determine whether pond spillways, ditches, diversions, and similar structures have been designed to pass the peak discharge with the recurrence interval specified in the applicable regulatory standard. The permit applicant would be required, in the permit application, to affirmatively demonstrate the assumptions or analyses which document that the selected design event will produce a discharge at least equal to the peak discharge as specified in the applicable regulation.

A key requirement for any state that wishes to regulate surface coal mining within its boundaries is to provide the ability to enforce its program. Such enforcement ability is clearly evident when a state enacts statutory and regulatory requirements. The use of other documents, such as policy statements, must also carry a clear ability to enforce requirements, whether they are discretionary or as aids to internal management.

Alaska has not demonstrated such ability with regard to their policy statements. The Director, therefore cannot approve the statements and is requiring that Alaska provide policy statements that satisfy the requirements of OSM's October 7, 1986, letter, or to provide regulations that are no less effective than the counterpart Federal regulations.

20. *Petitions for Lands Unsuitable for Surface Coal Mining*

Alaska proposes two petition forms that may be submitted by any person, organization, or municipality concerning lands unsuitable. The first form is a petition to designate an area as unsuitable for surface coal mining. The second form is a petition to terminate the designation of an area as unsuitable for surface coal mining. The forms are being submitted to meet requirements of Federal regulations at 30 CFR 764.13(b) and (c) concerning the State's process for designating areas unsuitable for surface coal mining operations.

The State's proposed designation petition form includes the criteria to be used for designating lands unsuitable, and requests allegations of fact and supporting evidence that tends to support the allegation for the specific mining operation, if known. It also requests the notarized signature of the petitioner, and provides for the regulatory authority to request supplementary information as needed. The Federal regulations at 30 CFR 764.13(b) require that the petition process contain these same elements, and gives the regulatory authority the latitude to determine what other information if necessary.

Alaska also proposes a termination of designation petition form designed to allow any person, organization or municipality to petition the State to terminate an unsuitability designation. The Federal regulations at 30 CFR 764.13(c) provide for petitions to terminate an unsuitability designation to be received by the regulatory authority.

During OSM's review of the form, several problems were discovered. The first page of the form (page 6 of the petition package) contains an introductory paragraph describing what is required to terminate a designation. A part of the paragraph reads, "For information purposes, the criteria on which a designation may be based and their associated definitions have been composited from the Statute and its related regulations and included on the last page of this form". It should read instead, "* * * the criteria upon which a designation may be terminated * * *". The last page of the form contains unsuitability designation information rather than criteria for terminating a designation.

The Director finds that the proposed petition form for designating lands as unsuitable for all or certain types of surface coal mining meets the intent of the Federal regulation at 30 CFR 764.13(a), and is approving it.

The Director further finds that the proposed petition form to terminate an unsuitability designation does not meet the intent of the Federal regulation at 30 CFR 764.13(c) and is not approving it. Alaska is required to further amend the petition form to address the termination of an unsuitability designation in the areas described above.

IV. Public and Agency Comments

1. *Public Comments*

For a complete history of the opportunity provided to the public to comment on the proposed amendment, please refer to the portion of this notice entitled "Submission of Amendment".

The Alaska Coal Association, in addition to requesting an extension of the comment period, indicated that there was some disagreement as to the actual application to be made of the proposed policy statements. The association provided no position either for or against the policy statements.

Both the Alaska Coal Association (Administrative Record No. AK C–15), and comments from the Usibelli Coal Mine, Inc. (Administrative Record No. AK C–21) noted that the State did not intend to delete 11 AAC 90.311(g) that addresses removal of topsoil from the Alaska program. The provision was reinstated by Alaska in its May 7, 1991, reply to OSM's March 14, 1991, letter that identified concerns it had with the proposed amendment.

The commenter also questioned Alaska's use of policy statements; more from the aspect of being precedent setting, rather than their content, and noted that the State notified the commenter that the policy statements were guidelines only, and would not be applied or administered with the force of regulation or statute. If that is not the case, the commenter advises that OSM will need to remand the policy statements back to the State because they did not go through a formal comment period that proposed regulations or amendments are subject to in Alaska.

The Director notes that the public comment period was reopened for 15 days beginning March 30, 1990, and included additional time for the public to review the policy statements. However, since the policy statements were not approved (see finding III, No. 19, of this notice) Alaska is required to re-evaluate the policy statements. Therefore, an opportunity for further public comment on these statements will be afforded.

The commenter offered several suggestions and editorial changes to the "Guideline for Conducting Premining Vegetation Inventories and Determining Revegetation Success".

Non-editorial comments included: the Motyka or Sorenson's Index of similarity for use in reference areas lacks an element that addresses the absence of a statistical criterion to determine if a reference area is similar to a native vegetation type, and that an allowance could be made to use a multivariate t-test or equivalent. Use of systematic points for cover (in conjunction with a species list) is adaptable to most vegetation types by changing the length of transect and

distance between points. Line intercept is well-suited for total crown cover of trees and shrubs, but is tedious and cumbersome for use in most multi-layered vegetation in Alaska. Productivity is probably best handled by rectangular-shaped quadrants by varying sizes, depending on the vegetation's scale of pattern, and most double-sampling techniques have too broad a confidence interval to achieve sampling adequacy in Alaska.

The above comments are duly noted. However, since the Director is not approving Alaska's proposed "Guideline for Conducting Premining Vegetation Inventories and Determining Revegetation Success", and is requiring Alaska to resubmit the guideline (see Finding No. 18, of this notice) an opportunity exists for consideration of the above by Alaska in its future rulemaking actions and subsequent OSM review.

2. *Agency Comments*

Pursuant to section 503(b) of SMCRA and 30 CFR 732.27(h)(11)(i), comments were solicited from various Federal and State agencies with an actual or potential interest in the Alaska State program. A discussion of the comment follows.

The Bureau of Mines reviewed and commented upon the proposed amendments. They offered an editorial change, one general comment, and two specific comments (Administrative Record No. AK C–17). The general comment suggested the need for a legal review of the document by a "pro-mining" attorney or legal foundation, since it is a legal instrument. The U.S. Department of the Interior, Office of the Solicitor is required to review and surname all state program amendments, thus ensuring the legal adequacy of State program amendment documents.

The Bureau also inquired as to whether there are any limits which can or should be placed on how far off the proposed permit area an operator is responsible for in protecting the hydrologic balance of a proposed mining operation (11 AAC 90.085(a)(2). OSM notes that boundaries must be established for each permit application area on a case by case basis when determining the impacts of a mining operation on the hydrology of an area because of a number of factors that must be considered, such as the number, size and location of other mines, watershed data, use of aquifers, the geology of an area, and so on. As a part of the permit application process, applicants must furnish information on the probable hydrologic consequences of proposed mining operations on the permit and adjacent areas. The regulatory authority is responsible for determining the adequacy of a plan, and for either approving it or prescribing additional measures.

Additionally, at Alaska rule 11 AAC 90.331(g), the Bureau of Mines found a portion of a subsection to be unclear. It reads, "(g) Exemptions to the requirements of this section may be granted if (1) the disturbed area within the total disturbed area is small; * * *". The Federal regulation at 816.46(e)(1) reads, "Exemptions to the requirements of this section may be granted if (1) The disturbed drainage area within the total disturbed area is small;". OSM agrees with the commenter. Inclusion of the word "drainage" in the phrase, "The disturbed drainage area within the total disturbed area * * *" should eliminate the confusion. By virtue of this **Federal Register** notice, OSM is bringing this omission to the attention of Alaska for correction.

The National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, reviewed Alaska's proposed amendment and had no specific recommendations to offer (Administrative Record No. AK C–18).

The U.S. Fish and Wildlife Service made one general editorial comment, and four specific comments (Administrative Record No. AK C–19). It was suggested that Alaska consolidate all fish, wildlife, and habitat related information within Article 4, Environmental Resource Information Requirements, to facilitate applicants ability to respond. While the suggestion may have merit, OSM does not have the authority to require the State to reorganize Alaska's Administrative Code to provide for such consolidation, nor do the Federal regulations address fish and wildlife requirements in a consolidated manner.

It was suggested that section 11 AAC 90.057 contain information on how State and Federal resources agencies with mandated fish and wildlife management responsibilities can provide input on the content of fish and wildlife studies. The Federal program does not require that procedural details of this nature be placed in a State's regulations. The Director believes that the regulatory authority and State and Federal agencies should be afforded the flexibility to determine among themselves how best to provide input.

Comments were offered on the requirements of the Fish and Wildlife Protection Plan (11 AAC 90.081(c)). Specifically, it was stated that, "the Plan must trend toward enhancement of fish and wildlife resources at the time of vegetation success. If success will not be accomplished, the Plan should include an explanatory statement". It was suggested that the explanatory statement also include specific measures to ensure compliance with mitigation requirements imposed by the commissioner. Alaska's proposed rule may have been misread by the commenter. It reads, at (b), "The Plan must include protective measures to be used during the active mining phase of the operation, and enhancement measures to be used during the reclamation and postmining phases of the operation to develop aquatic and terrestrial habitats. (c) Where the plan does not include enhancement measures, it must contain a statement explaining why enhancement is not practicable". As written, it appears that the commenter has tied the enhancement of fish, wildlife, and their related environmental values to the success of revegetation, and that if revegetation is not successful, it must be explained in the plan. Alaska's proposed rule, as well as the counterpart Federal regulation at 30 CFR 780.16(3)(ii), are more broadly written to include more than revegetation. They call for protective measures to be used during active surface mining, and enhancement measures to be used during the reclamation and postmining phases of an operation. If, for some reason, enhancement measures are not practical, an explanation must be provided in the Plan.

It was also suggested that specific measures to ensure compliance with mitigation requirements be included in the plan. OSM does not agree, since the plan becomes part of the permit that an operator must comply with in order to mine. If the operator does not follow the approved permit requirements, the operator is in violation. Therefore, compliance with any approved mitigtion measures of the permit must be issued.

The U.S. Fish and Wildlife Service also commented on 11 AAC 90.163, Exploration. It was noted that an applicant must file an exploration and reclamation plan of operations which includes, among other things, important habitat for fish, wildlife, and plants. It was suggested that the section should describe how the "available information requirement" of this subsection relates to the study requirement of 11 AAC 90.057, which deals with fish and wildlife information. The proposed rule at 11 AAC 90.057 requires that site specific resource information be provided for the permit and adjacent areas, and applies to a mining operation. The proposed rule at 11 AAC 90.163

addresses the resource information required from an applicant who proposes to conduct exploration operations. Therefore, the requirements of 11 AAC 90.057 do not apply to exploration activities.

A final comment by the U.S. Fish and Wildlife Service concerns surface and groundwater monitoring requirements at 11 AAC 90.345. It was suggested that in addition to the various factors for which surface and groundwater are monitored, that turbidity also be routinely monitored. The Federal regulations at 30 CFR 780.21(j)(2)(i) and 30 CFR 784.14(i)(1)(i) do not contain a requirement for the monitoring of turbidity in streams, lakes, or impoundments. States cannot be required to provide for more stringent regulations than are required by the Federal program.

The Bureau of Land Management, Washington, D.C. had no comments (Administrative Record No. AK C–25).

The Bureau of Land Management's (BLM) office in Anchorage offered several comments on Alaska's proposed program amendments (Administrative Record No. AK C–24).

One comment expressed concern that the State's regulations do not address the issuance of short-term interim mining permits in order to allow operators to meet contractual requirements of purchase contracts pending issuance, and subject to the terms and conditions of the standard coal mining permit according to State regulations. The issuance of interim mining permits is not allowed under SMCRA. Since a state program must contain laws and regulations as stringent as and no less effective than the Federal regulations in order to receive the Secretary of the Interior's approval to regulate coal mining activities within its boundaries, it cannot allow for interim mining permits as suggested in the comment.

Another comment addressed OSM regulations and the lack of a provision for test burns of coal. The Federal regulations at 30 CFR 772.14(b) provide that with the prior written approval of the regulatory authority no permit to conduct surface coal mining is required during coal exploration operations if the commercial use or sale of the coal is for testing purposes only. The December 29, 1988, Preamble to the Federal regulation at 30 CFR 772.14(b) (53 FR 52947) specifically references test burns. It reads, in part, "OSMRE agrees * * * that test burns are sometimes required for determinations other than the quality of the coal. Testing for purposes of § 772.14(b) is considered by OSMRE to include valid test burns that are required by the end-user, but only in an amount necessary to evaluate the coal's compatibility with boiler or other technical specifications or to determine properties of the coal". Therefore, test burns are allowed as a part of coal exploration activities.

The commenter also questioned why OSM regulations did not contain provisions for emergency permits. Neither SMCRA nor the Federal regulations contain provisions for the issuance of emergency permits. A state program must contain laws and regulations as stringent as SMCRA and no less effective than the Federal regulations to receive the Secretary of the Interior's approval to regulate coal mining operations within the state. Therefore, it cannot allow for emergency permitting as suggested by the commenter.

The BLM suggested that the word "hazardous" at 11 AAC 90.077 should be defined in the context of the EPA definitions for hazardous chemicals, and questioned whether the use of the term implied a specific condition or application of specific parts of the EPA regulations. Alaska proposes to remove the word "hazardous" from its rules to more closely conform to the Federal regulations at 30 CFR 784.25. Therefore, BLM's concern with its usage in relation to EPA regulations is no longer relevant. However, the requirements of SMCRA neither supersede nor replace the requirements of other Federal laws. Accordingly, the treatment of "hazardous" materials as subject to EPA requirements must still be met by the State and the operator, as applicable.

The BLM suggested that some specific time frames for the processing of permit applications be included at 11 AAC 90.111, as well as for permit renewals at 11 AAC 90.129. The periods of time referenced by the BLM can be found at Alaska Statute (AS 27.21.180) Application Approval or Denial, and applies to new applications, revisions and renewals.

The BLM expressed concern with those aspects of Alaska Statute 27.21.260 and 11 AAC 90.701 through 11 AAC 90.715, Process for Identifying Land Unsuitable for Mining, concerning the provisions whereby a person or municipality may petition for the designation of an area as unsuitable for all or certain types of coal mining. Concern was expressed because of potential conflict with Federal land use plans, the Federal mineral and/or coal estate, and Federal Coal leases and their operation. A situation is cited where if, at some point in time, the State's coal mining regulations were used on Federal leases rather than OSM regulations, there could be a legal conflict because of the provision. The BLM registered strong disagreement with the petition provision and suggested removing it and placing it in other State regulations concerning land use planning.

Provisions of 30 CFR 769 of the Federal regulations require that any Federal land subject to a petition of a designation as lands unsuitable must be made to the Secretary of the Interior. Federal lands include both surface and mineral interest. The decision of whether to grant or deny a designation also rests with the Director of OSM and the Secretary. Recommendations must be provided by the appropriate Federal land management agency. Therefore, control over Federal lands is not relinquished to a state.

The Anchorage Office of the National Park Service offered one comment (Administrative Record No. AK C–26). It was suggested that Alaska's 11 AAC 90.041(b), Cultural and Historic Information, and 11 AAC 90.125(a)(7), Commissioner's Findings, should be expanded to reflect compliance with both Federal and State regulations pertaining to cultural/historic resources. They asked that work performed be in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. And, on State land, compliance with the Alaska Historic Preservation Act, Title 41, Chapter 35.

Alaska's proposed rule at 11 AAC 90.125(a)(7) requires that the Commissioner find that operations on properties listed or eligible for listing on the National Register of Historic Places be in compliance with Alaska's rule at 11 AAC 90.121(a). That rule, in turn, requires compliance with the Alaska Statute at AS 27.21.260(d). This statutory language requires the approval by the Federal, state, or local agency having jurisdiction over the park or historic site. Such approval will allow compliance with the appropriate Federal and State regulations pertaining to cultural and historic resources. Additionally, 11 AAC 90.041(a) requires that applications must contain a description of cultural and historic resources and known archaeological features within the permit and adjacent areas. Also, that the description must include data provided by state and local archaeological, historic, and cultural preservation agencies. This requirement additionally assures that appropriate Federal and state regulations, guidelines, etc., will be considered in the review and findings for cultural or historic resource impacts.

The Minerals Management Service in Alaska noted that surface coal mining

does not fall within their area of jurisdiction, and had no comments to offer (Administrative Record No. AK C–13.

The Alaska Power Administration of the Department of Energy had no comments to offer (Administrative Record No. AK C–10.

The Washington DC office of the Bureau of Reclamation had not comments to provide (Administrative Record No. AK C–12).

Region 10 of the EPA in Seattle, Washington also reviewed that amendment and had no comments to offer. It was noted that, "The overall requirements of the Alaska Surface Coal Mining Program complement EPA's regulatory activities in Alaska pursuant to the National Environmental Policy Act and the Clean Water Act (National Pollutant Discharge Elimination System permit program)", (Administrative Record No. AK C–14).

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. No comments were received from either organization.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.27(h)(11)(i), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) Concurrence was solicited from the Washington, DC office of the EPA on March 6, 1990, (Administrative Record No. AK C–11). EPA gave a written concurrence on April 18, 1991, (Administrative Record No. AK C–29), but qualified its concurrence by stating that Alaska's rules must be implemented consistent with the requirements of the Clean Water Act and cannot allow instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. The impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water, as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or siltation structures in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States occur by permit as appropriate under either section 402 or 404 of the Clean Water Act.

With specific reference to Alaska, EPA noted that the proposed rule at 11 AAC 90.331(b)(2) would allow the placement of siltation structures in perennial streams if approved by the commissioner, and that Alaska rule 11 AAC 90.336 could allow the creation of impoundments in the waters of the United States.

The Director acknowledges EPA's concerns and Alaska has been notified of these concerns by their inclusion in the administrative record. The Director emphasizes that section 702(a)(3) of SMCRA provides that nothing in the Act shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended, State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality. The EPA acknowledges that Alaska's rules charge operators with adherence to compliance with all applicable State and Federal water quality laws and regulations, including provisions dealing with impoundments (see the Alaska Administrative Code at 11 AAC 90.321(c).) Therefore, Alaska permit applicants and operators are aware of their responsibilities under the Clean Water Act and the Director is not requiring any further action on the part of Alaska at this time.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Alaska on February 2, 1990, and revised on May 7, 1991, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations, and identified in the codified portion of this notice under 30 CFR 902.15(c).

As discussed in findings 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, the Director is not approving 11 AAC 90.023(f)(3), identification of interests and compliance information; 11 AAC 90.045(a), 11AAC 90.163(b)(1), exploration that substantially disturbs the natural land surface; geology description; 11 AAC 90.311(g), removal of topsoil; 11 AAC 90.331(a), and (d)(1), siltation structures; 11 AAC 90.337(f), impoundments, inspections; 11 AAC 90.345(e), surface and ground water monitoring; 11 AAC 90.391(h), disposal of excess spoil and coal mine waste; 11 AAC 90.407(e), coal mine waste, dams and embankments; 11 AAC 90.423(b), protection of fish and wildlife; 11 AAC 90.443(d), backfilling and grading; 11 AAC 90.443(e)(1), backfilling and grading; 11AAC 90.457(c)(3), standards for revegetation success; 11 AAC 90.911 (79) definition of previously mined area; the revegetation guideline, policy statements A through G; and the petition form to terminate the designation of an area as unsuitable for surface coal mining.

Except as noted above, the Director is approving the Alaska rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR 902 codifying decisions concerning the Alaska program are amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to the Director as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Alaska program, the Director will recognize only statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Alaska of only such provisions.

VII. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 902—ALASKA

1. The authority citation for part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 902.15 is amended by adding paragraph (c) to read as follows:

§ 902.15 Approval of regulatory program amendments.

* * * * *

(c) With the exceptions of 11 AAC 90.023(f)(3), identification of interest and compliance information; 11 AAC 90.045(a), geology description; 11 AAC 90.163(b)(1), exploration that substantially disturbs the natural land surface; 11 AAC 90.311(g), removal of topsoil; 11 AAC 90–331(a), and (d)(1), siltation structures; 11 AAC 90.337(f), impoundments inspection; 11 AAC 90.345(e), surface and ground water monitoring; 11 AAC 90.391(h), disposal of excess spoil and coal mine waste; 11 AAC 90.407(e), coal mine waste, dams, and embankments; 11 AAC 90.423(b), protection of fish and wildlife; 11 AAC 90.443(d), backfilling and grading; 11 AAC 90.443(e)(1), backfilling and grading; 11 AAC 90.457(c)(3), standards for revegetation success; 11 AAC 90.911(79), definition of previously mined area; the revegetation guideline; policy statements A through G; and the petition form to terminate the designation of an area as unsuitable for surface coal mining, the following provisions of the Alaska Administrative Code as submitted to OSM on February 2, 1990, and revised on May 7, 1991, are approved effective August 18, 1992:

General Application Requirements, 11 AAC 90.021(c); Identification of Interests and Compliance Information, 11 AAC 90.023(a) (1), (2), (3), (b) (1) and (2); Authority to Enter and Ownership Information, 11 AAC 90.025(a) (1), (2), (b) and (c); Cultural and Historic Information, 11 AAC 90.041 (a) and (b); Hydrology and Geology, 11 AAC 90.043 (b) and (c); Geology Description, 11 AAC 90.045(b)(4); Fish and Wildlife Information, 11 AAC 90.057; Operation Plan, 11 AAC 90.071(2)(D); Operation Maps, Planviews and Cross Sections, 11 AAC 90.077 (b)(5), (b)(11) and (d); Fish and Wildlife Protection Plan, 11 AAC 90.081(a) (1), (2), (3), (b) and (c); Plan for the Protection of the Hydrologic Balance, 11 AAC 90.085(a) (1), (2), (3) (A), (B), (C), (D), and (E), (4), (b) (3) and (4), (c) (3), (4), (5) (A), (B), (C) and (D); Plan for Ponds, Impoundments, Dams and Embankments, 11 AAC 90.089 (a) and (c); Return of Coal Mine Waste to Abandoned Underground Workings, 11 AAC 90.099(a); Subsidence Control Plan, 11 AAC 90.101(c)(1), (2) (A), (B), (C), (D), (E), (F), (3) (A), (B), (C), (4), (5) (A), (B) and (6); Transfer, Sale or Assignment of Permit Rights, 11 AAC 90.119 (d) and (e); Areas Where Mining May Be Limited, 11 AAC 90.121(c); Commissioner's Findings, 11 AAC 90. 125(a) (7), (8), (9), (10), (11), (12) and (13); Permit Conditions, 11 AAC 90.127 (4), (5) (A), (B), (C), and (6); Permit Revisions and Renewals, 11 AAC 90.129(a) (6), (7) and (8); Mountaintop Removal Mining, 11 AAC 90.141(a)(1); Exploration that Substantially Disturbs the Natural Land Surface, 11 AAC 90.163(a)(2) (A), (B), (C), (D), (E), (F), (G), (b) (2), (3) and (c) (1), (2), (3) (A) and (B); Eligibility for Assistance, 11 AAC 90.173(a)(1), (2) and (3); Filing for Assistance, 11 AAC 90.175(4)(D); Qualified Laboratories, 11 AAC 90.181(a)(5) (A), (B), and (6); Applicant Liability, 11 AAC 90.185(a) (3), (4) and (5); Requirements for Specific Types of Bonds, 11 AAC 90.207(c)(5)(C); Bond Forfeiture, 11 AAC 90.213 (g) and (h); Water Quality Standards, 11 AAC 90.323 (a), (b), (c), and (d); Diversions and Conveyance of Flow, 11 AAC 90.325 (b), (c), (d) (1), (2), (3) and (g)(3); Stream Channel Diversion, 11 AAC 90.327(b)(2); Siltation Structures, 11 AAC 90.331(b) (1) and (2), (3), (c), (d) (2), (3), (4), (e), (f), and (g); Discharge Structures, 11 AAC 90.333; Impoundments, Design and Construction, 11 AAC 90.336 (a), (b) (1) and (2), (c) (1), (2), (3), (4), (5), (6), (7), (8), (9), (d) (1), (2), (3) (e) and (f); Impoundments, Inspections, 11 AAC 90.337 (a), (b), (c) (1), (2), (3), (4), (5), (6), (7), (d), (e) and (g); Permanent Impoundments Criteria, 11 AAC 90.338 (1), (2), (3), (4), (5), (6), (7); Protection of Ground Water Recharge Capacity, 11 AAC 90.343; Surface and Ground Water Monitoring, 11 AAC 90.345 (a), (b) (1), (2), (3), (4), (5), (c), (d), (2), (3), (4), (5), (6), (f), (g), (h) and (i); Discharge of Water into a Mine, 11 AAC 90.349(2)(A); Stream Buffer Zones, 11 AAC 90.353(a) (1), (2) and (3); Use of Explosives, 11 AAC 90.371(d) (1), (2), (3), (4);

Preblasting Survey, 11 AAC 90.373 (b), (c) and (d); Public Notice of Blasting, 11 AAC 90.375(b), (e), (f), (g) and (h); Control of Adverse Effects of Blasting, 11 AAC 90.379 (b), (c), (e), (f), (g), (h), (i) and (j); Seismographic Measurements, 11 AAC 90.381 (a) and (b); Disposal of Excess Spoil and Coal Mine Waste, 11 AAC 90.391 (b), (e), (g), (i), (k), (l), (m) (1), (2), (3), (4), (5), (6), (n), (o), (p) (3), (4), (5), (6), (7), (q) and (r); Coal Mine Waste, General Requirements, 11 AAC 90.395(a) (1), (2), (3), (4), (5) and (b); Disposal Area Site, 11 AAC 90.397 (a), (b), (c) (1), (2), (3), (4), (5), (d), (e), (f) and (g); Hazardous Coal Processing Waste, Water Control Measures, 11 AAC 90.399; Coal Mine Waste, Refuse Piles, 11 AAC 90.401 (a), (b) (1), (2), (3), (c), (d), and (e); Coal Mine Waste, Fires, 11 AAC 90.403; Burned Waste Removal, 11 AAC 90.405; Coal Mine Waste, Dams and Embankments, 11 AAC 90.407 (a), (b), (c), (d), (f), (g), (h) and (i); Return to Underground Workings, 11 AAC 90.409; Contemporaneous Reclamation, 11 AAC 90.435; Timing Requirements for Backfilling and Grading, 11 AAC 90.441 (a), (b) and (c); Backfilling and Grading, 11 AAC 90.443 (a), (b), (c)(1) (A), (B), (C), (D), (E), (F), (e) (2), (3), and (4), (f), (g), (h), (i), (j) and (k); Revegetation, 11 AAC 90.451(b) (1) and (5); Revegetation, Mulching 11 AAC 90.455 (1), (2), (3) and (4); Standards for Revegetation Success, 11 AAC 90.457 (b) and (c)(5); Individual Civil Penalties, 11 AAC 90.635 (a), (b)(1), (2), (c), (d) (1), (2), (3), (e) (1), (2), (3), (f), (g) and (h); Initial Processing of Petitions, 11 AAC 90.703(e); Notification and Request for Information, 11 AAC 90.705 (a), (b), (c), (d) and (e); General Provisions, Applicability, 11 AAC 90.901(c); Public Participation, 11 AAC 90.907 (b) and (i); Definitions, 11 AAC 90.911, (18) Coal Mine Waste; (19) Coal Processing Plant; (20) Coal Processing Waste; (21) Collateral Bond; (51) Head-of-hollow Fill; (110) Surface Coal Mining Operations; (118) Underground Development Waste; (112) Valley Fill; Petition form to designate an area as unsuitable for surface coal mining.

3. Section 902.16 is added to read as follows:

§ 902.16 Required program amendments

(a) By October 19, 1992, Alaska shall amend its program as follows:

(1) At 11 AAC 90.023(f)(3) by providing ownership and control regulations to meet the requirements of OSM's May 11, 1989, 30 CFR 732 notification.

(2) At 11 AAC 90.045(a) by requiring a description of the geology within the permit and adjacent areas to include the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining per the Federal regulation requirements at 30 CFR 780.22(b)(1) and 784.22(b)(1).

(3) At 11 AAC 90.163(b)(1) by requiring that the operator affirm that a surface coal mining permit application will be submitted in the near future as required at 30 CFR 772.14(b); and by requiring that provisions in an exploration application provide evidence that sufficient coal reserves are available for future use or sale; and that an application for an exploration permit to remove more than 250 tons of coal contain a statement of why extraction of more than that amount is necessary per the requirements of Federal regulations at 30 CFR 772.14(b) (3) and (4).

(4) At 11 AAC 90.181(5)(A), .043, .047 and .089 to include reference to the 17th edition of the Standard Methods for the Examination of Water and Waste Water.

(5) At 11 AAC 90.311(g) by deleting the subsection that provides the commissioner the discretion to authorize an exemption from the requirements for the removal, stockpiling, and redistribution of topsoil and other materials.

(6) At 11 AAC 90.331(a) by defining "other treatment facilities" and to clarify the relationship of "treatment facility(ies)", "water treatment facilities", and "erosion control structures" relative to the term "siltation structure" in a manner that is not less effective than the Federal program requirements. At 11 AAC 90.331(d)(1) to provide for the 10-year, 24-hour precipitation event per the Federal regulation at 30 CFR 816.46(c)(1)(iii)(C).

(7) At 11 AAC 90.337(f) to require that all impoundments be examined on a basis that is no less effective than the Federal requirements at 30 CFR 816.49(a)(11).

(8) At 11 AAC 90.345(e) to require that the surface-water monitoring plan include both upstream and downstream monitoring locations in all receiving bodies of water per the Federal regulation requirements at 30 CFR 780.21(j)(2)(i) and 784.14(i)(2)(i).

(9) At 11 AAC 90.391(h) to require that the regulatory authority approve the placement of coal mine waste disposal in excess spoil fills per the Federal requirements at 30 CFR 816.71(i).

(10) At 11 AAC 90.407(e) to provide for a precipitation event no less effective than the requirements of the Federal regulations at 30 CFR 816.84(b)(2) and the use of at lease the 6-hour PMP event for structures meeting the criteria of 30 CFR 77.216(a).

(11) At 11 AAC 90.423(b) to require consultation with Federal and State fish and wildlife agencies prior to making a determination as to whether and under what conditions an operator may continue with mining activities after reporting the presence of a listed endangered or threatened species per the Federal regulation requirements at 30 CFR 816.97(b).

(12) At 11 AAC 90.443(d) allow blending the spoil into the surrounding terrain in non-steep slope areas only, and to require the removal of all vegetative and organic material as a requirement for allowing spoil to be placed on the area outside the mined-out area per the Federal regulation requirements at 30 CFR 816.102(d)(2).

(13) At 11 AAC 90.443(e)(1) to require that spoil in the immediate vicinity of a remining operation be included in the permit area as required at 30 CFR 816.106(b)(1).

(14) At 11 AAC 90.457(c)(3) to require consultation with, and approval by the State forestry and wildlife agencies with regard to the minimum planting and stocking arrangements for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products postmining land use as required at 30 CFR 816.116(b)(3)(i).

(15) To resubmit standards for revegetation success per the requirements at 30 CFR 816.116(a)(1).

(16) To resubmit policy statements and/or provide proposed regulations for those items addressed in proposed policy statements A through G in a manner no less effective than the Federal regulation requirements.

(17) To resubmit the proposed petition form that requests termination of an unsuitability designation or provide proposed regulations in a manner that is no less effective than the Federal regulation requirements at 30 CFR 764.13(b).

(b) [Reserved.]

[FR Doc. 92-19703 Filed 8-18-92; 8:45 am]
BILLING CODE 4310-05-M

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30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving a proposed amendment submitted by the State of Arkansas as a

modification to its permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Arkansas regulations pertaining to the definition of "mine plan area" and the use of this term in its regulations; existing structures; the definition of "public road;" the definition of "valid existing rights;" the 2-acre exemption allowance and the use of this term regarding requirements for exploration and mining operations; soil surveys; geological descriptions; cross sections, maps, and plans for underground mining permit applications; prime farmland (soil compaction, estimated yields, and target yields); the definition of "irreparable damage to the environment;" bond liability period (revegetation exemption); bond terms and conditions; bond procedures; bond forfeiture; water rights and replacement; blasting; stabilization of surface areas; backfilling and grading; postmining land use (grazing, requirements for a higher use, and letters of commitment); and prime farmland (surface facilities for underground mining operations). The amendment revises Arkansas' regulations to incorporate the additional flexibility afforded by the Federal regulations and to clarify ambiguities.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary of the Interior's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Arkansas program was published in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning the Arkansas program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Program Amendment

On April 11, 1991, Arkansas, at its own initiative, submitted to OSM a proposed amendment to its approved program (administrative record No. AR-447). Arkansas proposed revisions to the regulations of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) in response to (1) Pub. L. 100-34 and (2) the affirmative disapprovals that the Secretary placed on the Arkansas program and codified at 30 CFR 904.10(b).

Pub. L. 100-34 preempted the States provisions that exempted from regulation those exploration and mining operations affecting 2 acres or less. In response to this statute, Arkansas proposed in this amendment to delete the 2-acre exemption at ASCMRC 772 and to delete references to this exemption at ASCMRC 707.12, 770.6(b), 770.6(i) (a) and (c), 810.11, 815, 815.2 (b) and (c), 815.11(c), 815.15 (a) through (d), and (f) through (k), and 1000(d)(7). (Note that Arkansas originally submitted proposed revisions at ARCMRC 770.11 (a) and (c), which OSM published in its proposed rule notice. By telephone conversation on June 11, 1992, Arkansas clarified that this was a typographical error in its amendment and that ASCMRC 770.11 (a) and (c) should be listed as ASCMRC 770.6(i) (a) and (c).)

The Secretary placed the affirmative disapprovals on the Arkansas program and codified them at 30 CFR 904.10(b) in response to a court decision that remanded certain Federal regulations for which Arkansas had proposed corresponding regulations in its original State program submittal. Subsequently, Arkansas also codified in its regulations at ASCMRC Part 1000 these affirmative disapprovals. In this amendment, Arkansas proposed revisions to the following ASCMRC regulations that in turn allow it to delete ASCMRC Part 1000. Arkansas intended that these revisions would allow the Director to remove the remaining affirmative disapprovals for the Arkansas program at 30 CFR 904.10(b).

ASCMRC 701.5, 764.15(a)(7), 770.5, 771.23 (e) (1) and (2), 779.11, 779.12 (a) and (b), 779.15(a), 779.16 (a) and (b)(2), 779.17, 779.18(a), 779.20(a), 779.22 (a) and (c), 779.24 (g) and (k), 779.25 (d) through (h) and (j), 779.27 (a), (b)(5), and (d) (1) and (2), 780.11, 780.14 (b) and (b)(2), 780.16(a)(1), 780.23(b), 780.25 (a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51-S(b), 816.52(a) (1) and (2), 816.104 (a), (b), and (b)(3), 828.11(e), 828.12(a), and 1000(d) (1), (9), (12) and (14), the definition of "mine plan area" and the use of this term in its regulations;

ASCMRC 701.11(c)(1) (i) and (ii), and 1000(d)(3), existing structures;

ASCMRC 761.5 and 1000(d)(4), the definition of "public road;"

ASCMRC 761.5 and 1000(d)(5), the definition of "valid existing rights;"

ASCMRC 779.21(a) and 1000(d) (11) and (17), soil surveys;

ASCMRC 779.25 and 1000(d)(18), cross sections, maps, and plans for underground mining permit applications concerning coal seam and overburden descriptions, location of existing and previously mined area, and location of waste disposal and impoundments;

ASCMRC 783.14 (a) through (d) and 1000(d)(15), geological descriptions;

ASCMRC 785.17(a) (1) through (4), 785.17(b) (3) and (8), and 823.14(c), and 1000(d) (20), (21), (22), and (49), prime farmland (soil compaction, estimated yields, and target yields);

ASCMRC 786.5(b) and 1000(d)(23), the definition of "irreparable damage to the environment;"

ASCMRC 805.13(d) and 1000(d)(24), bond liability period (revegetation exemption);

ASCMRC 806.12 (e)(6)(iii) and (g)(7)(iii) and 1000(d) (25) and (26), bond terms and conditions;

ASCMRC 808.12(c) and 1000(d) (27) and (28), bond procedures;

ASCMRC 808.14 (a) and (b) and 1000(d)(29), bond forfeiture;

ASCMRC 816.54 and 1000(d)(37), water rights and replacement;

ASCMRC 816.65(f) and 1000(d) (38) and (39), blasting;

ASCMRC 816.95 (a) and (b), 816.106, 780.18(b)(3), 785.16(a), 816.439(e), 816.107, 826.12(b), 827.12(m), and 1000(d)(40), stabilization of surface areas;

ASCMRC 816.101(b)(1), 816.102 (a) and (g), 816.103, and 1000(d) (41) and (42), backfilling and grading;

ASCMRC 816.115, 816.133(c), and 1000(d) (43), (45), and (46), postmining land use (grazing, requirements for a higher use, and letters of commitment); and

ASCMRC 823.1 and 1000(d)(48), prime farmland (surface facilities for underground mining operations).

OSM announced receipt of the proposed amendment in a notice in the May 2, 1991, publication of the **Federal Register** (56 FR 20165; administative record No. AR-459). In this notice, OSM opened a public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. The public comment period closed on June 3, 1991.

On September 25, 1991, Arkansas, again at its own initiative, submitted to OSM proposed revisions to ASCMRC 816.103 regarding backfilling and grading (administrative record No. AR-463). The revisions to ASCMRC 816.103 (a) and (b) proposed on September 25, 1991, included those submitted by Arkansas on April 11, 1991.

OSM announced receipt of the proposed amendment in a notice in the October 10, 1991, publication of the **Federal Register** (56 FR 51188;

administrative record No. AR–475). In this notice, OSM opened a public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. The public comment period closed on November 12, 1991.

During its review of the proposed amendment, OSM identified concerns relating to Arkansas' proposed revisions at ASCMRC 816.103 (a) and (b). OSM notified Arkansas of the concerns by letter dated November 18, 1991 (administrative record No. AR–479). In response to OSM's letter, Arkansas revised proposed ASCMRC 816.103 (a) and (b) and resubmitted them to OSM by letter dated November 22, 1991 (administrative record No. AR–478).

OSM announced receipt of the revised amendment in a notice in the December 13, 1991, **Federal Register** (56 FR 65030; administrative record No. AR–485. In this notice, OSM reopened the public comment period. The reopened public comment period closed on December 30, 1991.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions as discussed below, that the proposed revisions as submitted by Arkansas on April 11 and September 25, 1991, and as revised by it on November 22, 1991, are consistent with the Federal regulations, as modified by court decisions.

1. Revisions to Arkansas' Regulations That the Director Approves

a. Revisions to Arkansas' Regulations That Were Made in Response to 30 CFR 904.10(b)

Arkansas proposed revisions to the regulations discussed below in order to modify, remove, or suspend language affirmatively disapproved by the Secretary at 30 CFR 904.10(b). The affirmative disapprovals were codified by Arkansas in ASCMRC 1000(d) of its program. Arkansas also proposes to remove these affirmative disapprovals. The proposed revisions are based on the language of corresponding Federal regulations (listed in brackets) that have been revised in accordance with court order after the affirmative disapprovals were placed on the Arkansas program. The affirmative disapprovals codified at 30 CFR 904.10(b) and ASCMRC 1000(d) (also listed in brackets), which are associated with the proposed revisions, are discussed in finding No. 3(a) below.

Arkansas proposed to delete the definition of "mine plan area" at ASCMRC 701.5, and to either substitute the term "permit area" for the term "mine plan area" or delete reference to the "mine plan area" at ASCMRC 764.15(a)(7), 770.5, 771.23(e)(1), 779.11, 779.12(b), 779.15(a), 779.16 (a) and (b)(2), 779.18(a), 779.20(a), 779.22 (a) and (c), 779.24 (g) and (k), 779.25 (d) through (h) and (j), 779.27 (a), (b)(5), and (d) (1) and (2), 780.11, 780.14 (b) and (b)(2), 780.23(b), 780.25 (a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51–S(b), 816.52(a) (1) and (2), 816.104 (a), (b), and (b)(3), 828.11(e), and 828.12(a) [30 CFR 701.5, 764.15(a)(6), 777.14(a), 779.11, 779.12(b), 780.21(b) (1) and (2), 780.21(e), 779.18(a), 780.16(a)(2), 779.22 (a) and (c), 779.24 (g) and (k), 779.25(a) (4) through (8), and (10), 785.17(b)(3) (i) and (ii), 780.11, 780.14(b)(2), 780.23(b), 780.25 (a) and (b), 780.37(a), 773.13(c)(2)(iii), 773.15(c)(5), 774.15(a), 816.13, 816.41 (a) and (c), 816.104, 828.11(e), and 828.12(a); corresponding affirmative disapprovals at 30 CFR 904.10(b)(1) and ASCMRC 1000(d) (1), (9), (12), and (14)]. (Note that ASCMRC 779.24(i) also uses the term "mine plan area;" however, this regulation was not revised by Arkansas. To correct this inadvertent omission, OSM requests that upon promulgation of this amendment Arkansas revise ASCMRC 779.24(i) to replace "mine plan area" with "permit area.")

During its review of these proposed revisions, OSM found that many provisions in ASCMRC Parts 779 and 783 [§§ 779.13, 779.14, 779.15, 779.16, 779.17, 779.20, 783.13, 783.14, 783.15, 783.16, 783.16, 783.17, and 783.20) are substantively identical to regulations adopted by OSM in 1979.

In 1983, OSM replaced these 1979 regulations with the current Federal regulations at 30 CFR Parts 780 and 784 (48 FR 43956, Septembr 26, 1983). Arkansas in turn adopted counterpart provisions at ASCMRC 780.16, 780.21, 784.14, and 784.21 that are substantively identical to OSM's current Federal regulations.

Thus, Arkansas' regulations at ASCMRC 779.13, 779.15, 779.16, 779.17, 779.20, 783.13, 783.15, 783.16, 783.17, and 783.20 are duplicative of Arkansas' regulations at ASCMRC 780.16, 780.21, 784.14, and 784.21. Therefore, in effect, the earlier State regulations in the cited sections of ASCMRC Parts 779 and 783 have been superseded by the current State regulations at ASCMRC 780.16, 780.21, 784.14, and 784.21.

At 30 CFR 904.10(b), OSM affirmatively disapproved several of the State's superseded regulations (ASCMRC 779.12, 779.15, 779.16, 779.17, and 779.20). Since Arkansas has already replaced the affirmatively disapproved provisions with provisions that are no less effective than their Federal counterparts, OSM is removing the affirmative disapprovals from those provisions in this rulemaking.

However, OSM recommends that Arkansas revise its program to delete unnecessary and potentially confusing repetition of regulatory language. If Arkansas' superseded regulations preclude the implementation of the current regulations, Arkansas must remove the superseded regulations. Removal of superseded provisions that do not preclude implementation of current regulations is a matter left to Arkansas' discretion.

Arkansas proposed to make mandatory, after the appropriate findings are made, the exemption for existing structures at ASCMRC 701.11(c)(1) (i) and (ii) [30 CFR 701.11(c)(1) (i) and (ii); corresponding affirmative disapprovals at 30 CFR 904.10(b)(2) and ASCMRC 1000(d)(3)].

Arkansas proposed to replace the definition of "public road" at ASCMRC 761.5 with language substantively identical to the Federal definition of "public road" [30 CFR 761.5; corresponding affirmative disapprovals at 30 CFR 904.10(b)(3) and ASCMRC 1000(d)(4)].

Arkansas proposed an editorial note at ASCMRC 761.5 suspending paragraph (a)(2)(i) of the definition of "valid existing rights" "insofar as the 'all permits test' in defining 'valid existing rights' does not allow an operator to establish good faith efforts to obtain all permits prior to August 31, 1977 and thereby qualify for a valid prior existing right" [30 CFR 761.5; corresponding affirmative disapprovals at 30 CFR 904.10(b)(4) and ASCMRC 1000(d)(5)].

Arkansas proposed to require at ASCMRC 779.21(a) soil surveys only for land which may be prime farmland as identified by the investigation carried out under ASCMRC 779.27 [30 CFR 785.17(b)(3); corresponding affirmative disapprovals at 30 CFR 904.10(b)(8) and ASCMRC 1000(d)(11) and (17)].

Arkansas proposed an editorial note at ASCMRC 779.25 suspending paragraphs (c), (h), and (i) to the extent that the cross sections, maps, and plans for coal seam and overburden descriptions, location of previously mined areas, and location of existing waste disposal areas and impoundments apply to underground mining permit applications [30 CFR 779.25(a) (3), (8), and (9); corresponding affirmative disapprovals at 30 CFR 904.10(b)(10) and ASCMRC 1000(d)(18)].

Arkansas proposed to replace existing requirements for the geological

description at ASCMRC 783.14(a) through (d) with language substantively identical to the Federal regulations [30 CFR 780.22(a) through (d); corresponding affirmative disapprovals at 30 CFR 904.10(b)(9) and ASCMRC 1000(d)(15)].

Arkansas proposed to replace existing requirements for prime farmland historically used as cropland at ASCMRC 785.17(a)(1) through (4) with language substantively identical to the Federal regulations [30 CFR 785.17(a); corresponding affirmative disapprovals at 30 CFR 904.10(b)(11), and ASCMRC 1000(d)(20)]. (Note that ASCMRC 785.17(a)(4)(iii) includes a typographical error. The first sentence of this subsection refers to "non-contiguous" parcels; the phrase should be "non-continuous.") Arkansas proposed to delete the standard for determining "moist bulk density" at ASCMRC 785.17(b)(3) and 823.14(c) and require the operator to demonstrate that excessive compaction will be avoided in the replacement of prime farmland soils [30 CFR 785.17(c)(3) and 823.14(c) and (d); corresponding affirmative disapprovals at 30 CFR 904.10(12), and ASCMRC 1000(d)(21) and (49)].

Arkansas proposed to require at ASCMRC 785.17(b)(8) that prime farmland reclamation target yields be based on estimated yields under a level of management equivalent to (rather than higher than) that used on prime farmlands in the surrounding area [30 CFR 785.17(c)(3) and (e)(3), and 823.15(b)(4); corresponding affirmative disapprovals at 30 CFR 904.10(13), and ASCMRC 1000(d)(22)].

Arkansas proposed to revise the definition of "irreparable damage to the environment" at ASCMRC 786.5(b) to be substantively identical to the Federal definition [30 CFR 701.5; corresponding affirmative disapprovals at 30 CFR 904.10(b)(14) and ASCMRC 1000(d)(23)].

Arkansas proposed to delete at ASCMRC 805.13(d) the exemption from revegetation requirements at ASCMRC Part 816 [30 CFR 800.13; corresponding affirmative disapprovals at 30 CFR 904.10(b)(15) and ASCMRC 1000(d)(24)].

Arkansas proposed to delete the requirement at ASCMRC 806.12(e)(6)(iii) and (g)(7)(iii) that a permittee, upon the insolvency of a surety, discontinue operations until a new bond is approved, and inserted language allowing a grace period for obtaining new bond coverage that is substantively identical to the Federal regulations [30 CFR 800.16(e)(2); corresponding affirmative disapprovals at 30 CFR 904.10(b)(16) and ASCMRC 1000(d)(25) and (26)].

Arkansas proposed to delete language at ASCMRC 808.12(c) that limited bond liability to the protection of the hydrologic balance [30 CFR 800.50(c); corresponding affirmative disapprovals at 30 CFR 904.10(b)(17) and ASCMRC 1000(d)(27) and (28)].

Arkansas proposed to revise ASCMRC 808.14(a) and (b) to require that the regulatory authority forfeit and keep only the amount of bond necessary to complete reclamation [30 CFR 800.60(d)(2); corresponding affirmative disapprovals at 30 CFR 904.10(b)(18) and ASCMRC 1000(d)(29)].

Arkansas proposed to revise ASCMRC 816.54 so that the requirement to replace water supplies applies only to surface coal mining activities and not underground mining activities [30 CFR 816.41(h); corresponding affirmative disapprovals at 30 CFR 904.10(b)(37) and ASCMRC 1000(d)(37)].

Arkansas proposed to delete at ASCMRC 816.65(f) the absolute restriction of blasting within 300 feet of certain buildings and facilities [30 CFR 816.61(d)(1); corresponding affirmative disapprovals at 30 CFR 904.10(b)(25) and ASCMRC 1000(d)(38)].

Arkansas proposed to (1) delete the existing requirements regarding air resources protection and rills and gullies at ASCMRC 816.95 and 816.106 and replace them with requirements at ASCMRC 816.95(a) and (b) regarding stabilization of surface areas that are substantively identical to the Federal regulations, and (2) revise the following Arkansas regulations to correct the citation reference from "Sections 816.101 through 816.106" to "Sections 816.101 through 816.105." 780.18(b)(3), 785.16(a), 816.43(e), 816.107, 826.12(b), 827.12(m) [816.95(a) and (b), 780.18(b)(3), 785.16(a), 816.43(a)(3) and (c), 816.106(a), 816.107(a), and 827.12(1); corresponding affirmative disapprovals at 30 CFR 904.10(b)(27) and ASCMRC 1000(d)(40)].

Arkansas proposed to (1) add a regulation for underground mining activities at ASCMRC 816.102(g) allowing flexibility on previously mined lands for backfilling and grading to approximate original contour that is substantively identical to the Federal regulations, and (2) revise ASCMRC 816.101(b)(1) and 816.102(a) to include a reference to the new regulation at ASCMRC 816.102(g) [30 CFR 817.102(1)(1) and (2); corresponding affirmative disapprovals at 30 CFR 904.10(b)(38), and ASCMRC 1000(d) (41)]

Arkansas proposed to revise ASCMRC 816.103 to allow for adequate cover or treatment of exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining [30 CFR 816.102(f) and 817.102(f); corresponding affirmative disapprovals at 30 CFR 904.10(b)(28) and ASCMRC 1000(d) (42)]. In revising ASCMRC 816.103, Arkansas referenced several regulations that correspond to 30 CFR 816.41 and 817.41. Arkansas referenced the appropriate regulations; however, many of these provisions need to be revised to be consistent with the regulatory changes made by OSM to 30 CFR 816.41 and 817.41 on September 26, 1983 (48 FR 43990). Because these referenced rules are not part of this amendment, OSM will address these issues at a future date.

Arkansas proposed to delete the requirement at ASCMRC 816.115, which requires an operator who proposes range or pasture as the postmining land use to actually use the land for grazing during the last 2 years of the bond liability period, that is consistent with the deletion of this requirement from the Federal regulations (48 FR 40140, 40148; September 2, 1983) [30 CFR 816.116(b)(1); corresponding affirmative disapprovals at 30 CFR 904.10(b)(29) and ASCMRC 1000(d)(43)].

Arkansas proposed to delete its existing criteria for approval of alternative postmining land uses at ASCMRC 816.133(c) and replace it with criteria that are substantively identical to those in the Federal regulations [30 CFR 816.133(c); corresponding affirmative disapprovals at 30 CFR 904.10(b)(33) and ASCMRC 1000(d)(46)].

Arkansas proposed an editorial note at ASCMRC 823.1 suspending the requirements in ASCMRC Part 823 insofar as they apply to the surface effects of underground mining and do not provide an exemption for surface facilities actively used over extended periods which affect a minimal amount of land [30 CFR 823.11(a); corresponding affirmative disapprovals at 30 CFR 904.10(b)(39) and ASCMRC 1000(d)(48)].

The Director finds that Arkansas' proposed revisions are consistent with the Federal affirmative disapprovals at 30 CFR 904.10(b), and he approves them.

b. Revisions to Arkansas' Regulations That Were Made in Response to 30 CFR 904.12

Arkansas proposed revisions to its regulations discussed below to remove all references to the 2-acre exemption. In its affirmative disapproval at ASCMRC 1000(d)(7), Arkansas had incorporated OSM's disapproval at 30 CFR 904.12(a) of the 2-acre exemption. Arkansas also proposed to delete ASCMRC 1000(d)(7).

As originally enacted, section 528(2) of SMCRA (30 U.S.C. 1278) exempted from the requirements of SMCRA coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the

President signed Public Law 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987). Corresponding State regulations ASCMRC Part 772 exempted from the requirements of the State surface mining law those operations that extract coal for commercial purposes and affect 2 acres or less.

On May 1, 1987, Arkansas proposed revisions to ASCMRC Part 772. The Director disapproved the proposed revisions addressing the 2-acre exemption, and he codified this disapproval at 30 CFR 904.12(a) (finding No. 1, 53 FR 9881, 9883, March 28, 1988; administrative record No. AR–340). In this amendment, Arkansas proposed to delete ASCMRC Part 772 from its regulations. It also proposed to delete from ASCMRC 707.12, 770.6(b), 770.6(i)(a) and (c), 810.11, 815, 815.2 (b) and (c), 815.11(c), and 815.15 (a) through (d), and (f) through (k), all references to operations on 2 acres or less. Arkansas' proposal to remove from its regulations the language preempted by Pub. L. 100–34 is consistent with the Director's disapproval at 30 CFR 904.12(a) and will preclude confusion on the part of the public, which may not be aware of the Federal preemption and the Director's disapproval at 30 CFR 904.12(a). Therefore, the Director approves Arkansas' proposed deletions.

Arkansas also proposed to delete ASCMRC 1000(d)(7) regarding the 2-acre exemption at ASCMRC Part 772. The Director finds the proposed deletion of ASCMRC 1000(d)(7) to be consistent with the proposed deletion of ASCMRC Part 772. Therefore, he approves the proposed deletion.

2. Revisions to Arkansas' Regulations That the Director Does Not Approve

a. Revisions to ASCMRC 771.23(e)(2) and 779.12(a)

As discussed in finding No. 1(a), Arkansas proposed to delete the definition of "mine plan area." Consistent with this deletion, Arkansas proposed at ASCMRC 771.23(e)(2) and 779.12(a) to require permit applicants to describe and identify the proposed mining phases for the "permit area" rather than for the "mine plan area." The corresponding Federal regulations at 30 CFR 777.14(b) and 779.12(a) require applicants to provide the same information for the area of the life of the proposed mining operations ("life of operations area").

Because "life of operations area" could comprise an area larger than the "permit area," the Director finds that proposed ASCMRC 771.23(e)(2) and 779.12(a) are less effective than the Federal regulations at 30 CFR 777.14(b) and 779.12(a). The Director does not approve proposed ASCMRC 771.23(e)(2) and 779.12(a) to the extent that they do not require permit applicants to describe the mining phases for the life of mine operations area rather than for the permit area.

b. Revisions to ASCMRC 780.16(a)(1)

Arkansas proposed at ASCMRC 780.16(a)(1) to require permit applicants to include a fish and wildlife protection and enhancement plan for the "permit area" rather than for "mine plan area." However, the language submitted by Arkansas is not representative of that which exists in its approved program at ASCMRC 780.16(a)(1). The existing language at ASCMRC 780.16 was approved by OSM on November 14, 1989 (54 FR 47355), as being no less effective than the corresponding Federal regulation at 30 CFR 780.16. In this regulation, Arkansas already uses the term "permit area." Therefore, the Director does not approve the proposed revisions to ASCMRC 780.16(a)(1).

3. Removal of the Federal Affirmative Disapprovals at 30 CFR 904.10(b) and Approval of Arkansas' Proposed Deletion of the Corresponding Affirmative Disapprovals at ASCMRC 1000(d)

In the **Federal Register** notice announcing the Secretary's approval of Arkansas' original program, the Secretary at 30 CFR 904.10(b) affirmatively disapproved several provisions of Arkansas' program that incorporated, suspended or remanded Federal regulations (45 FR 77015, November 21, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" (In re: Permanent Surface Mining Regulation Litigation, Civil Action 79–1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

As discussed below, the Director finds, consistent with the court decisions, that the remaining affirmative disapprovals at 30 CFR 904.10(b) are no longer necessary, and he removes them. The Director also approves Arkansas' proposed deletions at ASCMRC 1000(d), which are the State counterparts to the removed Federal affirmative disapprovals.

The Director's decision to remove the Federal affirmative disapprovals at this time is consistent with the court's August 15, 1980, ruling in that (1) Arkansas' regulations are based on revised Federal regulations, not on the remanded 1979 language, and (2) in submitting the amendment, the head of the Arkansas regulatory authority specifically requested approval of the proposed regulations.

a. 30 CFR 904.10(b) (1), (2), (3), (4), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (27), (28), (29), (33), (37), (38), and (39) and ASCMRC 1000 (d) (1), (3), (4), (5), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (40), (41), (42), (43), (46), (48), and (49).

In this amendment, Arkansas proposes revisions to those regulations listed in finding No. 1(a) above. These proposed revisions incorporate corresponding affirmative disapprovals placed on the Arkansas program at 30 CFR 904.10(b). As discussed in findings Nos. 1(a) and 2, the Director finds that the proposed revisions are consistent with the Federal regulations. In accordance with the court's decisions, the Director removes the corresponding affirmative disapprovals at 30 CFR 904.10(b) (1), (2), (3), (4), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (27), (28), (29), (33), (37), (38), and (39).

In this amendment, Arkansas also proposes to delete ASCMRC 1000(d) (1), (3), (4), (5), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (40), (41), (42), (43), (46), (48), and (49), which correspond to the Federal affirmative disapprovals at 30 CFR 904.10(b) listed in the preceding sentence. The Director finds Arkansas' proposed deletions of ASCMRC 1000(d) (1), (3), (4), (5), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (40), (41), (42), (43), (46), (48), and (49) to be consistent with his

removal of the associated Federal affirmative disapprovals. Therefore, he approves these proposed deletions. (Note that the proposed deletion of ASCMRC 1000(7) regarding the 2-acre exemption is discussed and approved in finding No. 1(b) above.)

b. ASCMRC 1000 (d) (39) and (45)

By letter dated May 17, 1987 (administrative record No. AR–318), Arkansas submitted to OSM a proposed amendment revising its regulations at ASCMRC 816.83(a) and ASCMRC 816.113(b)(1), pertaining, respectively, to coal processing waste banks and postmining land use. The Director approved these proposed revisions and codified his approval of them at 30 CFR 904.15(d) (53 FR 9881, 9882, March 28, 1988; administrative record No. AR–340). At that time, the Director did not remove the affirmative disapprovals associated with the proposed revisions found at 30 CFR 904.10(b) (26) and (32). He did so in a subsequent decision on Arkansas' December 18, 1989, proposed amendment (finding No. 3, 55 FR 48835, 48836, November 23, 1990; administrative record No. AR–437).

In this amendment, Arkansas proposes to delete ASCMRC 1000(d) (39) and (45), which are the affirmative disapprovals corresponding to 30 CFR 904.10(b) (26) and (32). The Director finds Arkansas' proposed deletion of ASCMRC 1000(d) (39) and (45) to be consistent with his previous removal of the corresponding Federal affirmative disapprovals. Therefore, he approves the proposed deletions.

c. 30 CFR 904.10(b)(30)

By letter dated December 22, 1988 (administrative record No. AR–346), Arkansas submitted to OSM a proposed amendment revising its regulation at ASCMRC 823.11(c), pertaining to crop production on prime farmland, and deleting ASCMRC 1000(d)(50). The Director approved these proposed revisions and codified his approval of them at 30 CFR 904.15(f) (finding No. 2, 54 FR 47353, 47354, November 14, 1989; administrative record No. AR–374). However, at that time, the Director did not remove the corresponding affirmative disapproval at 30 CFR 904.10(b)(30). He is taking the opportunity to do so at this time.

IV. Public and Agency Comments

1. Public Comments

The Director solicited public comments on the proposed amendment and provided opportunity for a public hearing. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments from various Federal and State agencies with an actual or potential interest in the Arkansas program.

By letter dated May 15, 1991, the U.S. Forest Service responded that it had no comments on the proposed amendment (administrative record No. AR–450).

By letters dated May 17 and December 5, 1991, the Bureau of Indian Affairs responded that it had no comments on the proposed amendment (administrative record Nos. AR–452 and AR–481).

By telephone conversations on May 22 and December 19, 1991, the U.S. National Park Service responded that it had no comments on the proposed amendment (administrative record Nos. AR–454 and AR–483).

By letters dated May 22, October 28, and December 16, 1991, the Bureau of Land Management responded that the proposed amendment would not unduly impact its management responsibilities (administrative record No. AR–455, AR–470, and AR–482).

By letter dated May 28, 1991, the Bureau of Mines responded that it had no comments on the proposed amendment (administrative record No. AR–456).

By letters dated May 29 and October 31, 1991, the Army Corps of Engineers responded that it had no comments on the proposed amendment (administrative record Nos. AR–457 and AR–472).

By letters dated October 22, 1991, and January 23, 1992, the U.S. Soil Conservation Service responded that it had no comments and agreed with the amendment as proposed (administrative record Nos. AR–469 and AR–488).

By telephone conversation on January 2, 1992, the U.S. Fish and Wildlife Service responded that it had no comments on the proposed amendment (administrative record No. AR–486).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM solicited concurrence from EPA for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

None of the changes that Arkansas proposes to its regulations pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment (administrative record Nos. AR–435 and AR–464). EPA did not reply.

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), all amendments that may have an effect on historic properties are to be provided to the SHPO and ACHP for comment. OSM solicited comments from these offices.

By letters dated May 21 and October 15, 1991, SHPO responded that it had no objection to the proposed amendment and that the proposed amendment would have no effect on significant cultural resources (administrative records Nos. AR–453 and AR–467).

By letter dated May 15, 1991, ACHP commented that the proposed amendment does not satisfy OSM's responsibilities pursuant to Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800, and that, as written, the amendment could place OSM in jeopardy of being found in violation of section 106 of NHPA (administrative record No. AR–451). By telephone conversation on May 30, 1991, ACHP clarified its concerns (administrative record No. AR–458). First, ACHP said that its concerns were based upon the absence of cultural resources protection requirements in the proposed amendment and its assumption that such necessary requirements were not included elsewhere in the Arkansas program. Second, ACHP asserted that Arkansas' cultural resources regulations should reflect any revisions to the Federal regulations that could result from ongoing litigation of OSM's cultural resources protection regulations.

With respect to ACHP's first concern, the revisions Arkansas proposes in this amendment concern only a portion of the Arkansas program, and none of these revisions concern the protection of cultural resources. For ACHP's information, the Arkansas regulations concerning cultural resources are found at ASCMRC 761.11(c), 761.12(f)(1), 776.12(a)(3)(i), 786.19(e), 779.12(b), and 780.31. The Director notes that, in accordance with 30 CFR 732.17(d), he notified Arkansas on June 9, 1987, of revisions to these regulations that were needed to make them no less effective than the Federal regulations. In response to this notification, Arkansas proposed regulations which the Director approved in the June 1, 1988, **Federal Register** (53 FR 19903, administrative record No. AR–342).

With respect to ACHP's second concern, the litigation of OSM's regulations concerning cultural resources is outside the scope of this rulemaking and is not pertinent to the Director's decision on these proposed revisions to the Arkansas program. If revisions to the Federal cultural resources regulations result from the litigation, the Director would notify Arkansas in accordance with 30 CFR 732.17(d) of any needed revisions to the Arkansas program. For the reasons stated above, the Director does not require Arkansas to revise its amendment in response to ACHP's comments.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions, the amendments submitted to OSM by Arkansas on April 11 and September 25, 1991, and as revised by Arkansas on November 22, 1991.

The Director does not approve (1) ASCMRC 771.23(3)(2) and 779.12(a) to the extent that they do not require permit applicants to describe the mining phases for the life of mine operations rather than for the permit area (finding No. 2(a)) and (2) ASCMRC 780.16(a)(1) pertaining to fish and wildlife information (finding No. 2(b)).

The Director approves (1) the revisions to numerous regulations that Arkansas made in response to the Federal affirmative disapprovals at 30 CFR 904.10(b) and the corresponding State affirmative disapprovals at ASCMRC 1000(d); (2) the deletion of the 2-acre exemption and revision of related regulations in response to the Director's disapproval at 30 CFR 904.12(a) and the State affirmative disapproval at ASCMRC 1000(d)(7) (finding No. 2(b)); and (3) the removal of the outstanding State affirmative disapprovals (finding Nos. 3(a) and (b)). In conjunction with these approvals, the Director removes the outstanding Federal affirmative disapprovals at 30 CFR 904.10(b).

The Director approves the proposed regulations with the provision that they be fully promulgated, with the exceptions noted above, in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 904 codifying decisions concerning the Arkansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Arkansas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Arkansas of only such provisions.

VI. Procedural Requirements

1. Compliance with the National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact of a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 504 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 904.10 is revised to read as follows:

§ 904.10 State regulatory program approval.

The Arkansas permanent program submitted February 18, 1980, as amended May 29, 1980, July 2, 1980 (with clarifications submitted July 29, August 8, August 14, and August 29, 1980), and as further amended September 2, 1980, January 19, 1981, and March 12, 1981, is approved effective January 22, 1982. Copies of the approved program, as amended, are available at:

(a) Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72209, telephone (501) 562–7444.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135, telephone (918) 581–6430.

3. Section 904.15 is amended by adding paragraph (k) as follows:

§ 904.15 Approval of amendments to State regulatory program.

* * * * *

(k) With the exceptions of ASCMRC 771.23(e)(2) and 779.12(a), to the extent that they do not require permit applicants to describe the mining phases for the life of mine operations area rather than for the permit area, and ASCMRC 780.16(a)(1), pertaining to fish and wildlife information, the revisions to Arkansas' surface coal mining regulations as submitted to OSM on April 11 and September 25, 1991, and as revised by Arkansas on November 22, 1991, are approved effective August 19, 1992. Revisions to the following regulations are approved:

ASCMRC 701.5, 764.15(a)(7), 770.5, 771.23(e)(1) and (2), 779.11, 779.12(a) and (b), 779.15(a), 779.16(a) and (b)(2), 779.17, 779.18(a), 779.20(a), 779.22(a) and (c), 779.24(g) and (k), 779.25(d) through (h) and (j), 779.27(a), (b)(5), and (d)(1) and (2), 780.11, 780.14(b) and (b)(2), 780.23(b), 780.25(a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51–S(b), 816.52(a)(1) and (2), 816.104(a), (b), and (b)(3), 828.11(e), and 828.12(a), the definition of "mine plan area" and the use of this term in its regulations;

701.11(c)(1(i) and (ii), existing structures;

761.5, the definition of "public road;"

761.5, the definition of "valid existing rights;"

772, 707.12, 770.6(b), 770.6(i)(a) and (c), 810.11, 815, 815.2(b) and (c), 815.11(c), and 815.15(a) through (d), and (f) through (k), the 2-acre exemption allowance and the use of this term regarding requirements for exploration and mining operations;

779.21(a), soil surveys;

779.25, cross sections, maps, and plans for underground mining permit applications;

783.14(a) through (d), geological descriptions;

785.17(a)(1) through (4), 785.17(b)(3) and (8), and 823.14(c), prime farmland (soil compaction, estimated yields, and target yields);

786.5(b), the definition of "irreparable damage to the environment;"

805.13(d), bond liability period (revegetation exemption);

806.12(e)(6)(iii) and (g)(7)(iii), bond terms and conditions;

808.12(c), bond procedures;

808.14(a) and (b), bond forfeiture;

816.54, water rights and replacement;

816.65(f), blasting;

816.95(a) and (b), and 816.106, 780.18(b)(3), 785.16(a), 816.43(e), 816.107, 826.12(b), and 827.12(m), stabilization of surface areas;

816.101(b)(1), 816.102(a) and (g), and 816.103, backfilling and grading;

816.115, and 816.133(c), postmining land use (grazing, requirements for a higher use, and letters of commitment); and 823.1, prime farmland (surface facilities for underground mining operations);

and the deletion of ASCMRC 1000(d)(1), (3), (4), (5), (7), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (39), (40), (41), (42), (43), (45), (46), (48), and (49), affirmative disapprovals.

[FR Doc. 92–19704 Filed 8–18–92; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Kansas permanent regulatory program (the Kansas program), as administered by the Kansas Department of Health and Environment, Division of Environment, Surface Mining Section (SMS), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to a revegetation guidelines document entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success," and data supporting proposed exemptions from the proposed guidelines. The amendment is intended to revise the Kansas program to be consistent with SMCRA and the Federal regulations and to correct minor editorial and typographical errors.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office; telephone (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning the Kansas program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendment

On June 3, 1991 (Administrative Record No. KS–505), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to an OSM rulemaking action on February 19, 1991 (56 FR 6559). That rulemaking action approved, with certain exceptions, the Kansas program's revegetation guidelines, entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success," as submitted on June 8, 1990 (Administrative Record No. KS–468) (hereinafter, "the earlier version"). The June 3, 1991, amendment is intended to correct the deficiencies identified in the earlier version of the guidelines.

The proposed amendment consists of three letters (all dated June 3, 1991): (1) A letter transmitting a new, revised version of the guidelines ("Version 3," dated "June 1991"), hereinafter the "revised guidelines;" (2) a letter providing narrative in support of the Preface to the revised guidelines, hereinafter the "Preface letter;" and (3) a letter providing data and narrative to support proposed exceptions from the requirement for the use of dry weights for determining sample adequacy, hereinafter the "green weight letter." The proposal is intended to establish the standards and methods for determination of revegetation success prior to Phase II and Phase III bond release, as required by the Federal regulations at 30 CFR 816.116(a) and 817.116(a).

OSM published a notice in the June 14, 1991, **Federal Register** (56 FR 27473) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS–511). The public comment period ended July 15, 1991.

During its review of the amendment, OSM identified some concerns related to the technical adequacy of the proposed guidelines and the proposed exemptions. OSM notified Kansas of the concerns by letter dated September 4, 1991 (Administrative Record No. KS–512). Kansas chose not to submit any

further revisions or information in response to OSM's letter.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Kansas on June 3, 1991.

1. Parts of Guidelines Not Discussed

As noted above, an earlier version of the guidelines was approved, with certain exceptions, in a February 19, 1991, rulemaking action (56 FR 6559). Kansas has proposed some nonsubstantive revisions to the earlier version to correct editorial errors and improve clarity; the Director finds these revisions do not substantively alter the approved Kansas guidelines. Substantive changes to the guidelines are discussed in the finding below. Except as noted in the subsequent findings, the Director finds the revised guidelines to be substantively the same as the earlier version and consistent with the Federal regulations, and is therefore approving the proposed revision.

2. Preface

Kansas proposes revisions to the Preface that delete the term "grandfather" and remove one permit from the list of permits exempted from possible revision to incorporate the requirements of the revised guidelines. In the "Preface letter," Kansas also clarified that its intent in including these exemptions in the Preface was not to circumvent the State's responsibility to require reasonable revision; further, Kansas believes that the revegetation plans (programs) approved in the specified permits meet the full intent of the Kansas program and SMCRA.

In pertinent part, the revised Preface reads:

> The crop of wheat will be allowed to prove Phase III revegetation requirements as stipulated in the approved cropland test plot programs. Additionally the following specific permit conditions will be valid for bond releases as stipulated: [conditions of two permits listed].

Despite Kansas' stated intention, this provision would continue to exempt certain permits from possible revisions to reflect the success standards and sampling techniques in the revised guidelines.

As noted in the February 19, 1991, rulemaking (56 FR 6559, 6560), the Federal regulations at 30 CFR 774.11(b) provide authority for the regulatory authority, at midterm review or at any other time, to require reasonable permit revisions to ensure compliance with the regulatory program; the counterpart Kansas regulation is at Kansas Administrative Regulations (KAR) 47–6–1. OSM in that rulemaking found that by proposing to exempt, in part, certain permits from the success standards and sampling criteria and methodologies required by the guidelines, the State would give up its authority to require reasonable revision of the permits to bring them into compliance with the proposed revegetation guidelines, and that this was in direct conflict with the above-referenced Federal and State regulations. For this reason the preface of the earlier version was not approved to the extent that the State had given up its authority to require reasonable revision of the permits.

OSM recognizes the need for a transition in incorporating new revegetation requirements into existing permits. In particular, OSM recognizes that existing revegetation data, which meet the revegetation success requirements in effect at the time the data was collected, should not be excluded from consideration in meeting bond release standards. It was for this reason that OSM, in the February 19, 1991, rulemaking (56 FR 6559, 6560), specifically approved the portion of the Preface discussing previously collected vegetation data. But the question of whether to incorporate new requirements to apply to any subsequently collected revegetation success data in these existing permits is a question of whether it would be reasonable to require specific revisions to those existing permits. OSM considers such a determination to be a permitting decision and not an appropriate topic for a program amendment.

Since the revised Preface continues to exempt certain permits from possible revision, the Director finds that it remains less effective than both the Federal and the State regulations cited above, and is not approving the revised Preface to the extent that the State has given up its authority to require reasonable revision of permits.

It should be noted, however, that OSM is not asserting that these permits must be revised to incorporate the revised guidelines; OSM is only finding that that decision should be a permitting decision made at the appropriate time, not a program decision to be made in advance by either SMS or OSM.

3. Green Weight vs. Dry Weight in Determining Sample Adequacy

a. Proposals in "Green Weight Letter" To Allow the Use of Green Weights

In the "Green Weight Letter" (Administrative Record No. KS–505), Kansas has submitted a proposal to allow the use of green (wet) weights for sample adequacy determinations in some specific circumstances; the letter also contains data to support this proposal. The proposal would exempt production measurements, in some specific circumstances, from the requirements in the revised portions of the guidelines (addressed in Finding No. 3(b) below) for the use of dry weights in determining sample adequacy.

Sample adequacy is the method utilized by the guidelines to implement the requirement (KAR 47–9–1(c)(42), 47–9–1(d)(39)) that sampling tecniques for measuring revegetation success use a 90-percent statistical confidence level. The sample adequacy formula determines the number of samples that must be taken to attain a 90-percent statistical confidence interval.

The particular circumstances for which Kansas proposes to allow the use of green weights are: (1) Pastureland forage production, where the species composition falls within certain limits; and (2) cropland forage production, where the species composition falls within certain limits (note that due to mathematical or editorial errors, species composition would have to be exactly 50-percent Fescue and 50-percent Perennial Ryegrass to be exempt). Kansas also proposes that the sample adequacy for production of wheat and grain sorghum be calculated from green weights.

The data submitted in support of this proposal represent 32 crop or forage production measurements, and compare the number of samples required to achieve sample adequacy based on green weights with the number required based on dry weights for each of the 32 measurements.

The data include: Eight wheat production measurements (all data from 1988); five grain sorghum production measurements (four in 1988; one in 1989); nine pasture forage production measurements (distributed from 1986 to 1989), most with species composition within the proposed limits of species composition; and seven cropland forage production measurements, most from 1988, with (due to the error in establishing the limits, as noted above) none within the proposed limits of species composition.

In each case, the number of samples required to achieve sample adequacy for green weights is equal to or greater than the number of samples required for dry weights. Under the sample adequacy formula, this means that the use of green weights would result in attaining the 90-percent statistical confidence level that would be attained by use of the dry weights, or an even greater statistical confidence. Thus, the data as presented do provide support for Kansas' proposal to allow the use of green weights in calculating sample adequacy in the proposed circumstances.

However, Kansas has submitted no information to document the source of the data or the methods under which it was collected (including the methods used to determine green and dry weights of forage samples). In particular, since the data do not appear to have come from a study specifically designed to compare the statistical effectiveness of green weights versus dry weights, it is not clear whether this data is all of the data available, or if other data might exist which would not support the proposal. Without some documentation on the source and collection methodology of the data, OSM has no means to evaluate the accuracy and reliability of the data or its value in verifying the validity of using green weights for sample adequacy determinations. In its letter of September 4, 1991 (Administrative Record No. KS–512), in which OSM identified its concerns about the technical adequacy of the proposed amendment, OSM notified Kansas of the need for documentation on the source and collection methodology of the data. Kansas chose not to submit any documentation in response to this notification.

Since, as noted in the February 19, 1991, rulemaking (56 FR 6559, 6560), the scientific literature does not support the use of green weights for sample adequacy, OSM must have substantial support in order to approve such a proposal. OSM has determined that, without supporting documentation, it cannot accept the data to justify the use of green weights. As OSM noted in the preamble to the rulemaking which relaxed the provisions for State submission of alternatives approaches, "* * * it remains the responsibility of the State seeking approval of an alternative to establish the necessary record" (46 FR 53376, 53377; October 28, 1981).

Thus the Director finds that the proposals in the "green weight letter" to allow the use of green weights, and hence exempt some production measurements from the requirements of the revised guidelines for use of dry weights, to determine sample adequacy, are not consistent with the Federal requirements at 30 CFR 816/817.116(a)(2), and is not approving these proposals. Should Kansas in the future submit documentation on the source and collection methodology of the data as requested by OSM, the Director will then reconsider approval of the use of green weights in determining sample adequacy.

b. Revised Guidelines Regarding Green Weight vs. Dry Weight

i. *Forage and soybeans.* In the earlier version of the guidelines, Kansas proposed to calculate statistical sample adequacy for production determinations on the basis of the green weight of the forage or row crop samples. OSM found that the use of green weights in determining statistical sample adequacy was not consistent with the Federal requirements at 30 CFR 816.116(a)(2) and 817.116(a)(2), and did not approve the use of green weights in determining statistical sample adequacy (February 19, 1991; 56 FR 6559, 6560).

Kansas is now proposing revisions to the guidelines regarding the demonstration of statistical sample adequacy. As noted earlier, the guidelines utilize a sample adequacy formula to ensure that the 90-percent statistical confidence interval is attained. In this amendment, Kansas is proposing revisions to several sections of the guidelines to add a new requirement for a determination of statistical sample adequacy based on dry weights of samples or, in the case of soybean crops, on the basis of sample weights corrected to a standard moisture content.

The revisions would apply to pasture and grazing land forage production, prime farmland soybean production, prime farmland forage production, cropland soybean production, and cropland forage production. These revisions are located at the following sections (page numbers refer to the proposed "Version 3"): II.C. (pp 13–15); IV.E. (pp 54–57); IV.H. (pp 66–68); V.E. (pp 95–97); and V.H. (pp 107–109) (Administrative Record No. KS–505).

For the reasons explained in detail in the preamble to the February 19, 1991, rulemaking (56 FR 6559, 6560), OSM has determined that the use of dry weights for determining the number of samples sufficient to reach the 90-percent confidence interval is consistent with the Federal regulation requirements at 30 CFR 816/817.116(a)(2). The proposed revisions to the sample adequacy determinations for forage would require the use of sample dry weights.

For soybean production measurements, the proposed revisions would require the use of sample weights corrected to a standard moisture content (13-percent) (hereinafter, "corrected weights"). This has the same effect as determining sample adequacy based on sample dry weights after those dry weights are "coded" by multiplying each sample dry weight by a constant factor. In the formula that the guidelines require to be used for the calculation of sample adequacy, coding by a constant factor would result in multiplying both the numerator and the denominator by the same amount, resulting in the same number of samples as would be required for dry weights. Thus the use of corrected weights is equivalent to the use of dry weights for this purpose. See J.H. Zar, *Biostatistical Analysis* (1974), pages 25–26 and 38, on the effects of "coding" statistical data.

In summary, for forage (on both pasture/grazing lands and cropland) and for soybeans, the guidelines have been revised to require the use of dry weights (or equivalent) for the determination of sample adequacy. For the reasons discussed in the preamble to the February 19, 1991, rulemaking (56 FR 6559, 6560), OSM has determined that these requirements are consistent with the Federal requirements at 30 CFR 816/817.116(a)(2). Therefore, the Director is approving these revisions.

ii. *Wheat and grain sorghum.* No revisions were proposed to the sections of the guidelines identifying the requirements for the determination of sample adequacy for the crops of wheat and grain sorghum. At sections IV.E. (pp 47–51) and V.E. (pp 87–92) (Administrative Record KS–505), green weights are to be used to calculate sample adequacy.

As noted in the February 19, 1991, rulemaking, the use of green weights for the demonstration of sample adequacy is not consistent with the Federal requirements for statistical confidence at 30 CFR 816/817.116(a)(2). For the reasons detailed in the preamble to that rulemaking, the Director finds that these sections of the revised guidelines are less effective than the Federal requirements in ensuring a 90-percent statistical confidence level. Therefore, the Director is not approving the revised guidelines, at sections IV.E. (pp 47–51 and V.E. (pp 87–92), to the extent that they allow sample adequacy to be determined, for wheat and grain sorghum production, on the basis of green weights. Should Kansas in the future submit documentation on the

source and collection methodology of the data as requested by OSM (see Finding No. 3(a) above), the Director will then reconsider approval of these parts of the guidelines.

4. Use of Representative Forage Samples

Kansas is proposing revisions to the guidelines that would delete the provisions for the determination of dry weight and percent moisture content of forage based on representative subsamples of visually estimated stratified samples. Instead, the proposed revisions would require the entirety of each forage sample to be oven dried, and sample adequacy would be calculated from the sample dry weights. The dry weights would be corrected to a standard moisture before calculating the total production of the stratified sample area. These revisions are located at the following sections (page numbers from the revised "Version 3"): II.C. (pp 13–14), IV.H. (pp 65–66), and V.H. (pp 106–107) (Administrative Record No. KS–505).

In the earlier version of the guidelines, Kansas proposed to use visually estimated representative subsamples for these determinations. OSM found this to be inconsistent with the Federal requirements for statistical confidence at the 90-percent level, because visual estimates are subject to bias and the "representative" subsamples would constitute an unweighted sampling. Therefore, the proposal was not approved.

The Director now finds that the proposed revisions, by requiring the use of dry weights in determining sample adequacy, establish statistical methodologies consistent with the Federal requirements at 30 CFR 816/817.116(a)(2), and is approving these proposed revisions.

5. Blank Areas in Sampling of Prime Farmland and Cropland

Kansas is proposing revisions that delete the provisions, in certain sections of the earlier version of guidelines, to exclude blank areas from sampling. Blank areas are areas that were seeded to row crops but, for unspecified reasons, were subject to crop failure and are devoid of vegetation. The proposed revisions would allow the exclusion from sampling only of those areas that were not planted to crops (e.g., grassed waterways, roads); thus "blank areas" would not be excluded from sampling. These revisions are located in sections IV.E. (page 57) and V.E. (page 98).

In the earlier version, Kansas has proposed at sections IV.E. and V.E. in the subsections entitled "Special Problems in Row Crop Sampling," that when random coordinates for sample plots fall on blank areas, those sample plot locations would not be used. OSM found that this proposal (to not use random coordinates that fall on blank areas) would negate the statistical validity of the use of random coordinates. By not sampling at coordinates that fall on blank areas, the sampling technique would no longer be random, but rather would be selective. Because blank areas represent actual field conditions, on both mined and unmined land, they must be subject to random sampling. Therefore, the proposal was not approved.

OSM has determined that the currently proposed revisions would require all planted areas to be subject to random sampling, and thus establish a statistical sampling methodology consistent with the requirements of 30 CFR 816/817.116(a)(2). The Director therefore finds these revisions to be consistent with the Federal requirements, and is approving the proposed revisions.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No public hearing was held because no one requested an opportunity to provide testimony. One public comment response was received and is addressed below.

The Pittsburg & Midway Coal Mining Company (P&M) provided comments on the proposed amendment that addressed both the "grandfathering" of permits in the proposed Preface, and the use of green weights for determining sample adequacy (Administrative Record No. KS–509).

For three reasons, P&M supported the proposal in the Preface to exempt specific permits from being revised to incorporate the success standards, sampling criteria, and methodologies in the revised guidelines. First, the revegetation plans and success standards for the specific permits have been in implementation for a number of years; in some cases, the mine is no longer in operation and all revegetation activities have been completed. Second, if the permits were revised to incorporate the new guidelines, the new success standards might require the planting of new species or mixtures; the additional disturbance this would require would be counterproductive to the goals of reclamation. Third, vegetation data collected prior to these guidelines would no longer be valid, even though it was valid under previously approved methods.

Regarding the first two points, OSM believes that these factors should be considered in permit reviews, documented by written findings, rather than in program amendments. One reason for this is that OSM disagrees with P&M that all revegetation activities have necessarily been completed. For example, if the revegetation on a specific permit area should fail to meet the success standards currently required by the permit, then it is likely that augmentative seeding, fertilization, etc., would be required. That circumstance might well alter the decision as to whether certain permit revisions would be reasonable. It should be noted, however, as indicated in Finding No. 2 above, that OSM is not asserting that these permits must be revised to incorporate the revised guidelines; OSM is only saying that that decision should be a permitting decision, not a decision approved by OSM in a program amendment.

The third argument above, that existing data would be rendered invalid, has already been addressed in the Preface; both the earlier version (approved in applicable part in the February 19, 1991, rulemaking (56 FR 6559, 6560)) and the currently proposed version (being approved by the Director in Finding No. 1 of this action) indicate that previous data will be accepted if they meet the standards in effect at the time they were collected.

For the reasons presented above, and those presented in Finding No. 2 of this rulemaking action, OSM does not agree with P&M's position regarding the proposed Preface.

P&M also supported the proposal to allow the use of green weights in demonstrating sample adequacy, stating that P&M had reviewed the data submitted by Kansas and found that the data supported the proposal. P&M further stated that its own data on cool season pasture vegetation also indicated little if any variation in the number of samples required to reach sample adequacy between green and dry weight methods; however, P&M did not submit any data for review by OSM.

OSM, as noted in Finding No. 3(a), agrees that Kansas' submitted data, if its origin and reliability were known, would support the proposal. As noted in that finding, without any information on the origin and collection methodology of Kansas' data, the Director cannot approve Kansas' proposal in the face of a large body of scientific literature stating that only dry weight determinations of sample adequacy are

acceptable. For this reason, OSM does not agree with P&M regarding the proposals for the use of green weights in determining sample adequacy.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the Kansas program.

By letter dated June 28, 1991 (Administrative Record No. KS–508), the U.S. Soil Conservation Service (SCS) (State Conservationist) responded that the Labette County Soil Survey has been published, and that the proposed guidelines could make reference to that Soil Survey. OSM notes that when the guidelines were written, this soil survey had not been completed. Therefore, on pages 5, 57–58, and 98, the proposed ("Version 3") guidelines (Administrative Record No. KS–505) state that the SCS SOILS–5 interpretation data sheets will be used to obtain yield standards for Labette County until such time as the Labette County Soil Survey is available. No change to the guidelines is required, since they were written to cover this eventuality. However, the document could be simplified by rewriting the sections cited above to reflect the availability of the soil survey and including the soil survey in appendix (A); OSM will forward the comment to Kansas so that it may consider this action in any future revisions.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. The amendment did not contain any proposed provisions that would affect cultural or historic resources. No response was received from either group.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Kansas did not propose in this amendment any revisions to its program that relate to air or water quality standards. However, EPA's Regional and Headquarters offices were afforded opportunity to comment on this amendment. No response was received from EPA's Headquarters office.

By letter dated June 19, 1991 (Administrative Record No. KS–510), EPA's Region VII responded that it found the proposed procedures and techniques to be laboratory-grade and precise. However, they were concerned about how the procedures would take into consideration other variables affecting vegetation growth and production, such as rainfall, amount of sunlight, fertilization rates, seed varieties, length of growing season, weather conditions, insects, and diseases. Further, they commented that the procedures specified no contingency plans for unforeseen weather events or other obstacles encountered during sampling efforts.

OSM appreciates the review undertaken by the EPA; all of the factors they mentioned can have significant effects on vegetative growth. OSM believes that these factors are all taken into account either in the guidelines themselves or in other parts of the Kansas program. Many of these factors, for example, could be cancelled out if an operator were to choose to utilize the "reference area" method presented in section I of the guidelines; the reference area and the reclaimed area would be subject to the same influences, so a comparison of the two would eliminate the effect of these factors.

The agricultural data which the guidelines use to define technical standards represent data collected over many years across either a county or across one soil type, and hence represent "averages" over several years and over large areas. These averages should flatten out the peaks and valleys resulting from annual weather variations and spatial variability in weather events, insect infestations, etc.

Permittees quantifying the success of their revegetation, on the other hand, are subject to these peaks and valleys. In the case of prime farmland cropland, a given year's yields can be adjusted (by the SCS) to account for the climatic factor, insect damage, etc., that caused the reduced yield (see page 37 in revised version). For other land uses, such adjustment is not possible; however, in these instances the permittee is required to achieve only 90-percent of the technical standard. Preambles to the Federal regulation at 30 CFR 816.116 (44 FR 14902, 15237, March 13, 1979; 48 FR 40140, 40151, September 2, 1983), indicate that one reason for this 90-percent provision was to allow for annual and spatial variations in vegetative growth due to weather, etc.

Fertilization rates are determined by standard soil fertility testing and the target yield for the crop (see, e.g., page 10 of the revised guidelines). Fertilizer application must also be reported to the State (see page 10 and appendix E), providing Kansas an opportunity to review fertilization rates in comparison to fertilization rates common in the local area. Species variety is controlled for crops by the requirement to use one of the five most common varieties planted in the county (see, e.g., page 41 of the revised guidelines). Since the technical standard will represent the most commonly planted varieties, this will assure that the production on the reclaimed area can be fairly compared to the technical standard. For forage crops, the guidelines do not specify which varieties can be planted (although species must be acceptable for the postmining land use). However, the only agricultural database available to Kansas to be used as a technical standard reports forage production only by the large categories of cool season grasses and warm season grasses; hence it would make no sense to limit the varieties planted. Further, the technical standard most represents those species and varieties that are most commonly planted in the area on unmined land; it is to be expected that those will be among the most productive species and varieties available, and in order to meet this standard the mining industry would be expected to use these same varieties.

For fish and wildlife habitat, the success standards are defined by the SMS, the Kansas Department of Wildlife and Parks, the SCS, and the Forestry Extension of Kansas State University based on their experience, which summarizes many different field conditions over long time periods (see, e.g., pages 119 and 130 of the revised guidelines). The primary parameter for measuring success, which is the rate of successful stocking, reflects the total of 3 to 5 years' growing conditions, and hence tends to average out good and bad periods.

OSM also notes that the Kansas program includes, at KAR 47–3–42(a)(24) (referencing 30 CFR 780.18(b)(5)), a requirement to have approved in the permit a revegetation plan to include species planted, planting methods, irrigation and pest control, and soil testing. Therefore, several of the variance factors mentioned by EPA are controlled via permit conditions.

Regarding the concern about unforeseen events during sampling, OSM agrees that some such events can affect the data collected. This is one reason that dry weights are preferred

over green weights; green weights could vary greatly over the course of several hours if the vegetation is first damp from dew, then is dried by the sun and wind, then subsequently wet by a rain shower. Beyond this, though, OSM recognizes a need to rely on the professionalism of the biologists/agronomists collecting the data. The Kansas program is small and the Kansas regulatory authority works closely with the industry and with the consultants, and is thus able to closely observe the professional qualifications of the persons collecting the data.

For these reasons, the Director believes that the concerns raised by the EPA are adequately addressed in the Kansas program.

V. Director's Decision

Based on the above findings, the Director approves, with the exceptions noted below, Kansas' proposed program amendment as submitted June 3, 1991 (Administrative Record No. KS–505).

As discussed in Finding No. 2, the Director is not approving the proposed Preface to the extent that it forfeits Kansas' authority to require reasonable permit revisions to incorporate the success standards and sampling criteria and methodologies contained in the guidelines. As discussed in Finding No. 3(a), the Director is not approving the proposals in the June 3, 1991, "green weight letter" which would allow green weights to be used for sample adequacy determinations in some cases. As discussed in Finding No. 3(b)(2), the Director is not approving sections IV.E. (pp 47–51) and V.E. (pp 87–92) of the revised guidelines, to the extent that they allow the use of green weights to be used in determining sample adequacy for the production of wheat and grain sorghum.

The Federal regulations at 30 CFR part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the Kansas program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kansas of only such provisions.

VII. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.15(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 16, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*.

2. § 916.15 is amended by adding paragraph (m) to read as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(m) With the exceptions of: The Preface to the revised guidelines entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success" ("Version 3," dated June 1991), to the extent that it would forfeit Kansas' authority to require reasonable revisions of permits to incorporate the revegetation guidelines; sections IV.E and V.E. of those revised guidelines to the extent they allow the use of green weights in determining statistical sample adequacy; and the proposals in a June 3, 1991, letter to allow the use of green weights to determine statistical sample adequacy in certain circumstances, Kansas' program amendment as submitted June 3, 1991, is approved effective August 19, 1992.

[FR Doc. 92–19578 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Montana permanent regulatory program (hereinafter referred to as the Montana program), as administered by the Montana Department of State Lands (DSL) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the disposal of underground coal mine waste, definitions, permit application requirements, general backfilling & grading requirements, permanent cessation of operations, alluvial valley floors, remining, annual reports, and the Small Operator Assistance Program (SOAP). The amendment is intended to revise the Montana program to: Add rules that provide additional environmental and public safety safeguards; be consistent with SMCRA and the Federal regulations; correct minor editorial and typographical errors; and improve operational efficiency.

OSM is also correcting existing errors in the codification of the Montana program at 30 CFR part 926.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett; telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by DSL. Information regarding the general background on the Montana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Actions concerning program amendments taken subsequent to the approval of the Montana program are found at 30 CFR 926.15 and § 926.16.

II. Submission of Proposed Amendment

On June 19, 1990, Montana submitted proposed rules to OSM as an amendment to its approved regulatory program (Administrative Record No. MT–7–01). The proposed rules are intended (1) to add rules to provide additional safeguards for the environment and public safety and (2) to resolve internal rule inconsistencies, resolve ambiguities, and eliminate editorial and typographical errors. The proposed amendment also addresses, in anticipation, some items contained in a subsequent March 29, 1990, letter (Administrative Record No. MT–7–26) sent by the Director to Montana in accordance with the provisions of 30 CFR part 732 that informed Montana of changes necessary to maintain its program in a form no less effective than the Federal regulations that implement SMCRA.

Montana proposes to add seven new rules governing the application requirements and performance standards for the disposal of underground coal mine waste, to be included in the Administrative Rules of Montana (ARM) 26.4 subchapter 9. These rules are: ARM 26.4.920, special application requirements for the placement and disposal of underground development waste; ARM 26.4.924, general performance standards for the disposal of underground development waste; ARM 26.4.925, application requirements and performance standards for the disposal of underground development waste in valley fills; ARM 26.4.926, application requirements and performance standards for the disposal of underground development waste in head of hollow fills; ARM 26.4.927, application requirements and performance standards for the disposal of underground development waste in durable rock fills; ARM 26.4.930, special application requirements for the placement and disposal of coal processing waste in conjunction with underground mines; and ARM 26.4.932, performance standards for the disposal of coal processing waste in conjunction with underground mines. Montana also proposes revisions to existing rules in the following portions of its program: definitions and permit application requirements, ARM 26.4 subchapter 3; backfilling and grading requirements, ARM 26.4 subchapter 5; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining, ARM 26.4 subchapter 8; bonding, insurance, reporting, and special areas, ARM 26.4 subchapter 11; and special departmental procedures and programs, ARM 26.4 subchapter 12.

OSM announced receipt of the proposed amendment in the July 11, 1990, **Federal Register** (55 FR 28414), and in the same notice opened the public comment period and provided for a public hearing on its substantive adequacy (Administrative Record No. MT–7–07). The public comment period closed on August 10, 1990. The public hearing scheduled for August 5, 1990, was not held because no one requested an opportunity to testify.

By letter dated September 7, 1990 (Administrative Record No. MT–7–13), OSM notified Montana of a technical concern it had with design precipitation events for runoff diversions. By letter dated October 29, 1990 (Administrative Record No. MT–7–15), Montana submitted additional information on the subject to provide evidence that its proposed rule is no less effective than the Federal regulation. OSM announced receipt of this material in the November 19, 1990, **Federal Register** (55 FR 48135), and in the same notice reopened the public comment period until December 4, 1990 (Administrative Record No. MT–7–17).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Montana on June 19, 1990.

1. Provisions Not Discussed

Montana proposes new rules, and revisions to existing rules that either correct editorial errors, improve clarity, or are substantive in nature; some of these proposed new and revised rules contain language substantially identical to the corresponding Federal regulations. The Director, therefore, finds that these proposed rules and rule revisions are no less effective than the corresponding Federal regulations and is approving the proposed additions and revisions. They include [Federal regulation counterparts indicated in brackets]:

Definition, "coal processing waste," ARM 26.4.301(24) [30 CFR 701.5]; Definition, "cumulative hydrologic impact area," ARM 26.4.301(32) [30 CFR 701.5]; Baseline information, environmental resources, ARM 26.4.304(5) [30 CFR 780.21(b)(1)/ § 784.14(b)(1)]; Application requirements, transportation facilities plan, ARM 26.4.321(2) [30 CFR 780.37(a)(5)/§ 784.24(a)(5)]; Alluvial valley floors, ARM 26.4.805(1) [30 CFR 785.19(b)(2), § 822.12(b)(2)]; Application requirements, placement and disposal of underground development waste, ARM 26.4.920 [30 CFR 784.19]; Disposal of underground development waste, general requirements, ARM 26.4.924(2), (5), (6), (9), (10), (15), (17), (18), and (19) [30 CFR 817.81(b), (c)(2), (d), § 817.83(a)(2), (b), (c), (d), (e)]; Disposal of underground development waste, valley fills and head-of-hollow fills,

ARM 26.4.925(1), (2), (3)(a, b, c), (4), and 26.4.932(1) [30 CFR 817.83 (a), (c), § 817.81(a)(2), § 817.83(a)(3), § 817.83(c)(2)] Disposal of underground development waste, durable rock fills, ARM 26.4.927 (2)(a, b), (3)(b, c, d), (6), and (7)(a, b) [30 CFR 817.81(c), 817.83 (a)(2, 3), (c)(2)]; Special Application requirements, placement and disposal of coal processing waste, narrative [[ARM 26.4.930(1) [30 CFR 784.11(b)(4), § 784.16(a)(1)(ii), (d), § 784.23(b)(5, 7, 10)]], and plans & designs [[ARM 26.4.930(2)(a), (b) [30 CFR 784.16(a)(1), 784.16(a)(2, 3)]]; and Disposal of Coal Processing Waste, ARM 26.4.932(2, 3, 5(a, c, d), 6, 7, and 9) [30 CFR 817.81(a) and § 817.83(c)(4), (d), (introduction), (a)(3), (c)(4)].

2. Definitions

(a) *"Head-of-Hollow Fill" and "Valley Fill".* At ARM 26.4.301(48) and (128), Montana proposes to revise its definitions of "head-of-hollow fill" and "valley fill" by allowing the fills to "* * * [consist] of any material, other than non-coal organic material * * *." Montana previously defined these fills as consisting of any materials other than coal (processing) waste and organic material. Thus, as amended, the proposed definitions would now allow the inclusion of coal processing waste and coal organic material in these fills.

The Federal definitions of these fills at 30 CFR 701.5 also allow the inclusion of coal processing waste materials in head-of-hollow and valley fills. However, the Federal definitions prohibit the inclusion of all organic materials: fills may only "[consist] of any material, other than organic material * * *".

Montana's proposed revision would exclude non-coal organic materials but not coal organic materials; thus Montana's proposed definition would not exclude all organic material from being placed in head-of-hollow and valley fills, as does the Federal regulation.

Since the proposed Montana rule would allow coal organic materials to be placed in head-of-hollow and valley fills, the Director finds that the proposed definitions are less effective than the Federal definitions, and is not approving them. Specifically, the Director is not approving the limitation to "non-coal organic materials" of the organic materials barred from inclusion in these fills, and is requiring Montana to revise the definitions to eliminate the word "non-coal."

(b) *"Land use".* At ARM 26.4.301(63), Montana defines "land use":

> "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. * * * Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternate land use that is subject to approval by the department.

Montana proposes to revise its definition by deleting the last sentence quoted above ["[c]hanges of land use from one of the following categories to another shall be considered as a change to an alternate land use that is subject to approval by the department"].

Under the Montana program (at ARM 26.4.762 and ARM 26.4.824), all affected lands are normally required to be reclaimed to grazing or wildlife habitat uses, with all other postmining uses being considered "alternative" land uses, no matter what the premining use had been. The Secretary has previously approved these provisions (45 FR 21560, 21565; April 1, 1980).

As a result, removal of the provision defining alternative land uses from the Montana definition of "land use" does not delete the criteria for identifying alternative uses. Therefore the Director finds that the approved Montana program as revised would continue to be no less effective than the Federal regulation requirements and is approving the proposed change.

(c) *"Previously mined area".* Montana proposes to revise the definition of "previously mined area," at ARM 26.4.301(84), to read:

> "Previously mined area" means land on which coal mining operations were previously conducted, except those lands subject to the standards of the Montana Strip and Underground Mine Reclamation Act or of the Surface Mine [sic] Control and Reclamation Act of 1977.

The proposed definition is substantively similar to the corresponding Federal definition at 30 CFR 701.5 (the State definition only adds a reference to the State's regulatory statute). However, in the case of *National Wildlife Fed'n.* v. *Lujan* 733 F. Supp 419 (D.D.C. 1990), the United States District Court for the District of Columbia addressed two concerns about the Federal definition. The first concern was whether "previously mined" means mining that occurred (1) before the enactment date of SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. The second concern was whether the Federal definition would allow an operator to remine an area that had been fully and satisfactorily reclaimed and then leave it only partially reclaimed.

Regarding the first concern, the court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue" (*National Wildlife Fed'n.*, 733 F. Supp at 438. Consequently, the court held that August 3, 1977, "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." (*Id.* at 441–442).

On the second issue, the court held that "[a] definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible." (*Id.* at 441). Accordingly, the court remanded the definition to the Secretary to correct both flaws.

Although OSM has not actually suspended this definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Montana's proposed definition. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the applicable provisions of SMCRA as interpreted by the court.

Montana had proposed this same revised definition in a previous program amendment [Administrative Record MT–5–1; December 21, 1988]. On May 11, 1990, in accordance with the court's ruling, the Director did not approve the proposed definition to the extent that the definition (1) would interpret or contemplate the temporal concept of "previously" as being any date other than August 3, 1977, or (2) would allow lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed (55 FR 19727, 19729–19730). In that same rulemaking action, the Director indicated that this issue would be subject to future notification under 30 CFR 732.17(d).

Even though Montana has not received a 30 CFR Part 732 notification from the Director, it is now resubmitting the same proposed definition, based on the State's belief that its definition is consistent with the court's decision. In its disposition of comments appended to its May 7, 1990, rulemaking, Montana clarified that the state statute was effective March 16, 1973, and that any lands mined and reclaimed after that date, whether permitted or not, would not be "previously mined" as defined in this proposal; Montana also indicated that its rules at ARM 26.4.834 do not define "remining" to include the disturbance of old highwalls or redisturbing a mined and reclaimed site to recover a lower coal seam (Administrative Record No. MT–7–01).

OSM has reviewed Montana'a rules regarding remining operations, at ARM 26.4.834–26.4.837, and agrees that those rules limit "remining" to "operations which process coal mine waste materials resulting from 'previously mined areas'." Further, ARM 26.4.835(2) requires remining operations to comply with all permitting and performance requirements. Therefore, all remaining operations must be reclaimed to the full extent required by the Montana program; there are no exemptions allowed for partial elimination of highwalls, and there is a requirement that all previously mined areas, whether or not previously reclaimed, be fully reclaimed to the standards of SMCRA.

For these reasons, the Director finds that Montana's definition of "previously mined area" at ARM 26.4.301(84) has no function corresponding to the function of the Federal definition in 30 CFR 701.5, as applied at part 816/§ 817.106. Therefore, the Director is approving the proposed definition.

The Director notes, however, that the statutory definition of "remaining," at 82–4–203(28), is not limited to processing coal mine wastes; if Montana should at some future time revise its regulatory applicability definition at ARM 26.4.834 and also grant remining operations exemption from some permitting and performance standards, then Montana's definition of "previously mined area" would have to be reevaluated.

(d) *"Road"*. Montana is proposing minor editorial revisions to the definition of "road" at ARM 26.4.301(100). The minor revisions do not substantively change the definition. The definition, both currently and as revised, would exclude pioneer and construction roadways from the definition of "road."

The Federal definition at 30 CFR 701.5 was revised on November 8, 1988 (53 FR 45190, 45210), to eliminate the previous exclusion of pioneer/construction roadways, thereby making pioneer/construction roadways subject to those road performance standards at 30 CFR Part 816/§ 817.150–151 which are applicable to road construction.

The Director finds that the proposed minor editorial clarifications have no substantive effect on the definition, and is approving the proposal. However, the Director notes that Montana's existing and proposed definitions of "road," by excluding pioneer and construction roadways, are less effective than the Federal definition. Because this less effective definition adversely affects proposed revisions to the application requirements for transportation facilities at ARM 26.4.321 (see Finding No. 4(c) below), the Director is requiring Montana to further revise the definition to clarify that pioneer and construction roadways are subject to any general performance standard applicable to road construction.

(e) *"Waste"*. Montana is proposing to modify its definition of "waste" at ARM 26.4.301(132) to include "coal processing waste." Thus, as revised, the term "waste" includes coal processing waste, underground development waste, and other materials. The Federal regulations do not define the term "waste," but do define the term "coal mine waste" at 30 CFR 701.5. Under the Federal definition, "coal mine waste" includes "coal processing waste" and "underground development waste." The Montana program contains definitions of these latter two terms, at ARM 26.4.301, which are identical to the Federal definitions. Therefore, the Director finds that the Montana definition of "waste" is no less effective than the Federal definition of "coal mine waste."

Regarding the application of the revised definition, however, OSM notes that "waste" is used to describe materials governed by existing rules ARM 26.4.505 and ARM 26.4.510 (hereinafter, "rules 505 and 510"). Montana in this program amendment is proposing rules to govern the disposal of "waste" in connection with underground mines. But rules 505 and 510 are the only part of the Montana program regulating the disposal of "waste" on surface mining operations; OSM's review found that rules 505 and 510 do not contain requirements corresponding to all of the Federal requirements for the disposal of coal mine waste at, or incorporated by reference in, 30 CFR 816.81 through 816.84 and § 816.102(e).

Thus rules 505 and 510 would be less effective than the Federal regulations cited above in governing the disposal on surface mining operations of "waste," in the revised definition, since "waste" would now include "coal mine waste." Therefore, the Director notes that approving the proposed definition, to the extent that such approval would allow the disposal of coal processing waste on surface mining operations to be governed by rules 505 and 510, would render the Montana program less effective than the Federal requirements at 30 CFR 816.81 through 816.84 and § 816.102(e). Therefore, the Director is not approving the proposed definition of "waste" at ARM 26.4.301(132) to the extent that it includes coal processing waste to be disposed of on surface mining operations. The Director is also requiring Montana to further amend its program, at ARM 26.4.505 and 26.4.510 or elsewhere, to add requirements for the disposal of coal mine waste on surface mining operations that are no less effective than the Federal requirements at, or incorporated by reference in, 30 CFR 816.81 through 816.84 and § 816.102(e).

3. Reclamation Plan: Alternatives to Highwall Reduction

Montana proposes a revision to the permit application requirements for reclamation plans, at ARM 26.4.313(3)(b). The proposal would further revise an earlier proposed revision on which the Director has deferred a decision. The revision would delete ARM 26.4.825 (alternative revegetation) from the proposed standards that allowable alternatives to highwall reduction would be required to meet.

ARM 26.4.313 was one of several rules addressing the topic of allowable alternatives to highwall reduction that were proposed for revision by Montana as part of an amendment package submitted December 21, 1988 (Administrative Record No. MT–5–1#).

In the May 11, 1990, rulemaking action on the December 21, 1988, proposed amendment (55 FR 19727), the Director deferred a decision on the effectiveness of the proposed rules addressing alternatives to highwall reduction, until such time that Montana provided additional clarification as to the conditions under which alternatives to highwall reduction would be allowed. Montana has not yet submitted this information in a formal amendment. Therefore, the Director is continuing the deferral on the earlier proposed revisions, and also on the currently proposed revision to ARM 26.4.313(3)(b); in accordance with 30 CFR 732.17(g), this deferral continues to render these proposals non-enforceable by the State of Montana.

4. Application Information: Transportation Facilities Plan

Montana is proposing several revisions to ARM 26.4.321, which specifies the required permit application materials that address transportation facilities. These revisions include non-substantive, editorial renumbering of the rule and the addition of new requirements, including a requirement for the preparation and certification of plans and drawings for roads by experienced registered professional engineers or registered land surveyors. Other proposed new rule requirements are addressed in Finding No. 1 of this notice.

(a) Certification of Plans and Drawings: Content

At ARM 26.4.321(3), Montana proposes to add the requirement that:

> The plans and drawings for each road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or a registered land surveyor, with experience in the design and construction of roads. The road designs must meet the performance standards outlined in ARM 26.4.601 through 26.4.606.

The counterpart Federal regulations at 30 CFR 780.37(b)/§ 784.24(b) require plans and drawings for primary roads to be prepared by and certified by registered engineers (or registered land surveyors, in states which authorize them to do so). Further, they specify the content of the certification: Plans and drawings must be certified as meeting (1) the requirements of 30 CFR chapter VII; (2) current, prudent engineering practices; and (3) any design criteria established by the regulatory authority. The Federal regulation and its preamble on November 8, 1988, (53 FR 45190 at 45195–6) specify that the plans must be certified as meeting the performance standards and current, prudent engineering practices. At 53 FR 45196, the preamble (in response to a comment asserting that certification was unnecessary because all designs and plans must comply with applicable performance standards) indicates that a certification that the designs meet the requirements of SMCRA is necessary to minimize the potentially major environmental impacts of primary roads.

The Montana proposal places the design and certification requirements on the plans for all roads, not just on plans for primary roads; it therefore assures that the Federal requirements for the plans for primary roads will be met. However, while the Montana proposal requires a certification, the content of that certification is not specified. The Montana proposal does include the requirement that designs must meet the road performance standards, but does not require that the designer certify that this is true; nor is the certification required to address current, prudent engineering practices or any additional design criteria established by DSL.

The Director finds that the failure of the Montana proposal to specify the content of the certification for these plans and designs renders the proposal less effective than the Federal regulations in achieving the purposes of SMCRA. The Director is approving the proposal, but is requiring Montana to further amend the rule to include the required content of the certification, to be no less effective than 30 CFR 780.37(b)/§ 784.24(b).

(b) Professionals Authorized to Certify Plans

In its proposed rule language at ARM 26.4.321(3), Montana would allow the preparation and certification of transportation facilities plans by "registered land surveyor[s]." The Federal regulations at 30 CFR 780.37(b)/§ 784.24(b) allow registered land surveyors to perform these preparation and certification tasks if such tasks are authorized by the registration practices of the individual States. OSM has reviewed the Montana statute governing the registration of engineers and land surveyors and notes that at 37–67–101(7), MCA, the "practice of land surveying" is defined by Montana to mean:

> * * * any service * * * requir[ing] the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:
>
> (a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys [sic]; (b) teaching of land surveying subjects; (c) measurement and allocation of lines, angles, elevations, and coordinate systems; (d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including * * * the determination of areas and volumes; (e) monumenting of property boundaries; (f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and (g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

In regard to roads, the Director therefore finds that registered land surveyors are authorized only to perform the "platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein * * *". Thus registered land surveyors are not specifically authorized by Montana's statute to perform other road design work, including the development of other road specifications, such as surfacing, drainage controls, stream crossings, etc. Given the absence of direct statutory language, and the absence of sufficient information supporting DSL's interpretation that 37–67, MCA, authorizes land surveyors to prepare and certify transportation facilities plans, OSM cannot conclude that surveyors are authorized to perform such work. Therefore the Director finds Montana's proposed ARM 26.4.321(3) to be less effective than the Federal regulation at 30 CFR 779.37(b) to the extent that it allows registered land surveyors to prepare and certify permit application materials, which they are not specifically authorized to do under Montana state law. The Director is therefore not approving in proposed ARM 26.4.321(3) the phrase ", * * * or a registered land surveyor, * * *," and is requiring Montana to revise the rule to remove that phrase.

Additionally, the Montana program at ARM 26.4.305 specifies requirements for the preparation and certification of certain maps, plans, and cross sections required in permit applications; this rule at revised subsection ARM 26.4.305(2)(b) allows registered land surveyors to prepare and certify all such materials except for those relating to spoil disposal facilities and sedimentation ponds. Registered land surveyors would thus be allowed to prepare and certify plans and cross sections for: mineral storage, cleaning and loading areas; storage areas for soil, spoil, coal waste, and garbage or other debris; water diversions and facilities for collection, conveyance, treatment, storage, and discharge of water; and explosives storage and handling facilities (ARM 26.4.305(1)(l),(m),(o),(s),(t)). The Federal regulations at 30 CFR 780.14(c) allow registered land surveyors to perform such preparation and certification tasks if such tasks are authorized by the registration practices of the individual States.

Montana's statutory definition of the "practice of land surveying" has been noted above. OSM does not find in that definition specific authorization for the preparation of those plans and cross sections allowed under proposed ARM 26.4.305(2)(b). OSM also notes, particularly, that "inspection of construction for the purpose of assuring compliance with drawings and specifications" is reserved for engineers, under the statutory definition of "the practice of engineering" at 37–67–101(6), MCA; further, under this definition "the practice of engineering" is also delegated responsibility for safeguarding life and property, which is one of the primary purposes behind SMCRA's preparation and certification requirements.

Therefore, the Director finds Montana's rule ARM 26.4.305(2)(b) to be less effective than the Federal regulations at 30 CFR 780.14(c) to the extent that it allows registered land surveyors to prepare and certify permit application materials for which they are not authorized under Montana state law. Specifically, the Director is not approving the phrase "* * *, registered land surveyor, * * *" and is requiring

Montana to amend its program to remove this provision.

(c) Plans and Drawings for Stress Fords

Montana's proposed rules do not provide counterparts to the Federal requirements at 30 CFR 780.37(a)(2),(3) / § 784.24(a)(2),(3) that require the submission of:

(1) Drawings and specifications for roads proposed to be located in stream channels; and

(2) Drawings and specifications for proposed temporary fords of perennial and intermittent streams used during road construction.

Existing ARM 26.4.602(2) allows temporary fords of "dry streams," and allows the placement of roads in stream channels except those of "active streams." Montana has clarified that it interprets any stream as "dry" if, at the moment in question, there is no water flowing [correspondingly, any stream is "active" if, at the moment in question, water is flowing] (Administrative Record No. MT–7–25). Thus, perennial streams are always active; but ephemeral and intermittent streams are sometimes "active" and sometimes "dry." Therefore, it is concluded that ARM 26.4.602(2) allows the potential for placement of roads in intermittent stream channels and the potential for temporary fords of intermittent streams.

Based on the above, the Director finds that since the Montana program lacks the permitting requirements for these roadway locations that are required by the Federal regulations at 30 CFR 780.37(a)(2),(3) / § 784.24(a)(2),(3), the Montana program is less effective. Montana is required to amend its program to include requirements no less effective than the Federal requirements.

(d) Reclamation Plans and Schedules

Montana's proposed rule does not include a counterpart to the Federal regulations, at 30 CFR 780.37(a)(6) / § 784.24(a)(6), that require plans and schedules for the reclamation of temporary roads. Even though Montana's program does contain, at ARM 26.4.308(2)(d), a counterpart to 30 CFR 780.11(b)(3) that requires a narrative explaining the construction, maintenance, and removal of transportation facilities, this is general in nature and does not require the specific design plans and schedules of 30 CFR 780.37(a)(6).

Therefore, the Director is requiring Montana to further amend its rule at ARM 26.4.321 to include application requirements, for roads not to be retained for the postmining land use, no less effective than the Federal regulations at 30 CFR 780.37(a)(6) / § 784.24(a)(6).

5. Remining: Bonding

The current ARM 26.4.837 requires:

(1) Bond must be submitted consistent with 82–4–223, MCA and sub-chapter 11, except as noted below. (2) If approval is granted for a remining and reclamation plan that does not adversely affect eligibility for abandoned mine land reclamation funding on the site pursuant to ARM 26.4.836, the performance bond for the area must be the estimated total cost to the department for reclamation of the site in accordance with the approved reclamation plan.

Montana is proposing to revise ARM 26.4.837(2) to read "The performance bond for the area must be the estimated total cost to the department for reclamation of the site in accordance with the approved reclamation plan." Since the deleted language serves to limit this provision to a subset of remining operations (those whose reclamation plan would not adversely affect eligibility for funding under the Abandoned Mine Lands program), the proposed revision would require that the bond for every remining operation be sufficient for DSL to complete the reclamation. The Montana status cited in subsection (1), 82–4–223(2), MCA, requires a minimum $10,000 bond for all operations.

The Federal regulations on remining at 30 CFR 816.106 do not specifically address bond amounts on remining operations. However, 30 CFR 800.14(b) requires that the bond on all operations be sufficient for the regulatory authority to assure completion of the reclamation plan in the event of forfeiture.

The Director finds that Montana's proposed revision to ARM 26.4.837 is consistent with and no less effective than the requirements of the Federal regulation at 30 CFR 800.14 and is approving the revision.

6. Backstowing of Coal Mine Waste

Montana proposes new rules at ARM 26.4.924(1) and ARM 26.4.932(1) that require underground development waste and coal processing waste to be disposed of on underground mines by backstowing in underground workings, unless valid physical, economic, safety, environmental, or other reasons exist for not doing so. "Backstowing" is a term in common use in surface mining and reclamation operations, and in the reclamation of abandoned mined lands, and means that these wastes would be transported back undergound and deposited in mine voids that are no longer needed for the operation.

The Federal regulations at 30 CFR 817.81(f) allow, but do not require, that coal mine waste, including both underground development waste and coal processing waste, be disposed of by backstowing. Montana's proposal thus requires disposal in a manner that is allowed, but not required, under the Federal regulations. Therefore, the Director finds that Montana's proposal is not inconsistent with and no less effective than the Federal program requirements and is approving the proposed provision.

7. Disposal of Underground Development Waste and Coal Processing Waste: Location Relative to Mine Excavations

Proposed ARM 26.4.924(3) and 26.4.932(2) would require underground development waste and coal processing waste, respectively, to be placed within designated disposal areas within a permit area of an underground mine.

In the Federal regulations, disposal of these wastes outside of mine excavations (and in underground workings) is regulated by 30 CFR 817.81–817.84; disposal within surface excavations (e.g., face-up areas) is regulated under 30 CFR 817.102(e). Requirements specified by the two sets of performance standards are the same, except that disposal facilities within mine excavations are allowed to be designed for and achieve a static safety factor of 1.3, as opposed to the required static safety factor of 1.5 for disposal facilities outside mine excavations.

Montana's proposed rules are not specifically directed either to disposal within mine surface excavations (i.e., in face-up areas) or to disposal outside mine excavations; thus it is not clear whether the proposed rules are intended to govern both situations (i.e., to be counterparts to both 30 CFR 817.81–817.84 and 817.102), or only disposal outside mine workings (i.e., to be a counterpart to only 30 CFR 817.81–817.84). Note that disposal in underground workings is regulated by other paragraphs of these rules (see Finding No. 6 above).

This situation is somewhat clarified elsewhere in the proposed rules; regarding underground development waste, ARM 26.4.924(3)(c), through referencing ARM 26.4 subchapter 5, requires disposal areas to meet approximate original contour (AOC) requirements, except for "waste disposal structures," which need not meet AOC requirements. This provision is incorporated for coal processing wastes through a cross reference to ARM 26.4.924(3)(c) at 26.4.932(6). Therefore the proposed rules are intended to regulate waste disposal both

where AOC must be achieved and where AOC need not be achieved. However, the proposal does not define what is meant by "waste disposal structures," so it is not clear whether these cases correspond to disposal within mine surface excavations and disposal outside these excavations, respectively.

The Director finds that without some indication as to whether these proposed rules are intended to address waste disposal within mine surface excavation or outside mine surface excavations, or both, and clarification on what constitutes a "waste disposal structure," OSM is unable to evaluate the effectiveness of proposed ARM 26.4.924(3) and 26.4.932(2). Therefore the Director is not approving these proposed provisions, and is requiring Montana to revise ARM 26.4.924 and 26.4.932 to specify whether the waste disposal governed by these rules is within or outside mine surface excavations, and to clarify what constitutes a "waste disposal structure."

8. Disposal of Underground Development Waste (Design Criteria)

(a) Comparison of Regulatory Schemes

In order to more easily identify the similarities and differences between the Federal and proposed State provisions, the following is a brief summary of Montana's proposed regulatory scheme as compared with the Federal regulatory scheme.

Montana's proposed new rule ARM 26.4.924 provides the general performance standards for the disposal of underground development waste. The corresponding Federal regulation requirements are located at 30 CFR 817.81–817.84 and § 817.102(e). These Federal regulations address not only underground development waste, but coal processing waste as well. Montana's proposal addresses coal processing waste in a separate proposed rule (ARM 26.4.932) to be discussed below.

(b) Design Criteria

The Federal regulations at 30 CFR 817.81(c), § 817.83(a), and § 817.84(d) specify certain design criteria that must be included in the designs for coal mine waste disposal facilities, and be certified as being met in the design. In particular, these Federal regulations require that these structures be designed to attain the 1.5 safety factor and that designs for the diversions and underdrains be included [in certain circumstances] in the designs for the structure.

Montana's proposal, at ARM 26.4.924(4), requires:

> (4) Each waste disposal structure must be designed using current prudent design standards, certified by a registered professional engineer experienced in the design of similar earth and waste structures, and approved by the department. Coal waste refuse structures must meet the requirements of 30 CFR 77.214 and 77.215.

The attainment of a static safety factor and the construction of diversions and underdrains are addressed in other subsections of the proposed rule. Specifically, proposed ARM 26.4.924(8) requires that:

> * * * waste be hauled or conveyed and placed in horizontal lifts * * * concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to * * * ensure a long-term static safety factor of 1.5,

and proposed ARM 26.4.924(12) requires that:

> [i]f the disposal area contains springs, * * * watercourses, or * * * seeps, an underdrain system consisting of durable rock must be constructed * * *

Thus in the Montana disposal, the general requirements for static safety factors and underdrain and diversion construction are not required to be included in the designs as design criteria, but rather are required to be achieved as performance standards (it should be noted that for special types of structures, namely valley fills, head-of-hollow fills, and durable rock fills, Montana's proposed rules at ARM 26.4.925(2), 26.4.926(1), and 26.4.927(2) do require the static safety factor to be included in the design). In the Federal regulations, these criteria are required to be part of the design as design criteria for all coal mine waste disposal structures. However, OSM notes that, under ARM 26.4.405(6)(a), DSL cannot approve designs in permit applications unless the designs meet the requirements of the performance standards. Thus any designs for underground development waste disposal structures would have to demonstrate that the designed disposal structure would meet the required safety factor and drainage system requirements; this effectively makes the safety factor and drainage system design criteria.

The same factors are incorporated for coal processing waste by cross referencing proposed ARM 26.4.924 at proposed 26.4.932(6).

Therefore, the Director finds that the Montana proposal at ARM 26.4.924(4) and 26.4.932 is no less effective than the Federal requirements at 30 CFR 817.81(c), § 817.83(a), and § 817.84(d), and is approving the proposed rule.

9. Disposal of Underground Development Waste: Requirements of the Mine Safety and Health Administration (MSHA)

As quoted in Finding No. 8 above, Montana's proposal at ARM 26.4.924(4) requires all underground development waste disposal structures to be designed and certified. The proposal goes on to address MSHA requirements, but requires that only "coal waste refuse structures" meet the requirements of MSHA at 30 CFR 77.214 and § 77.215. Montana has not explicitly defined what constitutes a "coal waste refuse structure," nor has Montana indicated that the disposal facilities not required to meet the MSHA requirements are limited to impounding structures only.

The introductory text to the Federal regulation at 30 CFR 817.83 requires that all refuse piles meet the MSHA requirements at 30 CFR 77.214 and § 77.215. The regulations at 30 CFR 817.102(e), by referencing § 817.83, also require that disposal facilities within the mined-out area meet the MSHA requirements. In short, the Federal regulations require that all disposal facilities other than coal mine waste impoundments meet the MSHA requirements at 30 CFR 77.214 and § 77.215.

Therefore the Director finds that the Montana proposal at ARM 26.4.924(4), by requiring that only some underground waste disposal structures meet the MSHA requirements, without clarifying whether the balance are impounding structures, is less effective than the Federal requirements at 30 CFR 817.83 and § 817.102(e). The Director is approving the first sentence of the proposal, regarding design and certification requirements, but is not approving the second sentence regarding compliance with 30 CFR 77.214 and § 77.215. The Director is requiring Montana to amend the provision to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and § 77.215, and, further, to clarify what constitutes a "coal waste refuse structure."

10. Disposal of Underground Development Waste: Location

Montana's proposal at ARM 26.4.924(7) and (11) specifies requirements for the placement of underground development waste disposal structures. These include additional requirements beyond those

location requirements specified in the Federal regulations at 30 CFR 817.81(a).

Therefore the Director finds that the Montana proposal provides for more stringent regulation of waste disposal structures than do the Federal regulations, and thus in accordance with 30 CFR 730.11(b) is not inconsistent with the Federal regulations, and is approving the proposal.

11. Disposal of Underground Development Waste, General Requirements: Underdrain Systems

(a) Underdrain Construction

Montana's proposed rules ARM 26.4.924(12) and (13) establish the requirements for underdrain systems. Proposed ARM 26.4.924(12) requires that if the disposal area contains seeps, springs, or water courses, an underdrain system consisting of durable rock must be constructed. At ARM 26.4.924(13), Montana proposes specific requirements for underdrain systems. These requirements include durability and non-toxic properties for the rock, location and extent of the underdrains, requirements for filter systems, and minimum underdrain sizes.

The Federal regulations at 30 CFR 817.71(f), referenced by § 817.83(a)(3) and § 817.102(e), impose requirements that are substantively the same, except that the Federal regulations would also allow the use of pipe underdrains in place of durable rock and do not specify minimum size criteria.

The Montana proposal by requiring the use of rock underdrains utilizes the discretion afforded by the Federal regulations to use either pipe or rock underdrains systems; the minimum size criteria provide more specific performance standards to assist in the Montana program. Therefore the Director finds that Montana's proposal is not inconsistent with and is no less effective than the Federal program requirements and is approving the proposal.

(b) Variance From Underdrain Requirements

Montana proposes at ARM 26.4.924(14) a procedure to provide variances from the underdrain requirements that are specified in proposed ARM 26.4.924(12) and (13):

> An alternative subdrainage system may be utilized after approval by the department upon a thorough analytical demonstration that such an alternative will ensure the applicable static safety factor, stability of the fill, and protection of the surface and groundwater in accordance with applicable rules.

The Federal regulations at 30 CFR 817.83(a)(3) and § 817.102(e), referencing § 817.71(f)(3), do not allow for variance from the requirements of that subsection. The Director therefore finds that this variance procedure would render the Montana program less effective than the Federal requirements, and is not approving subsection ARM 26.4.924(14) of the proposed amendment, and is requiring Montana to revise its program to remove this provision.

12. Disposal of Underground Development Waste, General Requirements: Covering With Non-Toxic Material

Montana's new rule at ARM 26.4.924 is proposed to be, in part, a counterpart to the Federal regulation requirements at 30 CFR 817.81 and § 817.83 that provide requirements for coal mine waste to be placed as refuse piles. In this proposal Montana has failed to address the Federal requirement at 30 CFR 817.83(c)(4) regarding covering refuse piles with non-toxic materials; the Federal regulation requires all refuse piles to be covered with a minimum of 4' of the best available non-toxic material; this is required regardless of the degree of toxicity of the material disposal of in the structure (a depth variance, however, is available upon appropriate physical and chemical analyses). The Montana proposal, ARM 26.4.924, contains no equivalent requirement. Proposed ARM 26.4.924(3)(c) does incorporate the requirements of ARM 26.4.505 and 26.4.510; however, these rules impose a coverage requirement only if the material is shown to be toxic or acid-forming. 30 CFR 817.83(c)(4), on the contrary, requires the coverage regardless of toxicity.

Therefore, the Director finds the Montana proposal lacks a counterpart requirement to the Federal regulation at 30 CFR 817.83(c)(4), and is requiring Montana to amend its rule to add a requirement that is no less effective than 30 CFR 817.83(c)(4).

13. Disposal of Underground Development Waste, General Requirements, and Head-of-Hollow and Durable Rock Fills: Design Precipitation Event for Surface Runoff Diversions

At ARM 26.4.924(16), 26.4.925(1), 26.4.926(2), 26.4.927(4) and (6), and 26.4.932(6), Montana proposes rules requiring that surface diversions on underground development waste disposal structures (including valley, head-of-hollow and durable rock fills) and coal processing waste disposal structures be designed to safely pass the runoff from a 100-year, 24-hour precipitation event.

The Federal regulations at 30 CFR 817.83(a)(2) and 817.84(d) require that the diversions on refuse piles and coal mine waste impoundments be designed for a 100-year, 6-hour precipitation event. The Federal requirements were changed from a 100-year, 24-hour event to the current 100-year, 6-hour event on September 26, 1983 (48 FR 44006, 44017). This change was made for consistency with MSHA's design criteria, which OSM found to provide adequate safety (48 FR 32910, 32920; July 19, 1983). In these preamble discussions, OSM indicated that the 24-hour event usually results in a higher peak flow, but that watershed geometry in some cases can produce a greater peak with the 6-hour event.

On October 29, 1990, Montana submitted further information indicating that the 24-hour event produces both larger runoff volumes and greater peak discharges than the 6-hour event (Administrative Record No. MT–7–15). OSM has reviewed this information, and has determined that the 24-hour event produces both greater runoff volumes and greater peak discharges than the 6-hour event, when applied to cases representative of Montana mining site conditions. MSHA commented on the proposed amendment and responded that it found no conflicts with MSHA regulations and found the amendment acceptable (Administrative Record Nos. MT–7–12 and MT–7–24).

Therefore, the Director finds that Montana's requirements for a 100-year, 24-hour design event are no less effective than the Federal requirements at 30 CFR 817.83(a)(2) and § 817.84(d) for a 100-year, 6-hour design event, and is approving these provisions of Montana's proposed rules.

14. Disposal of Underground Development Waste: Valley Fills, Head-of-Hollow Fills, and Durable Rock Fills: Terrace Ditch Design

Montana's proposed ARM 26.4.925(5) [valley fills], 26.4.926(1) [head-of-hollow fills], and 26.4.927(7)(c) [durable rock fills], require that a ditch must be constructed on the inside of any terrace constructed, to intercept runoff and divert it toward the stabilized channels that are required by proposed ARM 26.4.924(16). These provisions do not explicitly require that the ditches along the inside of terrace benches be stabilized and designed for a 100-year, 24-hour precipitation event, as is required by the Federal regulations at 30 CFR 817.83(a)(2) (as discussed in Finding No. 13 above, the Federal regulations require a 6-hour event, but Montana's 24-hour event is no less effective).

However, proposed ARM 26.4.925(1) and 26.4.926(1) require compliance with all of the requirements of proposed rule ARM 26.4.924. ARM 26.4.924(16), in turn, would require these ditches, as diversions of surface runoff, to be stabilized and designed for the 100-year, 24-hour precipitation event. Similarly, proposed ARM 26.4.927(6) would also require the terrace ditches required at 26.4.927(7)(c) to be designed for the 100-year, 24-hour event.

Therefore the Director finds Montana's proposed rules at ARM 26.4.925(5), its reference at 26.4.926(1), and 26.4.927(7)(c) to be no less effective than the Federal requirements at 30 CFR 817.83(a)(2), and is approving the proposals.

15. Disposal of Underground Development Waste: Durable Rock Fills

(a) Allowance for Construction of Durable Rock Fills

At proposed ARM 26.4.927(1), Montana proposes to allow underground development waste to be placed in durable rock fills if the material is appropriate. The material would be required to be transported and placed in a controlled manner, and the method of placement designed to ensure stability. This proposal adds additional detail to the Federal requirements regarding the placement of underground development waste at 30 CFR 817.81(a), (c)(1), and § 817.102(e).

Therefore the Director finds the Montana proposal to be no less effective than the Federal regulation requirements at 30 CFR 817.81(a), (c)(1), and § 817.102(e), and is approving the proposal.

(b) Static Safety Factor

Montana's proposed rule ARM 26.4.927(2)(c) requires that durable rock fills of underground development waste be designed for an "end-of-construction" static safety factor of 1.5. The Federal regulations at 30 CFR 817.81(c)(2) specify a "long-term" static safety factor of 1.5. The Federal regulation thereby places a more stringent requirement, in that a design for an "end-of-construction" static safety factor would not necessarily ensure the achievement of a "long-term" static safety factor of 1.5.

However, ARM 26.4.927(1)(a) incorporates a proposed rule at ARM 26.4.924, that, at subsections (4) and (8), requires that all underground development waste disposal structures be designed to attain a long-term static safety factor of 1.5.

Therefore, while not specifically required at proposed ARM 26.4.927(2)(c), the Montana proposal nonetheless requires durable rock fills of underground development waste to be designed for a long-term static safety factor of 1.5, through its incorporation of ARM 26.4.924(4, 8). The Director therefore finds the proposal to be no less effective than the Federal requirement, and is approving proposed ARM 26.4.927(2)(c).

(c) Internal Drainage Systems

Proposed ARM 26.4.927(3)(a) requires the designs of durable rock fills that are configured as head-of-hollow or valley fills to include designs for internal drainage systems. Thus, if a durable rock fill is constructed on a site containing seeps or watercourses, but is not configured as a head-of-hollow or valley fill, it need not have a drainage system designed and built.

The Federal regulations at 30 CFR 817.83(a)(3), incorporating the requirements of 30 CFR 817.71(f), require that all fills include underdrains if they are constructed on sites containing seeps, watercourses, etc. Thus the Federal requirements apply to more fills that does the proposed Montana provision.

However, proposed ARM 26.4.927(1)(a) incorporates proposed new rule ARM 26.4.924, and subsections (4) and (12) of that rule require that the designs of all underground development waste fills include underdrain systems (if the site contains seeps, watercourses, etc.) whether configured as head-of-hollow or valley fills or not.

Thus, while not explicitly required at proposed ARM 26.4.927(3)(a), the Montana proposal, by incorporation of proposed ARM 26.4.924, contains requirements that are substantially equivalent to the Federal requirements. Therefore, the Director finds the Montana proposal to be no less effective than the Federal regulations, and is approving proposed ARM 26.4.927(3)(a).

(d) Grading of Durable Rock Fills

Proposed ARM 26.4.927(5) requires that the top surfaces of durable rock fills be graded to slopes no steeper than 20%, unless otherwise approved by DSL, to direct runoff from the fill into designed drainage channels.

The Federal regulations at 30 CFR 817.83(a)(2) also require surface runoff to be diverted to stabilized channels, but do not specify a maximum slope of the refuse pile top allowed to accomplish this. The Montana proposal thus provides more specific performance standards to assure greater environmental protection.

OSM notes that the slope of the refuse pile top is also constrained by stability requirements (30 CFR 817.81(c)) and acceptability for the postmining land use (30 CFR 817.83(c)(2)). The Montana proposal contains counterparts to these at ARM 26.4.924(4), (8) and 26.4.924(9), respectively. Therefore, fill designs would have to meet these requirements as well, and thus Montana's specified maximum slope is not inconsistent with these Federal regulations. For the reasons specified above, the Director finds that the Montana proposal is no less effective than the Federal regulation requirements, and is approving the proposal.

16. Underground Mine Application Requirements: Disposal of Coal Processing Waste, Design Requirements

Montana's proposed rule ARM 26.4.930 requires, or incorporates through cross-referencing, the equivalents to most of the application requirements for the disposal of coal processing waste required by the counterpart Federal regulations at 30 CFR 784.11, § 784.16, § 784.23, and § 784.25 (see Finding No. 1 above), with the following exception.

The Montana proposal does not contain counterparts to the requirements of 30 CFR 784.16(e) and (f), that specify detailed application and design requirements for coal processing waste impoundments. The Montana program at ARM 26.4.505(3) (applicable to this proposed rule through ARM 26.4.903(1)) prohibits the construction of embankments from wastes; but impoundments of coal processing wastes behind embankments constructed of other materials is not prohibited.

The more detailed requirements of 30 CFR 784.16(e) and (f) include more detailed geotechnical investigations of the foundations underlying both the embankment and the impoundment basin, compliance with additional MSHA rules, and justifications for engineering designs for "large" waste impoundments (>20 ac.-ft. and/or embankment >20 feet high).

The Director is therefore requiring Montana to amend its rule to add application requirements that are no less effective than those at 30 CFR 784.16(e) and (f).

17. Disposal of Coal Processing Waste: Performance Standards

(a) Disposal of Off-Site-Generated Waste

At ARM 26.4.932(4), Montana proposes to allow on-site disposal of off-site-generated wastes without a specific requirement for prior approval by DSL.

The proposed rule at subsection (6) cross-references proposed rule ARM 26.4.924(2), which includes a requirement for DSL approval for this practice. The Federal regulation at 30 CFR 817.81(b) requires approval of the regulatory authority for the disposal of off-site-generated wastes. Thus, while not specifically required at ARM 26.4.932(4), the Montana proposal does, by incorporating proposed ARM 26.4.924(2), include the same requirement for approval as is included in the Federal regulation. Therefore, the Director finds that the Montana proposal is no less effective than the Federal regulation requirements, and is approving this proposed provision.

(b) Inspection of Coal Waste Disposal Structures

Montana's proposed rule at ARM 26.4.932(5)(b) would allow the termination of engineer's inspections of coal waste disposal structures after the structure has been resoiled, with the provision that DSL may require the inspections to continue for a longer period. The counterpart Federal regulations at 30 CFR 817.83(d) require the inspections to continue through the revegetation of the structure.

However, Montana's proposed rule also incorporates by reference, at subsection (6), the requirements of proposed ARM 26.4.924(18); that rule, in turn, requires the operator to continue inspections through revegetation of the structure. Therefore, in order for proposed ARM 26.4.932(5)(b) to be consistent with proposed 26.4.924(18), DSL will have to always exercise its discretion to require inspections to continue for the longer period.

Thus, while not specifically included at proposed ARM 26.4.932(5)(b), the Montana proposal does, by incorporating proposed ARM 26.4.924(18), require the inspections to continue through revegetation, i.e. for a period coincident with that required by the Federal regulations. Therefore, the Director finds the proposal as effective as the Federal regulation requirement and is approving this proposed provision.

(c) Coal Processing Waste Placement

Montana at ARM 26.4.932(8) proposes to require that when placed in disposal structures, coal processing waste be placed in lifts no higher than 24 inches, and compacted to attain 90 percent of the maximum dry density; variances from these standards would be allowed for dewatered fine coal wastes. The proposed rule at ARM 26.4.932(6) incorporates the requirements of proposed ARM 26.4.924 (4) and (8); those provisions, in turn, require that designs attain a long-term static safety factor of 1.5 (see Finding No. 8(b) above). Therefore, the structures must be designed to achieve the 1.5 safety factor while utilizing these compaction criteria as part of the required criteria.

The counterpart Federal regulations at 30 CFR 817.83(a) do not require specific maximum lift heights or compaction standards; instead, design flexibility is allowed, as long as the design demonstrates a long-term static safety factor of 1.5.

The Director finds that the Montana proposal provides for detailed requirements not found in the Federal regulations but assures that a long term static safety factor of 1.5 is achieved as required by the Federal regulations at 30 CFR 730.11(b). Therefore the Director finds that Montana's proposed changes at ARM 26.4.932(8) are no less effective than the Federal regulation requirements and is approving the proposal.

(d) Plan for Extinguishing Coal Waste Fires

Montana's proposed rule at ARM 26.4.932(10) requires that the plan for extinguishing coal waste fires be in compliance with MSHA requirements, but does not require MSHA approval of the plan. However, existing rule ARM 26.4.903(1) requires compliance with ARM 26.4.523; that rule, in turn, includes the requirement for MSHA approval of the plan. The Federal regulations at 30 CFR 817.87(a) also require compliance with MSHA requirements and approval of the plan by MSHA. Therefore, the Director finds that ARM 26.4.932(10), in conjunction with existing requirements at ARM 26.4.903(1), provides for no less effective than requirements as the Federal regulation, and is approving this provision.

18. Annual Report

Montana proposes a revision to its rule at ARM 26.4.1129(1) to require that the operator, rather than the permittee, submit to DSL an annual report. The report is to contain information on the amounts of area disturbed and reclamation accomplished.

There is no counterpart Federal regulation, and no Federal requirement for the submission of an annual report. However, the Director finds that the Montana proposal will assist in the administration of the program and is not inconsistent with the requirements of the Federal regulations, and is approving the proposed revision.

19. Correction of Previous Errors in the Codification of the Montana Program at 30 CFR 926.16

In a May 14, 1984, rulemaking (49 FR 20286), the Director granted Montana an extension of time in which to submit rules for the training, examination, and certification of blasters and to develop a program to examine and certify blasters; the new submission requirements were codified at 30 CFR 926.16(a) (49 FR 20286, 20287).

On January 3, 1984, September 20, 1984, and August 16, 1984, Montana submitted proposed program materials to address these topics. The Director approved the proposed amendment in a November 18, 1985, rulemaking, codifying the approval at 30 CFR 926.15(e) (50 FR 47386, 47388). Since the approval of this amendment satisfied the required amendments at 30 CFR 926.16(a), those requirements should have been removed at that time; however, this was not done.

The Director now finds, for the reasons specified in the November 18, 1985, rulemaking (50 FR 47386), that Montana has fulfilled the requirements codified at 30 CFR 926.16(a), and is removing those requirements.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the Montana program.

By letters dated July 13, July 18, and November 28, 1990 (Administrative Record Nos. MT–7–08, MT–7–10, and MT–7–21), the Bureau of Indian Affairs responded that it had no comments, that it found the amendment satisfactory, and that it would defer to OSM's judgment regarding design precipitation events.

By letters dated July 17 and November 23, 1990 (Administrative Record Nos. MT–7–09 and MT–7–19), the U.S. Fish & Wildlife Service responded that it had no comments and that the 100-year, 24-hour precipitation design event was adequate for its needs.

By letter dated July 20, 1990 (Administrative Record No. MT–7–11), the Bureau of Land Management responded that the proposed amendment will protect public safety and the environment.

By letters dated July 27, 1990, and January 8, 1991 (Administrative Record Nos. MT–7–12 and MT–7–24), the Mine Safety and Health Administration responded that it found no conflicts with MSHA regulations and found the amendment acceptable.

By letter dated November 21, (Administrative Record No. MT–7–18), the Bureau of Reclamation responded that the use of the 24-hour design event would not have a major impact on its interests. By letter dated November 20, 1990, and telephone conversation dated December 14, 1990 (Administrative Record Nos. MT–7–20 and MT–7–22), the Army Corps of Engineers reported that it had no comments.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment and clarifying information submitted by Montana to the SHPO and the ACHP for comment. The proposal included no provisions that would directly affect historic properties or cultural resources. No response was received from either group.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

By letters dated September 26 and December 24, 1990 (Administrative Record Nos. MT–7–14 and MT–7–23), EPA's headquarters commented that the proposed amendment and the clarifying information submitted by Montana was in compliance with the requirements of the Clean Water Act, and concurred with the proposed revisions. EPA has thus granted concurrence with those provisions of the proposed amendment which relate to water quality standards promulgated under the authority of the Clean Water Act.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements noted below, Montana's proposed program amendment as submitted June 19, 1990 and clarified on October 29, 1990.

As discussed in Finding No. 2(a), the Director is not approving, in the proposed definitions of "head-of-hollow fill" and "valley fill" at ARM 26.4.301(48) and (128), the limitation to "non-coal organic materials" of the organic materials barred form inclusion in these fills; as discussed in Finding No. 2(e), the Director is not approving the proposed definition of "waste" at ARM 26.4.301(132) to the extent that it includes coal processing waste to be disposed of on surface mining operations; as discussed in Finding No. 4(b) regarding proposed ARM 26.4.305(2)(b) and ARM 26.4.321(3), the Director is not approving the phrases "* * *, registered land surveyor, * * *" and "* * *, or a registered land surveyor, * * *"; as discussed in Finding No. 7, the Director is not approving proposed ARM 26.4.924(3) and 26.4.932(2) regarding locations of disposal areas; as discussed in Finding No. 9, the Director is not approving the second sentence of proposed ARM 26.4.924(4) regarding the disposal structures required to meet MSHA requirements; and as discussed in Finding No. 11(b), the Director is not approving proposed ARM 26.4.924(14) which establishes a variance procedure for alternative underdrain systems.

The Director is requiring the following program amendments at 30 CFR 926.16(e): As discussed in Finding No. 2(a), revision of ARM 26.4.301(48) and (128) to eliminate the word "non-coal"; as discussed in Finding No. 2(d), revision of the definition of "road" at ARM 26.4.301(100); as discussed in Finding No. 2(e), revision of ARM 26.4.505 and 26.5.510, or other program revision, to incorporate additional requirements for the disposal of "waste" on surface mines; as discussed in Finding 4(a), revision of ARM 26.4.321(3) to add requirements for the content of certifications; as discussed in Finding No. 4(b), revision of ARM 26.4.305(2)(b) to remove the phrase "* * *, registered land surveyor, * * *" and revision of ARM 26.4.321(3) to remove the phrase "* * *, or a registered land surveyor, * * *"; as discussed in Finding No. 4(c), revision of ARM 26.4.321, transportation facilities plan to incorporate requirements no less effective than 30 CFR 780.37(a) (2), (3)/§ 784.24(a) (2), (3); as discussed in Finding No. 4(d) revision of ARM 26.4.321 to incorporate requirements equivalent to 30 CFR 780.37(a)(6)/§ 784.24(a)(6); as discussed in Finding No. 7, revision of ARM 26.4.924(3) and 26.4.932(2) to indicate whether disposal under these rules is within mine surface excavations or outside mine surface excavations, and clarify what constitutes a "waste disposal structure"; as discussed in Finding No. 9, revision of ARM 26.4.924(4) to require all non-impounding underground development waste disposal structures to meet the MSHA requirements at 30 CFR 77.214 and 77.215 and clarify what constitutes a "coal waste refuse structure"; as discussed in Finding No. 11(b), revision of ARM 26.4.924 to remove subsection Arm 26.4.924(14); as discussed in Finding No. 12, revision of ARM 26.4.924 to add a coverage requirement no less effective than 30 CFR 817.83(c)(4); and as discussed in Finding No. 16, revision of ARM 26.4.930 to add application requirements that are no less effective than 30 CFR 784.16(e).

As discussed in Finding No. 3, the Director is deferring action on the proposed revision to ARM 26.4.313(3)(b).

Additionally, as discussed in Finding No. 19, the Director is removing requirements at 30 CFR 926.16(a) which have previously been fulfilled by Montana.

The Federal regulations at 30 CFR part 926 codifying decisions concerning the Montana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the Montana program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Montana of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, § 732.15, and § 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 2, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 926—MONTANA

1. The authority citation for part 296 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended by adding paragraph (j) to read as follows:

§ 926.15 Approval of amendments to State regulatory program.

* * * * * *

(j) The following provisions of the Administrative Rules of Montana (ARM), as submitted on June 19, 1990, and clarified on October 29, 1990, with the exceptions noted below, are approved effective August 19, 1992: ARM 26.4.920, Placement and Disposal of Underground Development Waste (Special Application Requirements); ARM 26.4. 924, Disposal of Underground Development Waste (General Requirements); ARM 26.4.925, Disposal of Underground Development Waste (Valley Fills); ARM 26.4.926, Disposal of Underground Development Waste (Head of Hollow Fills); ARM 26.4.927, Disposal of Underground Development Waste (Durable Rock Fills); ARM 26.4.930, Placement and Disposal of Coal Processing Waste (Special Application Requirements); ARM 26.4.932, Disposal of Coal Processing Waste; definitions and permit application requirements, ARM 26.4 subchapter 3; backfilling and grading requirements, ARM 26.4 subchapter 5; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining, ARM 26.4 subchapter 8; bonding, insurance, reporting, and special areas, ARM 26.4 subchapter 11; and special departmental procedures and programs, ARM 26.4 subchapter 12.

The following provisions of the submittal are not being approved: the limitation to "non-coal organic materials" of the organic materials barred from inclusion, in the proposed definitions of "head-of-hollow fill" and "valley fill" at ARM 26.4.301(48) and (128); the proposed definition of "waste" at ARM 26.4.301(132) to the extent that it includes coal processing waste to be disposed of on surface mining operations; the phrases "* * *, registered land surveyor, * * *" and "* * *, or a registered land surveyor, * * *" in proposed ARM 26.4.305(2)(b) and ARM 26.4.321(3); the proposed revision to ARM 26.4.313(3)(b); proposed ARM 26.4.924(3) and 26.4.932(2); the second sentence of proposed ARM 26.4.924(4); and proposed ARM 26.4.924(14).

3. Section 926.16 is amended by removing and reserving paragraph (a) and by adding new paragraph (e), to read as follows:

§ 926.16 Required program amendments.

(a) [Reserved]

* * * * *

(e) By October 19, 1992, Montana shall:

(1) Submit proposed revisions to ARM 26.4.301(100), or other revision, to include pioneer and construction roadways in the definition of "road";

(2) Submit proposed revisions to ARM 26.4.505 and 26.5.510, or other program revision, to incorporate requirements for the disposal of "waste" on surface mines no less effective than 30 CFR 816.81–816.84 and § 816.102(e);

(3) Submit proposed revisions to ARM 26.4.321(3), or other revisions, to specify certification content requirements no less effective than 30 CFR 780.37(b) and § 784.24(b);

(4) Submit proposed revisions to ARM 26.4.321, or other revisions, to incorporate application requirements no less effective than 30 CFR 780.37(a) (2), (3), (6) and § 784.24(a) (2), (3), (6);

(5) Submit proposed revisions to ARM 26.4.924 and 26.4.932, or other revisions, to specify whether the waste disposal governed by these rules is within or outside mine surface excavations, and to clarify what constitutes a "waste disposal structure";

(6) Submit proposed revisions to ARM 26.4.924(4), or other revisions, to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and § 77.215 and also to clarify what constitutes a "coal waste refuse structure";

(7) Submit proposed revisions to ARM 26.4.924, or other revisions, to incorporate a requirement no less effective than 30 CFR 817.83(c)(4);

(8) Submit proposed revisions to ARM 26.4.930, or other revisions, to add application requirements that are no less effective than 30 CFR 784.16(e); and

(9) Submit proposed revisions to remove the following parts of this State initiative that the Director is not approving but which have been promulgated by Montana:

ARM 26.4.301(48) and (128), the word "non-coal"; ARM 26.4.305(2)(b) and 26.4.321(3), the phrases "* * *, registered land surveyor, * * *" and "* * *, or a registered land surveyor, * * *"; and ARM 26.4.924, subsection ARM 26.4.924(14).

[FR Doc. 92-19705 Filed 8-18-92; 8:45 am]

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30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to Texas' existing regulations pertaining to definitions; general provisions; lands unsuitable for mining; surface coal mining operation permits; coal exploration procedures; bond and insurance requirements for surface coal mining and reclamation operations; permanent program performance standards for coal exploration; and permanent program inspection and enforcement procedures. The proposed amendment also adds to Texas' regulations a new part pertaining to the training, examination, and certification of blasters. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program, can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated September 22, 1989 (Administrative Record No. TX-458), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters dated May 20, 1985, June 9, 1987, and October 20, 1988, that OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas also submitted the proposed amendment in response to the required program amendment at 30 CFR 943.16(a). The provisions of Chapter IV of the Texas Coal Mining Regulations (TCMR) that Texas proposed to revise are: Subchapter A, General, parts 700 and 701; subchapter F, Lands Unsuitable for Mining, part 762; subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System, parts 770, 771, 776, 778, 779, 780, 783, 784, 785, 786, 788, and 795; subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations, parts 800, 806, 807, and 808; subchapter K, Permanent Program Performance Standards—Coal Exploration, parts 815, 816, 817, and 819; and subchapter L, Permanent Program Inspection and Enforcement Procedures, parts 840, 843, and 845. In addition, Texas proposed to add a new part 850, pertaining to the training, examination, and certification of blasters at subchapter M.

OSM published a notice in the October 6, 1989, **Federal Register** (54 FR 41282) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period closed November 6, 1989.

During its review of the amendment, OSM identified concerns relating to identification of interests and compliance information at TCMR 778.116(h)(3), geology description at TCMR 779.127(c) and 783.173, terms and conditions for liability insurance at TCMR 806.311(d), procedures for seeking release of performance bond at TCMR 807.312(c), criteria and schedule for release of performance bonds at TCMR 807.313(a), stream buffer zones at TCMR 816.355(a), general requirements for explosives at TCMR 816.357 and 817.526, and general requirements for blaster certification at TCMR 850.702(e). OSM notified Texas of the concerns by letter dated March 16, 1990 (Administrative Record No. TX-474). By letter dated September 11, 1990 (Administrative Record No. TX-484), Texas withdrew from the proposed amendment the deficient regulations listed above.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions and additional requirements, that the proposed amendment as submitted by Texas on September 22, 1989, and as revised by it on September 11, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. Substantive Revisions to Texas' Regulations That Are Substantively Identical to the Corresponding Federal Regulations

Texas proposed revisions to the following regulations that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulations (listed in parentheses):

TCMR 700.003(22), 701.008 (56), (81), and (85), 762.074 (1) and (2) (30 CFR 700.5, and 701.5), definitions for "surface coal mining operations," "permanent impoundment," "substantially disturb," "temporary impoundment," "fragile lands," and "historic lands;"

TCMR 770.100(c), 771.107(d), 786.216(p), 788.230(a)(4) through (a)(6), and 788.232(c)(1), (d), and (e) (30 CFR 773.15(a)(2), 773.15(C)(11), 777.13(b), 774.15(c)(1)(iv) through (vi), and 774.17(d)(1) and (e)), permitting; TCMR 776.111(a)(3)(A), (a)(7), and 815.327(a) and (f) (30 CFR 772.12(b)(8)(i) through (iv), (b)(9), (b)(7), and 815.15(a), (e)), coal exploration;

TCMR 779.125(b), 779.126(a), 779.133, 783.171(b) (30 CFR 779.12(b), 780.22(a), 780.16 (a) and (c), and 783.12(b)), environmental resources information; TCMR 780.144(a), 783.179, and 784.195(a) (30 CFR 780.16(b) and 784.21), fish and wildlife plan; TCMR 780.145(b)(4) and 784.187(b)(4) (30 CFR 780.18(b)(4) and 784.13(b)(4)), topsoil;

TCMR 780.151 and 784.191 (30 CFR 780.31 (a) and (b), and 784.17 (a) and (b)), public parks and historic places; TCMR 784.194(a), (e) and (f), 817.562(c), and 817.565(e) (30 CFR 784.20 (a) through (c) and (h), and 817.121 (g) and (e)), subsidence control plan; TCMR 785.200 (a) through (c), and (f) through (i) (30 CFR 785.13(b), (e), (g), and (h)), experimental practices;

TCMR 795.237(b)(5), (c), and (d), 795.238(d)(4), and 795.243(a) (30 CFR 795.6 (a)(2) and (a)(2)(iv), 795.7(d)(4), and 795.12(a)), small operator assistance program; TCMR 808.317 (30 CFR 800.50(d)(1) and (2)), bond forfeiture

criteria; TCMR 816.339(a) and 817.509(a) (30 CFR 816.41(a) and 817.41(a)), hydrologic balance;

TCMR 816.344(a) and 817.514(a) (30 CFR 816.46(c)(1)(ii) and (iii)(A), (B), and (F), 817.46(c)(1)(ii) and (iii)(A), (B), and (F)), sedimentation ponds; TCMR 816.353(d) (30 CFR 816.41(i)(1)(i)), discharge to underground mine; TCMR 816.359, (30 CFR 816.64 (b) and (c)), blasting schedule; TCMR 816.363(j), (l), (o) and (p) and 817.531(l), (o) and (p) (30 CFR 816.71(e)(5) and (h) and 817.71(e)(5), (h)(3)(ii) and (iii)), disposal of excess spoil; TCMR 816.368(c), 816.369(a), 816.371(c)(3) (deleted), and 816.377(b) (30 CFR 816.81(c)(1), 816.83, and 816.84(d)), coal processing waste banks;

TCMR 816.380 (b) and (c), and 817.547 (b) and (c), (30 CFR 816.97 (b) and (c), and 817.97 (b) and (c)), protection of fish and wildlife and related environmental values; TCMR 816.390(a) (30 CFR 816.111(a)(3)), revegetation; TCMR 819.600(c)(1) (30 CFR 819.15(b)(1)), auger mining;

TCMR 840.672(b), 843.680(a), and 843.682(f) (30 CFR 840.14(b), 843.119(a), and 843.13(d)), inspection and enforcement; and TCMR 845.695(b)(2) (30 CFR 845.17(b)(2)), civil penalties.

Because the proposed revisions to these Texas regulations are substantively identical to the corresponding Federal regulations, the Director finds that these proposed Texas regulations are no less effective than the corresponding Federal regulations. Therefore, the Director approves these proposed regulations.

2. TCMR 700.002(b)(2), Authority, Responsibility and Applicability—2 Acre Exemption

Texas proposed to delete existing TCMR 700.002(b)(2), which excluded from regulation under the Texas Surface Coal Mining Control and Reclamation Act coal extraction operations affecting 2 acres or less. As originally enacted, section 528(2) of SMCRA also exempted coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Texas proposed to remove from TCMR 700.002 the language preempted by Public Law 100–34. Removal of the acreage exemption from the Texas regulations will prevent confusion on the part of the public, which may not be aware of the Federal preemption.

The Director finds that the proposed deletion of TCMR 700.002(b)(2) regarding the 2-acre exemption does not render the Texas regulations less stringent than SMCRA, as amended by Public Law 100–34. Therefore, the Director approves this revision.

3. TCMR 701.008(18), Definition of "Coal Processing Plant or Coal Preparation Plant"

Texas proposed at TCMR 701.008(18) to define "coal processing plant or coal preparation plant" as a facility where coal is subjected to chemical or physical processing or cleansing, concentrating, or other processing or preparation. The proposed definition includes a partial list of facilities associated with coal preparation activities that may comprise a coal processing or preparation plant. The definition excludes facilities operated by the final consumer of the coal.

The corresponding Federal regulations at 30 CFR 701.5 define "coal preparation plant" as a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. The Federal definition also includes a partial list of facilities associated with coal preparation activities that may comprise a coal preparation plant, but it does not specifically exclude any facilities.

With the exception of the part of Texas' definition that excludes certain facilities and the part that gives additional examples of facilities which may be associated with coal preparation activities, Texas' proposed definition of "coal processing plant or coal preparation plant" is substantively identical to the Federal definition of "coal preparation plant". Included in Texas' proposed list of facilities associated with coal preparation activities that may comprise a coal processing or preparation plant are "roads, railroads and other transport facilities." These facilities are not included in the Federal definition of coal preparation plant because they are regulated as roads at 30 CFR 701.5, 816.150, 816.151, 817.150, and 817.151 or as support facilities at 30 CFR 816.181 and 817.181 (48 FR 20392, 20395, May 5, 1983). Therefore, Texas' inclusion of roads, railroads, and other transport facilities does not render Texas' proposed definition of "coal processing plant or coal preparation plant" less effective than the corresponding Federal definition.

In addition, Texas proposed to exclude from its definition of "coal processing plant or coal preparation plant" facilities "operated by the final consumer of the coal, such as an electricity generating power plant, when, in the opinion of the Commission, the primary purpose of the facilities is to make the coal ready for conversion into a different energy form and the facilities are located at or near the electricity generating plant or other point of final consumption away from the mine site and outside of the approved mine permit area." Although the Federal definition does not specifically exclude any facilities from regulation, OSM has determined that its jurisdiction under section 701(28)(A) of SMCRA does not extend "to facilities solely operated in connection with the end user of the coal product" (48 FR 20392, 20393, May 5, 1983). In its present definition of "coal preparation plant," OSM reiterated that "coal preparation plants associated with the ultimate use or consumption of coal, are not in connection with a mine, and are not regulated surface coal mining operations" (52 FR 17724, 17726, May 5, 1987). Therefore, Texas' proposed exclusion from regulation as a coal processing plant or coal preparation plant of facilities operated by the final consumer of the coal is not inconsistent with the Federal definition of "coal preparation plant." For the above reasons, the Director finds that Texas' proposed definition of "coal processing plant or coal preparation plant" at TCMR 701.008(18) is no less effective than the Federal definition of "coal preparation plant" at 30 CFR 701.5 and approves the proposed definition.

4. TCMR 770.101, Definition of "Cumulative Impact Area"

Texas proposed to add at TCMR 770.101 a definition for "cumulative impact area." The proposed definition is substantively identical to the corresponding Federal definition at 30 CFR 701.5. However, in promulgating TCMR 770.101, the existing definitions for "applicant," "application," "complete application," "general area," "principal shareholder," "property to be mined," and "violation notice" were omitted. The Federal regulations at 30 CFR 701.5 include definitions for "applicant," "application," "principal shareholder," "property to be mined," and "violation notice," and as explained in the following finding No. 7, the approval of Texas' proposed TCMR 776.111(b)(1) is dependent upon the definition for "complete application."

The Director finds that Texas' proposed definition of "cumulative impact area" is no less effective than the corresponding Federal definition and approves it. However, the Director requires Texas to revise TCMR 770.101 to replace the omitted definitions, or to otherwise demonstrate that those definitions are not necessary for the

Texas program to be no less effective than the Federal regulations.

5. TCMR 770.102(c), Coordination With Requirements Under Other Laws

Texas proposed at TCMR 770.102(c) to revise the existing list of Federal statutes with which the processing of permits for coal mining operations must be coordinated. Texas proposed to delete Executive Order 11593, which addresses protection and enhancement of the cultural environment, add the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*), and add the Bald Eagle Protection Act, as amended (16 U.S.C. 668a). With one exception, the proposed revisions would make the list at TCMR 770.102(c) the same as the corresponding list in the Federal regulation at 30 CFR 773.12.

The exception is that the Federal regulation at 30 CFR 773.12 requires that where Federal and Indian lands covered by SMCRA are involved, the processing of permits must be coordinated with the requirements of the Archaeological Resources Protection Act of 1979 (ARPA). Texas' proposed TCMR 770.102(c) does not include an equivalent requirement. Any archaeological excavation or removal of archaeological materials from either Federal or Indian lands is governed by the provisions of ARPA. State and private lands are not covered by ARPA (52 FR 4261, 4256, February 10, 1987). Presently there are no coal mines on Federal or Indian lands within the State of Texas, and Texas does not have a Federal lands cooperative agreement for State regulation of surface coal mining and reclamation operations of Federal lands.

Because Texas currently has mines only on State and private lands and because ARPA applies only to Federal and Indian lands, the Director finds that it is not necessary for the Texas program to require the permitting process to be coordinated with the requirements of ARPA. If, in the future, Texas and the U.S. Department of the Interior enter into a cooperative agreement for State regulation of surface coal mining and reclamation operations on Federal lands in Texas, Texas would have to amend its program to require that the processing of permit applications be coordinated with the requirements of the ARPA.

The Director finds that Texas' proposed TCMR 770.102(c) is no less effective than the corresponding Federal regulation at 30 CFR 773.12, and the Director approves it.

6. TCMR 771.108, Permit Fees

Texas proposed at TCMR 771.108 to revise the schedule of fees required to accompany each application for a permit, permit renewal, or permit revision. The proposed fee schedule consists of an application fee and an annual fee. Proposed application fees are $5,000 for a permit application, $500 for a permit revision application, and $3,000 for a permit renewal application. In addition, each permittee would be required to pay an annual fee of $120 for each acre of land within the permit area from which coal or lignite is actually extracted during each calendar year. The proposed regulation would allow the initial fee to be paid in equal installments over the term of the permit. The annual fee would be due and payable not later than March 15 of the year following the year of extraction.

The corresponding Federal regulation at 30 CFR 777.17 provides for the assessment of permit application fees but leaves the determination of the amount of such fees to the discretion of the regulatory authority. The Director finds that Texas' revised permit fee schedule as proposed at TCMR 771.108 is not inconsistent with the Federal regulations at 30 CFR 777.17 or any other requirement of the Federal regulations or SMCRA. The Director approves this proposed regulation.

7. TCMR 776.111(b)(1), Exploration of More than 250 Tons

Texas proposed to revise TCMR 776.111(b)(1) to require that public notice of a filing with the Commission of a complete application be published in a newspaper of general circulation in the county or counties of the proposed exploration area. The corresponding Federal regulation at 30 CFR 772.12(c)(1) requires the applicant to provide public notice of the filing of an administratively complete application with the regulatory authority in a newspaper of general circulation in the county of the proposed exploration area. With one exception, Texas' proposed TCMR 776.111(b)(1) is substantively identical to the Federal requirements at 30 CFR 772.12(c)(1). The exception is that although under both Texas' proposed regulations at TCMR 776.111(b)(1) and the Federal regulations at 30 CFR 772.12(c)(1) the processing and public review of an application begin upon publication of notice that the application has been filed with the regulatory authority, the proposed Texas regulation requires publication of notice upon filing of a complete application, whereas the Federal regulation requires publication of notice with the filing of an administratively complete application.

The Federal regulations at 30 CFR 701.5 define (1) an "administratively complete application" as an application determined "* * * to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review," and (2) a "complete and accurate application" as an application determined "* * * to contain all information required under the Act, this subchapter, and the regulatory program that is necessary to make a decision on permit issuance." In defining these terms, OSM noted that:

> [T]he concepts of a 'complete' application and a 'complete and accurate' application are contained in the Act [SMCRA] in section 510(a) and (b)(1) and apply to the standards for permit approval by the regulatory authority after review. A 'complete and accurate application' [or a 'complete' application] is thus a requisite for permit approval, not for the initiation of the review process. Under Section 513(a) of the Act [SMCRA], the public participation process begins with submission of an application.

(48 FR 44344, 44350, September 28, 1983). Thus, the Federal regulations provide for public participation and review to begin upon submission of an administratively complete application. Under this process "a regulatory authority may seek supplemental information from the applicant or a modification of the proposed operation with necessarily requiring that the comment period start anew" (48 FR 44344, 44350, September 28, 1983), until the application contains all the information necessary to make a decision on permit issuance.

The Texas program does not define or use the terms "administratively complete application" and "complete and accurate application." However, Texas' approved regulation at TCMR 051.07.04.101(3) defines a "complete application" as an application which contains "all information required under the Act [Texas Surface Coal Mining and Reclamation Act (TSCMRA)] and this Subchapter." Further, section 21(a) of TSCMRA, like section 510(a) of SMCRA, provides that a "complete" application is the basis for permit approval or denial, and therefore must contain all the information necessary to make a decision on permit issuance.

Because Texas' regulation at TCMR 051.07.04.101(3) and section 21(a) of TSCMRA require a "complete" application to contain all necessary information on which to base permit approval or denial, the Director finds that Texas' definition of a "complete application" is no less effective than the Federal definition of an

"administratively complete application." Therefore, the Director finds that proposed TCMR 776.111(b)(1) is no less effective than the corresponding Federal regulation at 30 CFR 772.12(c)(1) and approves it.

8. TCMR 779.127(a) and (b), Geology Description

Texas proposed to revise TCMR 779.127 to specify in greater detail the geologic information that must be submitted in a permit application. With two exceptions, proposed TCMR 779.127(a) and (b) are substantively identical to the corresponding Federal regulations at 30 CFR 780.22(b)(1) and (b)(2).

The first exception is that Texas' proposed TCMR 779.127(a) does not include the information sources listed by the Federal regulations at 30 CFR 780.22(b)(1)(i) through (iii). However, lack of these information sources does not relieve applicants from providing, or prevent Texas from requiring, a complete and adequate description of the geology of the permit and adjacent areas as specified at proposed TCMR 779.127(a). Therefore, the Director finds that the omission of these information sources does not render the proposed regulations less effective than the Federal regulations at 30 CFR 780.22(b)(1) and (b)(2).

The second exception is that proposed TCMR 779.127 does not require, as the 30 CFR 780.22(b)(2) does, that the geology description include analyses of samples of geologic materials from the permit and adjacent areas. The description is only required to include the items listed at proposed TCMR 779.127(a) (1) through (3). Proposed TCMR 779.127(b) requires that analyses of any samples collected must provide certain specified data, but it does not require that any samples actually be collected and included in the geology description. Because proposed TCMR 779.127(a) and (b) do not require the geology description to be based on samples of geologic materials collected from the permit area, the Director finds that Texas' proposed TCMR 779.127(a) and (b) are less effective than the corresponding Federal regulations at 30 CFR 780.22(b). The Director does not approve the proposed regulations and requires Texas to revise TCMR 779.127 to provide that the geology description must be based, in part, on the analyses of samples collected from the permit area.

9. TCMR 780.142(c), Operation Plan: Maps and Plans

Texas, at TCMR 780.142(c), proposed permit application requirements for maps, plans, and cross sections of mine facilities (hereinafter in this finding referred to as "plans"). Under Texas' proposed rule, either qualified registered professional engineers or professional geologists could certify the plans addressed at TCMR 780.142(b)(4), (5), (6), (10), and (11), although only a qualified registered professional engineer could prepare the sedimentation ponds and spoil disposal plans addressed at TCMR 780.142(b)(4), (5) and (11).

The corresponding Federal regulation at 30 CFR 780.14(c) differs from Texas' proposed TCMR 780.142(c) in several important aspects. With certain exceptions, the Federal regulation at 30 CFR 780.14(c) allows a qualified, registered, professional land surveyor, in any State that authorizes such land surveyors to do so, to prepare and certify plans. Texas has not proposed at TCMR 780.142(c) that land surveyors be granted such authority. This omission of land surveyors from the regulation does not render proposed TCMR 780.142(c) less effective that the corresponding Federal regulation at 30 CFR 780.14(c).

With certain exceptions, the Federal regulation at 30 CFR 780.14(c) allows professional geologists to prepare and certify plans. The exceptions are, as required by 30 CFR 780.14(c) through the citing of other Federal regulations at 30 CFR 780.25(a)(2), 780.25(a)(3), 780.35(a), and 816.81(c), that a qualified registered professional engineer, but not a professional geologist, is authorized to prepare and certify plans for sedimentation ponds, water impoundments, coal processing waste banks, dams, and embankments (30 CFR 780.25(a)(2) and (3)), excess spoil fills (30 CFR 780.35(a), which cites 30 CFR 816.71), durable rock fills (30 CFR 780.35(a), which cites 30 CFR 816.73), and coal mine waste disposal facilities (30 CFR 816.81(c)). Proposed TCMR 780.142(c), through its citing of TCMR 780.142(b)(5), (6), and (11), is not consistent with 30 CFR 780.14(c), because it would allow professional geologists to prepare and certify plans for coal waste storage areas; water treatment, storage, and discharge facilities; and sedimentation ponds, permanent water impoundments, coal processing waste banks, and coal processing waste dams and embankments. In addition, proposed TCMR 780.142(c)(1) and (2) is not consistent with 30 CFR 780.14(c), because it would require that qualified registered professional engineers prepare plans for sedimentation ponds and spoil disposal areas, but it would allow professional geologists to certify them.

For the above reasons, the Director finds that Texas' proposed TCMR 780.142(c) is less effective than the corresponding Federal regulation at 30 CFR 780.14(c). The Director does not approve the proposed regulation to the extent that it would allow professional geologists to prepare and certify cross sections, maps, and plans for sedimentation ponds; water impoundments; coal processing waste banks, dams, and embankments; excess spoil fills; durable rock fills; and coal mine waste disposal facilities. The Director requires Texas to revise TCMR 780.142(c) to only allow qualified registered professional engineers to prepare and certify such cross sections, maps, and plans.

10. TCMR 783.172, General Requirements for Description of Hydrology and Geology

Texas' existing TCMR 783.172 sets forth the general requirements for hydrologic and geologic information that must be included in a permit application. These requirements are not inconsistent with corresponding Federal requirements for hydrologic information and geologic information at 30 CFR 784.22.

Texas proposed to revise TCMR 783.172 by adding the requirement that an application must include geologic information of sufficient detail to assist in determining (1) the probable hydrologic consequences of the operation on the permit and adjacent areas, (2) the existence of all potentially acid- or toxic-forming strata down to and including the stratum immediately below the lowest coal seam to be mined, and (3) whether the required reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

Texas' proposed requirement is substantively identical to the Federal regulations at 30 CFR 784.22(a) (1) through (3), but it does not include, as the Federal regulation at 30 CFR 784.22(a)(4) does, a reference to the subsidence control plan required at Federal regulation 30 CFR 784.20, which has a corresponding State regulation at TCMR 784.194. However, the lack of a reference in TCMR 783.172 to TCMR 784.194 would not prevent Texas from requiring sufficient geologic information with which to prepare the subsidence control plan required at TCMR 784.194. The Texas regulations at TCMR 784.194(a)(3) require a description of the geologic factors that would affect subsidence and subsidence control, and

TCMR 784.194(a) allows the Commission to require necessary information to assure that the proposed operation can be conducted in accordance with the performance standards for subsidence control. Therefore, the Director finds that proposed TCMR 783.172 is no less effective than the corresponding Federal regulations at 30 CFR 784.22, and the Director approves this proposed regulation.

11. TCMR 800.301(b), Requirements To File a Bond

Texas proposed to revise TCMR 800.301(b) to provide an applicant the option of posting a bond or bonds to cover the entire permit area, or an identified increment of land within the permit area upon operations will be initiated during the initial permit term. The proposed regulation also includes a provision that the bond cannot "be for a land area that is smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term." Except for this provision, proposed TCMR 800.301(b) closely follows the corresponding Federal regulations at 30 CFR 800.11(b)(1) and (b)(2).

The provision to require bonding increments for areas that are not "smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term" is no less effective than the Federal regulations at 30 CFR 800.11(b)(1) and (2), which clearly allow bond increments on areas smaller than the entire permit area. However, the proposed restriction seems to contradict the other provisions of TCMR 800.301(b), which would allow the posting of bond for an area that is smaller than the entire permit area. Nonetheless, whether Texas enforces this restriction or not, the remaining requirements of proposed TCMR 800.301(b) would be no less effective than the corresponding Federal regulations at 30 CFR 800.11(b)(1) and (2). The Director finds that the proposed provision to restrict bonding increments to areas that are no smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term, although confusing, does not render proposed TCMR 800.301(b) less effective than the corresponding Federal regulations at 30 CFR 800.11(b) (1) and (2). Therefore, the Director approves this proposed regulation.

12. TCMR 816.360, 816.361, 816.362, Use of Explosives

(a) TCMR 816.360, Control of Adverse Effects

With three exceptions, proposed TCMR 816.360 includes all the requirements of, and is no less effective than, the corresponding Federal regulations at 30 CFR 816.64(a), 816.66, and 816.67.

The first exception is at TCMR 816.360(a)(2), which prohibits blasting within 1,000 feet of certain buildings and within 500 feet of certain facilities not including underground mines, unless lesser distances are approved by the Commission. The Federal regulations do not prohibit blasting within specified distances of buildings and facilities. However, the Federal regulations at 30 CFR 816.61(d)(1) do require that a blast design be submitted to the regulatory authority if blasting operations will be conducted within 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area, or within 500 feet of an active or abandoned underground mine. The Director finds that Texas' proposed TCMR 816.360(a)(2) is less effective than the corresponding Federal regulations at 30 CFR 816.61(d)(1) because it would allow the Commission to approve blasting operations at lesser distances without submittal of a blast design, and because the proposed regulation does not specifically protect all public buildings, all community or institutional buildings outside the permit area, and active or abandoned underground mines. The Director approves proposed TCMR 816.360(a)(2) regulations but requires Texas to revise it (1) by adding to the list of protected buildings at TCMR 816.360(a)(2)(A) public buildings and community or institutional buildings, (2) by adding to the list of protected facilities at TCMR 816.360(a)(2)(B) active and abandoned underground mines, and (3) by requiring that operators submit to Texas blast designs for all blasting operations within 1,000 feet of the buildings listed in TCMR 816.360(a)(2)(A) and within 500 feet of the facilities listed in TCMR 816.360(a)(2)(B).

The second exception concerns proposed TCMR 816.360, which contains a second paragraph (e) located at the end of the section, after subparagraph (h) (6). This second paragraph (e) identifies locations that are exempt from the "maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this Section." Since TCMR 816.360 already has a paragraph (e) located between paragraphs (d) and (f) which addresses scheduled blasting and required warnings, this second paragraph (e) located after subparagraph (h) (6) is incorrectly codified. In addition to the paragraph being incorrectly codified, its reference to "paragraphs (b) and (d) of this Section" is also incorrect. The corresponding Federal regulation at 30 CFR 816.67(e) refers to paragraphs (b) and (d), which set forth the requirements for control of adverse effects from airblast and ground vibration, respectively. Texas' requirements for control of adverse effects from airblast and ground vibration are found at TCMR 816.360(f) and (h). The Director finds that Texas' proposed TCMR 816.360 is not consistent in its codification and is less effective than the corresponding Federal regulation at 30 CFR 816.67(e) because it references the Texas program requirements for warnings and access control at blasting sites rather than the requirements for control of adverse effects from airblast and ground vibration. The Director approves proposed TCMR 816.360 but requires Texas to revise it by recodifying the second paragraph (e), located after paragraph (h)(6), and in it referencing TCMR 816.360(f) and (h) rather than "paragraphs (b) and (d) of this Section."

The third exception concerns Texas' proposed requirements for control of adverse effects from ground vibration at TCMR 816.360(h). The proposed regulation incorrectly references paragraphs (e) and (d). The corresponding Federal regulation at 30 CFR 816.67(d) references paragraph (e), which identifies locations that are exempt from the maximum airblast and ground-vibration standards, and various subparagraphs of paragraph (d), which set requirements for control of adverse effects from ground vibration. Texas has requirements corresponding to the Federal requirements for identification of locations that are exempt from the maximum airblast and ground-vibration standards at 30 CFR 816.67(e), but as discussed above, these requirements are at an incorrectly codified paragraph (e) located after proposed TCMR 816.360(h)(6). Texas also has, at proposed TCMR 816.360(h) rather than (d), requirements for control of adverse effects from ground vibration corresponding to the Federal requirements at 30 CFR 816.67(d). The Director finds that Texas' proposed TCMR 816.360(h) is less effective than the corresponding Federal regulation at 30 CFR 816.67(d) because it references an incorrectly codified paragraph (e)

and because it incorrectly references subparagraphs of TCMR 816.360(d) rather than (h). The Director approves proposed TCMR 816.360(h), but requires Texas to revise it to reference the recodified paragraph (e), and paragraphs (h)(2)(A), (h)(2), (h)(3), (h)(4), (h)(5), and (h)(2)(A) rather than paragraphs (e), (d)(2)(A), (d)(2), (d)(3), (d)(4), (d)(5), and (d)(2)(A), respectively.

(b) TCMR 816.361, Seismographic Measurements and Modified Scaled-Distance Factor

Existing TCMR 816.361 specifies where seismographic measurements of ground motion velocity and peak particle velocity are required, and when used of a modified equation to determine the maximum weight of explosives per delay would be approved. Texas proposed to delete all requirements from existing TCMR 816.361 and to add at TCMR 816.360 requirements no less effective than the corresponding Federal regulations at 30 CFR 816.67 concerning required seismographic measurements and the use of a modified scaled-distance factor during blasting operations. The Director finds that deletion of the existing requirements at TCMR 816.361 does not render Texas' proposed requirements for the use of explosives less effective than the corresponding Federal regulations at 30 CFR 816.61 through 816.68 and the Director approves the deletion.

(c) TCMR 816.362, Records of Blasting Operations

Texas proposed to revise TCMR 816.362 by requiring additional information to be included in records of blasting operations. With the proposed revisions, TCMR 816.362 is substantively identical to the corresponding Federal regulation at 30 CFR 816.68, except where TCMR 816.362(d) refers to the buildings "described in Section .360(e)." Because, as discussed in finding No. 12(a) above, proposed TCMR 816.360 contains two paragraphs (e), it is not immediately apparent which "Section .360(e)" is referenced.

The corresponding reference at Federal regulation 30 CFR 816.68(d) is to 30 CFR 816.67(e), which paragraph identifies locations that are exempt from the maximum airblast and ground-vibration standards specified at 30 CFR 816.67(b) and (d). Texas identifies locations that are exempt from the maximum airblast and ground-vibration standards at the paragraph located after paragraph (h)(6) of proposed TCMR 816.360. This paragraph (e) follows verbatim the Federal regulation at 30 CFR 816.67(e). Therefore, the Director finds that the context in which this reference is used clearly indicates that the regulation was intended to refer to the last paragraph of proposed TCMR 816.360 which reads "The maximum airblast and ground vibration standards of paragraphs (b) and (d) of this Section shall not apply at the following locations: (1) At structures owned by the permittee and not leased to another person; and (2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Commission before blasting." With the understanding that Texas will interpret it in this manner, the Director finds that Texas' proposed TCMR 816.362 is no less effective than the corresponding Federal regulation at 30 CFR 816.68, and approves it.

13. TCMR 816.375(d), Disposal for Noncoal Mine Wastes

Texas proposed to revise TCMR 816.375 by adding at paragraph (d) the requirement that any noncoal mine waste defined as "hazardous" undersection 3001 of the Resource Conservation and Recovery Act (RCRA) shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations. Texas' proposed requirement is identical to that of the corresponding Federal regulation at 30 CFR 816.89(d) which OSM promulgated on September 26, 1983 (48 FR 44006). However, the Federal regulations at 30 CFR 816.89(d) and 817.89(d) were suspended on November 20, 1986 (51 FR 41962), to implement the decision of the U.S. District Court for the District of Columbia in In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III, No. 79–1144 (D.D.C. Oct. 1, 1984). 21 Env't Rep. Cas. 1724 and 620 F Supp. 1519 (D.D.C. 1985). The court remanded these regulations because OSM failed to comply with the public notice and public comment requirements of the Administrative Procedures Act in promulgating these Federal regulations. No substantive issues were involved (51 FR 41960, 41959).

OSM subsequently deleted 30 CFR 816.89(d) and 817.89(d) (56 FR 65612, December 17, 1991). In deleting these rules, OSM reasoned that Congress had assigned permitting, inspection and enforcement responsibilities under RCRA to the Environmental Protection Agency (EPA) and that SMCRA did not require OSM or the State regulatory authorities to assume such responsibilities. It was further reasoned that Congress would not appropriate funds to OSM or State regulatory authorities for this task. With the deletion of this requirement, OSM agreed to continue "to coordinate its regulatory program with EPA to facilitate the implementation of RCRA regulations" (56 FR 65612, 65624, December 17, 1991). However, OSM's action does not prohibit or prevent a State regulatory authority from choosing to assume such responsibilities in coordination with EPA. Under 30 CFR 730.11(b) States are allowed to enact provisions for which no corresponding provisions are contained in the Federal regulations of SMCRA.

Because there is no Federal counterpart to proposed TCMR 816.375(d), OSM evaluated Texas' amendment based upon its consistency with section 515(b)(14) of SMCRA. Section 515(b)(14) of SMCRA generally states that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are to be treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. Because Texas' proposed regulation at TCMR 816.375(d) provides for the handling and disposal of "hazardous" noncoal mine wastes in a manner designed to prevent contamination of ground or surface waters, i.e., pursuant to the provision of subtitle C of RCRA, the Director finds that Texas' proposed regulation at TCMR 816.375(d) is not inconsistent with section 515(b)(14) of SMCRA. The Director approves this proposed regulation.

14. TCMR 816.384(b)(2) and 817.551(b)(2), Backfilling and Grading

Texas proposed to revise TCMR 816.384(b)(2) and 817.551(b)(2) to require that backfilled material be placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land use. The corresponding Federal regulations at 30 CFR 816.102(a) and 817.102(a) require, in part, that "[d]isturbed areas shall be backfilled and graded to * * * (4) [m]inimize erosion and water pollution both on and off the site; and (5) [s]upport the approved postmining land use."

With two exceptions, proposed TCMR 816.384(b)(2) and 817.551(b)(2) include all the requirements of the corresponding Federal regulations at 30 CFR 816.102(a) (4) and (5) and 817.102(a) (4) and (5).

The first exception is that proposed TCMR 816.384(b)(2) and 817.551(b)(2) do not specifically state that backfilled material must be graded. However, requirements for grading of backfilled material are provided at TCMR 816.384(b)(1) and 817.551(b)(1) which require that "all disturbed areas shall be returned to their approximate original

contour [and] [a]ll spoil be transported, backfilled, compacted * * * and graded to eliminate highwalls, spoil piles, and depressions."

The second exception is that proposed TCMR 816.384(b)(2) and 817.551(b)(2) do not specifically state, as 30 CFR 816.102(a)(4) and 817.102(a)(4) do, that erosion must be minimized off the site as well as on the site. Backfilling and grading, as well as other surface or underground mining activities, could cause increased erosion of areas off the sites where these activities are being conducted by causing additional amounts of runoff to be diverted to them. It follows that minimization of off-site erosion would be accomplished by minimizing the amount of additional runoff diverted to these areas.

Proposed TCMR 816.384(b)(2) and 817.551(b)(2) only require that "backfilled material be placed to minimize erosion." The proposed regulations do not state where erosion is to be minimized, and although it is reasonable to assume that at least erosion on the sites where the backfilling and grading are being conducted must be included, it is not clear whether these regulations also require minimization of off-site erosion. However, existing Texas regulations provide for minimization of erosion on off-site areas.

Specifically, existing TCMR 816.343(b) provides that "[s]ediment control methods include, but are not limited to (1) [d]isturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading and prompt revegetation as required in Section .390(b), (2) stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of Section .384, and * * * (4) [d]iverting runoff away from disturbed areas." The same requirements are provided for underground mining activities, respectively, at TCMR 817.513 (a), (b), and (d). In addition, TCMR 816.339(a) and 817.509(a), respectively require that surface and underground mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas. Erosion is an element of the hydrologic balance.

For the above reasons, the Director finds that Texas' proposed TCMR 816.384(b)(2) and 817.551(b)(2) are no less effective than the corresponding Federal regulations at 30 CFR 816.102(a)(4) and (5) and 817.102(a)(4) and (5), and approves them.

15. TCMR 817.522(f), Water Discharge Into Underground Mines

Texas' proposed underground mining regulations at TCMR 817.522(f) prohibits the discharge of surface water into underground mine workings unless it is demonstrated to the Commission that such discharge will minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from surface mining activities.

Texas' proposed regulations are substantively identical to the corresponding Federal regulations for underground mining activities at 30 CFR 817.41(h)(1)(i) except that the Federal regulations require a demonstration that the proposed discharge would "otherwise eliminate public hazards resulting from underground mining activities" (emphasis added) instead of surface mining activities as proposed by Texas. In addition, Texas' use of the term "surface mining activities" at proposed TCMR 817.522(f) is not consistent with the introductory paragraph at TCMR 817.522 which addresses underground rather than surface mining activities.

The Director finds that Texas' proposed TCMR 817.522(f) is less effective than the Federal regulations at 30 CFR 817.41(h)(1)(i). The Director does not approve the proposed amendment to the extent that it uses the term "surface mining activities" rather than "underground mining activities," and requires Texas to replace "surface mining activities" with "underground mining activities."

16. TCMR 817.531(j), General Requirements for Disposal of Excess Spoil

The Federal regulations at 30 CFR 817.71(h) allow either a qualified registered professional engineer or a qualified professional specialist under the direction of a professional engineer, both of which must have experience in the construction of earth and rockfill embankments, to inspect and certify the construction of disposal piles for excess spoil and underground development waste produced by underground mining activities. Texas' proposed TCMR 817.531(j) would allow only a qualified registered professional engineer experienced in the construction of earth and rockfill embankments to make such inspections and certifications. The omission of a qualified professional specialist from the regulation does not render proposed 817.531(j) less effective than the corresponding Federal regulations at 30 CFR 817.71(h). Therefore, the Director approves this proposed regulation.

17. TCMR Part 850, Training, Examination, and Certification of Blasters

(a) TCMR Part 850. General

The Federal regulations at 30 CFR 850.12 (a) and (b) require States to develop and adopt a program for examining and certifying persons directly responsible for the use of explosives in surface coal mining operations. To satisfy this requirement and the required program amendment at 30 CFR 943.16(a), Texas proposed to add a new part 850 to chapter IV, Subchapter M of its Texas Coal Mining Regulations.

In addition to the proposed regulations at TCMR Part 850, Texas submitted additional information (referred to in this notice as "Supplemental Information") to clarify various aspects of the program as proposed, including a proposed blaster examination (Administrative Record Nos. TX–450 and TX–451). According to the Supplemental Information, the Commission would provide, through the Oklahoma Mining Training Institute (OMTI) at Wilburton, Oklahoma, the required training and testing of persons seeking to become certified as blasters. The Commission would certify qualified applicants who successfully complete OMTI's training and testing program, and who demonstrate to the satisfaction of the Surface Mining and Reclamation Division (SMRD) the experience and competence necessary for handling and using explosives.

(b) TCMR 850.700, Purpose and Scope

At TCMR 850.700, Texas proposed the purpose and scope of part 850, and set forth a disclaimer from liability for actions of individuals certified as blasters under this program. While the Federal regulations include a scope at 30 CFR 850.1, that scope places no requirements on State programs. The Federal regulations at 30 CFR part 850 have no requirements with regard to a statement of purpose or disclaimers. The Director finds that the purpose and scope provisions at proposed TCMR 850.700 are not inconsistent with the Federal regulations, and their inclusion does not render the Texas program less effective than the Federal regulations at 30 CFR part 850. The Director approves these proposed provisions.

(c) TCMR 850.701, Definitions

Texas proposed (1) at TCMR 850.701(4) to define a "blaster" as "a person who is *directly responsible for*

the use of explosives" (emphasis added), (2) at TCMR 850.701(12) to define a "Certified Blaster" as "a person who has met the qualifications of this Part and who has been issued a 'commission blaster certificate' that is currently valid and not expired, suspended or revoked," and (3) at TCMR 850.701(13) to define "commission blaster certificate" as a certificate issued "to a person qualified under this Part to be *directly responsible for the use explosives* in mining operations regulated by the Commission" (emphasis added). Under the corresponding Federal definition at 30 CFR 850.5, a "blaster" is a person directly responsible for the use of explosives in surface coal mining operations who is certified under the requirements of 30 CFR Part 850.

The Director notes that Texas has proposed to use the term "certified blaster" in TCMR 850.707 and 850.708, which pertain, respectively, to certification and recertification, and to use the term "blaster" in all other sections of Part 850. It is not clear whether Texas intended to make a distinction between blasters and certified blasters with respect to blasting duties and under their responsibility. However, because Texas indicates that both a "blaster" and "certified blaster" are "directly responsible for the use of explosives," the Director interprets the terms to be interchangeable and that the requirements of Texas' regulations at Part 850 apply to both. On this basis, the Director finds that Texas' proposed definitions of "blaster" at TCMR 850.701(4) and "certified blaster" at TCMR 850.701(12) are no less effective than the Federal definition of "blaster" at 30 CFR 850.5. The Director approves the proposed definitions of "blaster" and "certified blaster," and "commission certified blaster."

Texas additionally proposed to define 15 other terms generally pertaining to blaster certification, blasting, and the use of explosives. In the proposed regulation, Texas stated that these definitions apply only to the requirements of part 850. One of the terms, "applicant," is also defined at TCMR 701.008(a). The definition at TCMR 701.008(8) would apply to all parts of chapter IV, except part 850. Of the proposed definitions, "applicant" and "application" are defined in the Federal regulations at 30 CFR 701.5 as they pertain to permits to conduct surface coal mining and reclamation operations. However, there are no corresponding Federal definitions for "applicant" and "application" as they pertain to training, examination and certification of blasters. The Director finds that these 15 other proposed definitions provide additional direction and guidance in the Texas program and are not inconsistent with the blaster training, examination and certification requirements of the Federal regulations. Accordingly, the Director finds that Texas' proposed definitions at TCMR 850.701 are no less effective than the Federal regulations at 30 CFR Part 850. The Director approves these proposed definitions.

(d) TCMR 850.702, General Requirements

Proposed TCMR 850.702 provides administrative requirements for age, knowledge, experience, and training for individuals applying for blaster certification. There are no direct counterparts to these requirements in the Federal regulations. The Director finds that Texas' general requirements at proposed TCMR 850.702 are not inconsistent with the Federal regulations at 30 CFR part 850. The Director approves these proposed requirements.

(e) TCMR 850.703, Training

The Federal regulation at 30 CFR 850.14(a)(2) requires the regulatory authority to ensure that candidates for blaster certification are examined for practical field experience that would qualify the candidate to accept responsibility for blasting operations in surface coal mining operations. Proposed TCMR 850.703(a) requires a blaster candidate (1) to have received on-the-job training, including practical field experience in blasting operations, from a certified blaster during 2 of the 3 years preceding submission of the application and (2) to provide satisfactory evidence of the required on-the-job training.

In addition, the Supplemental Information states that applicants will be screened on the basis of "past work and other blasting experience" prior to acceptance into the blaster certification training and testing program. Criteria for acceptance includes practical field experience necessary to qualify the applicant to accept responsibility for blasting operations in surface coal mining operations. The Director finds that proposed TCMR 850.703(a), as augmented by the Supplemental Information, provides that blaster candidates would be adequately examined for practical field experience as required by the Federal regulations at 30 CFR 850.14(a)(2).

The Federal regulations at 30 CFR 850.13(a)(2) further require the regulatory authority to establish procedures whereby any uncertified persons assigned to a blasting crew or to assist in the use of explosives must receive direction and on-the-job training from a certified blaster. Texas' proposed TCMR 850.703 only requires on-the-job training for uncertified persons who have applied for blaster certification. It has no on-the-job training requirements for persons assigned to a blasting crew or to assist in the use of explosives who are not certified blasters or who have not applied for blaster certification. However, the Supplemental Information states that a blaster "will also have the responsibility of giving directions and on-the-job training to other members of the blasting crew." Therefore, the Director finds that Texas' proposed TCMR 850.703(a), as augmented by the Supplemental Information, is no less effective than the Federal regulation at 30 CFR 850.13(a)(2). The Director approves the proposed regulation.

Proposed TCMR 850.703(b) requires blaster candidates to have received, within 2 years prior to the application, training in the technical aspects of blasting operations and State and Federal laws governing the use of explosives. The corresponding Federal regulations at 30 CFR 850.13(a)(1) require the regulatory authority to establish procedures whereby applicants for blaster certification must receive training in the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives. Proposed TCMR 850.703(b) also provides that applicants for certificate reissuance need only to have received training in areas where significant changes have occurred in the topics listed at TCMR 850.704, and that the applicant provide satisfactory evidence that the required training was completed.

Unlike the Federal regulations at 30 CFR 850.13(a)(1), proposed TCMR 850.703(b) does not specifically require training in State and Federal laws governing storage and transportation of explosives. In promulgating the requirements at 30 CFR 850.13(a)(1), OSM stated that SMCRA requires the use of explosives to be under the direction of a certified blaster, and since the blaster directs the receipt, storage and movement of explosives, it is essential that he be trained in the proper methods of storage and transportation. Accordingly, OSM emphasized the importance of training in the storage and transportation aspects of explosives use by specifically requiring training in storage and transportation, in addition to "use," in its regulation.

It is unclear whether Texas intended "use of explosives" at proposed TCMR 850.703(b) to include the storage and transportation of explosives. There is nothing in proposed TCMR Part 850 or in the Supplemental Information to suggest such interpretation. In addition, the proposed blaster examination includes no questions concerning the storage and transportation of explosives. On this basis, the Director finds that Texas' proposed TCMR 850.703 is less effective than corresponding Federal regulations at 30 CFR 850.13(a)(1). The Director approves Texas' proposed TCMR 850.703 but requires Texas to amend the regulation to require that before being certified a blaster must receive training in State and Federal laws governing storage and transportation of explosives.

(f) TCMR 850.704, Training Courses.

Proposed TCMR 850.704(a) lists the course topics for which the Commission would provide training for blaster certification applicants. The proposed list of courses is the same as the Federal list at 30 CFR 850.13(b). Proposed TCMR 850.704(b) would allow the Commission to recognize training provided by other qualified jurisdictions or by accredited agencies or schools. By definition at TCMR 850.701(16), a "qualified jurisdiction" is a State or Federal regulatory authority that provides a blaster certification program that has been approved by OSM. The Director finds that the training courses proposed at TCMR 850.704(a), or those provided by a qualified jurisdiction, address the same topics as the courses required by the corresponding Federal regulation at 30 CFR 850.13(b). However, proposed TCMR 850.704(b) does not specify that "accredited agencies or schools" must provide and require completion of, at a minimum, all the courses listed at TCMR 850.704(a). The Director finds that Texas' proposed TCMR 850.704 is less effective than the corresponding Federal regulations at 30 CFR 850.13(b). The Director approves the proposed regulation but requires Texas to amend the regulation or otherwise amend its program to clarify that accredited agencies or schools must provide and require completion of the courses listed at TCMR 850.704(a).

(g) 850.705, Application

Proposed TCMR 850.705 provides administrative directions and procedures for processing applications from persons seeking blaster certification. There are no direct counterparts to these procedures in the Federal regulations. The Director finds that these procedures are not inconsistent with the Federal regulations at 30 CFR Part 850. The Director approves these proposed requirements.

(h) 850.706, Examination

Proposed TCMR 850.706(a) requires each applicant for blaster certification to pass a written examination on the technical aspects of blasting operations and on State and Federal laws governing the use of explosives. Proposed TCMR 850.706(a)(1) requires examinations to be periodically scheduled and administered by the Commission, or by persons or agencies contracted to provide such services. The corresponding Federal regulation at 30 CFR 850.14(a)(1) requires the regulatory authority to ensure that candidates for blaster certification must pass a written examination on the technical aspects of blasting and on State and Federal laws governing the storage and transportation of explosives, in addition to those governing the use of explosives. The Federal regulations do not require the regulatory authority to directly administer the examinations. As discussed in finding No. 15(e) above, there is nothing in proposed TCMR Part 850, or in the Supplemental Information,or the proposed blaster examination to indicate that Texas intended the term "use of explosives" to include the storage and transportation of explosives. Therefore, the Director finds that proposed TCMR 850.706(a) is less effective than the Federal regulation at 30 CFR 850.14(a)(1).

The Supplemental Information submitted by Texas states that "All testing will be conducted by OMTI." However, under proposed TCMR 850.706(a)(1), Texas itself would retain the option of administering blaster examinations, and it has proposed a blaster examination for that purpose. The Director finds that it is not inconsistent with the Federal requirements at 30 CFR part 850 for Texas to administer the examination for blaster candidates, either in addition to or in place of any testing conducted by another training agency.

Proposed TCMR 850.706(a)(2) requires that the blaster examination cover, at a minimum, the topics specified at TCMR 850.704. The Federal regulations at 30 CFR 850.14(b) imposes a similar requirement and references a list of topics at 30 CFR 850.13(b) that is substantively identical to that set forth at TCMR 850.704(a).

Proposed TCMR 850.706(b) provides that a person who fails to achieve a satisfactory score on the blaster examination may apply for reexamination by submitting a new application. If the new application is submitted within 2 years of completing the required training, the applicant would not be required to repeat the training. The Federal regulations at 30 CFR Part 850 do not require such provisions for reexamination. The Director finds that proposed TCMR 850.706(b) is not inconsistent with the Federal requirements at 30 CFR part 850.

In accordance with the discussion above, the Director finds that (1) proposed TCMR 850.706(a) is less effective than the corresponding Federal regulations at 30 CFR 850.14(a) (1) and (2) proposed TCMR 850.703(b), as augmented the Supplemental Information, is not inconsistent with 30 CFR part 850. The Director approves Texas' proposed TCMR 850.706(a) but requires Texas to amend TCMR 850.706(a) to require that before being certified a blaster must receive training in State and Federal laws governing storage and handling of explosives. The Director approves Texas' proposed TCMR 850.706(b).

(i) 850.707, Certification

Proposed TCMR 850.707 provides requirements for issuance of certification, certificate conditions, protection of certificates, and suspension and revocation that are either substantively identical to, or no less effective than, the Federal regulations at 30 CFR 850.15 (a), (b), (d) and (e). Proposed TCMR 850.707(b)(2) requires certified blasters to immediately exhibit certifications to any authorized representative of the Commission upon request. The corresponding Federal regulation at 30 CFR 850.15(e)(1) additionally requires a blaster to exhibit his or her certificate to authorized OSM representatives.

Under 30 CFR 842.13(a)(2), OSM has access to, and the authority to copy, any records of a surface coal mining operation. The Director finds that while it would provide clarity in the Texas program to require that the certified blaster exhibit his or her certificate to an authorized representative of OSM, the lack of such provision does not render the program less effective than the Federal regulations, because OSM has such authority under 30 CFR 842.13(a)(2).

Additionally, Texas includes at TCMR 850.707(b) State-specific provisions that do not have Federal counterparts and which require certified blasters to (1) complete a Commission-administered refresher course once every 3 years, and (2) notify the Commission within 30 days of an address change. These additional provisions are not inconsistent with the Federal

requirements at 30 CFR Part 850 or with section 719 of SMCRA.

For the reasons discussed above, the Director finds that proposed TCMR 850.707 is no less effective than corresponding Federal regulations at 30 CFR 850.15 (a), (b), (d) and (e). The Director approves this proposed regulation.

(j) 850.708, Recertification

Proposed TCMR 850.708(a) allows the Commission to require reexamination, training or other demonstration of competency of a certified blaster if it has determined that the certified blaster was involved in a blasting or blasting-related violation. Proposed TCMR 850.708(b) allows the Commission to exchange information with other qualified jurisdictions regarding blaster involvement in such violations. The corresponding Federal regulation at 30 CFR 850.15(c) provides that the regulatory authority may require reexamination, training or other demonstration of competency for continuance of certification, but there are no Federal requirements regarding exchange of information on blaster-related violations with other qualified jurisdictions.

The Director finds that proposed TCMR 850.708(a) is no less effective than the corresponding Federal regulations at 30 CFR 850.15(c). Also, the Director finds that the additional provisions at TCMR 850.708(b) are not inconsistent with the Federal requirements at 30 CFR part 850. The Director approves these proposed regulations.

(k) 850.709, Reciprocity

Proposed TCMR 850.709 allows the Commission to grant a blaster certificate to applicants who hold a current blaster certification from another qualified jurisdiction. It also sets forth conditions for maintaining certification through reciprocity. There are no Federal requirements regarding the granting of a blaster certificate through reciprocity. However, OSM endorses the concept of reciprocity (44 FR 9486, 9488, March 4, 1983) and provides, in its Federal Program States and Indian Lands blaster certification program at 30 CFR 995.16, for the granting of an OSM blaster certificate through reciprocity. The Director finds that proposed TCMR 850.709 is not inconsistent with the Federal regulations at 30 CFR part 850, and the Director approves this proposed regulation.

(l) 850.710, Applicability

Proposed TCMR 850.710 requires persons responsible for the use of explosives in mining operations regulated by the Commission to possess a Commission blaster certificate within 180 days after the effective date of TCMR part 850. Proposed TCMR 850.710 also provides for compilation of a list of persons directly responsible for the use of explosives in mining operations regulated by the Commission, and authorizes the Director of SMRD to make available the services required at TCMR part 850 to other Texas governmental and private entities involved in the use of explosives. The Federal regulations at 30 CFR part 850 do not specify a minimum time after adoption of a State blaster certification program in which persons responsible for the use of explosives in mining operations must become certified, nor do they address the listing of persons responsible for the use of explosives or the use of the blaster certification program by other entities. The Director finds that the provisions of proposed TCMR 850.710 are not inconsistent with the Federal requirements at 30 CFR part 850, and the Director approves this proposed regulation.

18. Recodification

With the exception of TCMR 800.309(j), Texas has recodified its surface coal mining regulations at Subchapters A through L of Chapter IV, from TCMR 051.07.04.001 through 051.07.04.698 to TCMR 700.001 through 845.698. The recodification of the self-bonding regulations at TCMR 800.309(j) was discussed in a previous rulemaking (54 FR 50753, December 11, 1989). In addition, Texas proposed to add regulations at Subchapter M codified as TCMR 850.700 through 850.710. Since the recodification does not alter the content or meaning of the proposed regulations, the Director finds that the revised codification system is not inconsistent with any Federal requirements.

IV. Public and Agency Comments

Public Comments

The Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the Texas program.

The Forest Service responded that it had no suggested changes or comments on the proposed amendment (Administrative Record No. TX–466).

The Bureau of Land Management (BLM) responded that Texas in proposed TCMR part 817 applied surface blasting requirements to underground mining operations. BLM further stated that "[b]ecause of the differences between surface and underground blasting practices, we believe separate requirements for underground blasting are necessary" (Administrative Record No. TX–470).

The Federal regulation at 30 CFR 817.61(a) limits the applicability of the regulations at 30 CFR 817.61 through 817.68, which pertain to the use of explosives for underground mining activities, to "surface blasting activities incident to underground coal mining, including but not limited to, initial rounds of slopes and shafts." Further, the preamble to that regulation states that "OSM only regulates the surface impacts of blasting from underground mines, which [impacts] are derived almost exclusively from surface blasting associated with such mines" (46 FR 9788, 9804, March 8, 1983). This requirement is consistent with the definition of "surface coal mining operations" at 30 CFR 700.5 and with section 516 of SMCRA. Thus, Texas is required by SMCRA and the Federal regulations to regulate the use of explosives relative to underground mining only where such use affects the surface, or surface activities, or structures on the surface. On this basis, the Director does not require Texas to revise its program in response to BLM's comment.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. By letters dated September 29, 1989, the Director solicited comments from these offices (Administrative Record No. TX–461). The SHPO and ACHP did not respond.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards

promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) On March 26, 1990, EPA gave its concurrence (Administrative Record No. TX–473) which included the understanding that Texas would implement its regulations consistent with the requirements of the Clean Water Act and that the Texas surface mining regulations do not in themselves provide full authorization for instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States occur by permit as appropriate under either section 402 or 404 of the Clean Water Act.

With specific reference to Texas, EPA noted that proposed TCMR 816.344(a) only provides that "sedimentation ponds be designed, constructed and maintained to provide adequate detention time to allow the effluent *from* the ponds to meet State and Federal effluent limitations" and that TCMR 816.344(A)(4) provides that sedimentation ponds shall "be located as near as possible to the disturbed area and out of perennial streams, unless approved by the Commission." EPA further noted that TCMR 816.347(b) provides that "the quality of the impounded water will be suitable on a permanent basis for its intended use and that discharges *from* the impoundment will meet applicable effluent limitations and will not degrade the quality of the receiving water below applicable State and Federal water quality standards."

The Director acknowledges EPA's concerns, and Texas has been notified of these concerns by their inclusion in the administrative record. The Director emphasizes that section 702(a)(3) of SMCRA provides that nothing in the Act shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended, State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality. It should be noted that Texas' general hydrologic balance rule at TCMR 816.339(c) is consistent with the corresponding Federal regulations at 30 CFR 816.45(a) in that it requires operators to comply with Federal and State water quality statutes, regulations standards and effluent limitations. Therefore, Texas permit applicants and mine operators are aware of their responsibilities under the Clean Water Act, and the Director is not requiring any further action on the part of Texas at this time.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and required amendments, the proposed amendment as submitted by Texas on September 22, 1989, and revised by it on September 11, 1990.

As discussed respectively in finding Nos. 8, 9, and 15, the Director does not approve (1) the geology description requirements at TCMR 779.127(a) and (b), (2) the permit operations maps and plans requirements at TCMR 780.142(c) to the extent that they would allow professional geologists to prepare and certify cross sections, maps, and plans for sedimentation ponds; water impoundments; coal processing waste banks, dams, and embankments; excess spoil fills; durable rockfills; and coal mining waste disposal facilities, and (3) the requirements for discharge into underground mines at TCMR 817.522(f) to the extent that they use the term "surface mining activities" rather than "underground mining activities." Accordingly, the Director requires Texas to revise these regulations. In addition, the Director, as discussed in findings Nos. 4, 12, and 17, requires Texas to revise the definitions at TCMR 770.101, the explosives regulations at TCMR 816.360, and the blaster training, examination and certification regulations at TCMR 850.703, 850.704, and 850.706(a).

In revising a number of the regulations in this amendment, Texas referenced other regulations in its program. Texas referenced the appropriate regulations; however, many of these referenced provisions need revising to be consistent with the corresponding Federal regulations. Because the referenced regulations are not part of this amendment, OSM will address these issues at a future date.

Except as noted, the Director approves the regulations with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 943 codifying decisions concerning the Texas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Texas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Texas of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.10 is revised to read as follows:

§ 943.10 State program approval.

(a) The Texas State program as submitted July 20, 1979, and amended November 13, 1979, and December 20, 1979, is approved, effective February 16, 1980. The Texas State program amendments of March 27, 1980, are approved effective June 18, 1980.

(b) Copies of the approved program as amended are available at:

(1) Texas Railroad Commission, Surface Mining and Reclamation Division, 1701 N. Congress, P.O. Drawer 12967—Capitol Station, Austin Texas 78711–2967.

(2) Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, 2202 Old Henderson Highway, Tyler, Texas 75702.

(3) Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, 1021 C Street, Floresville, Texas 78114.

(4) Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548.

4. Section 943.15 is amended by adding a new paragraph (h) as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(h) With the exception of the geology description requirements at TCMR 779.127(a) and (b), the permit operation maps and plans requirements at TCMR 780.142(c), and the requirements for discharge of water into an underground mine at TCMR 817.522(f) to the extent that it uses the term "surface mining activities" rather than "underground mining activities," the revisions to the Coal Mining Regulations of the Railroad Commission of Texas as submitted on September 22, 1989, and revised on September 11, 1990, are approved effective August 19, 1992. Revisions to the following regulations are approved.

2-acre exemption, 700.002(b)(2).
Definitions, 700.003(22); 700.008(18), (56), (81) and (85); 762.074(1) and (2); and 770.101.
Permitting requirements, 770.100(c) and 770.102(c).
Permit applications and fees, 771.107(d) and 771.108.
Coal exploration, 776.111(a)(3)(A), (a)(7), (b) and (b)(1); and 815.327(a) and (f).
Environmental resources information, 779.125(b); 779.126(a); 779.133; 783.171(b) and 783.172.
Reclamation plan, 780.144(a); 780.145(b)(4); 783.179; 784.187(b)(4) and 784.195(a).
Public parks and historic places, 780.151 and 784.191.
Subsidence control plan, 784.194(a), (e), and (f); 817.562(c) and 817.565(e).
Experimental practices, 785.200(a) through (c) and (f) through (i).
Criteria for permit approval or denial, 786.216(p); 788.230(a)(4) through (a)(6); and 788.232(c)(1), (d), and (e).
Small operators assistance program, 795.237(b)(5), (c) and (d); 795.238(d)(4) and 795.243(a).
Insurance and bonding Hydrologic balance, 800.301(b) and 808.317; 816.339(a); 816.344(a); 816.353(d); 817.509(a); and 817.514(a).
Use of explosives, 816.359; 816.360; 816.361 and 816.362.
Disposal of excess spoil, 816.363(j), (i), (o), (p) and 817.531(j), (i), (o), (p).
Coal processing waste banks, 816.368(c); 816.369(a); 816.371(c)(3) (deleted); 816.375(d) and 816.377(b).
Protection of fish and wildlife, 816.380(b) and (c); and 817.547(b), (c).
Backfilling and grading, 816.384(b)(2) and 817.551(b)(2).
Revegetation, 816.390(a).
Auger mining, 819.600(c)(1).
Inspection and enforcement, 840.672(b); 843.680(a); and 843.682(f).
Civil penalties, 845.695(b)(2).
Training, examination and certification of blasters, 850.700; 850.701; 850.702(a) through (d); 850.703 through 850.710; and Supplemental Information.
Recodification of the Texas Coal Mining Regulations, 700.001 through 845.698.

4. Section 943.16 paragraph (a) is removed and reserved, and paragraphs (k) through (q) are added to read as follows:

§ 943.16 Required program amendments.

* * * * *

(k) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the definitions at TCMR 770.101 to replace the definitions for "applicant," "application," "complete application," "general area," "principal shareholder," "property to be mined," and "violation notice," or otherwise demonstrate that these definitions are not necessary for the Texas program to be no less effective than the Federal regulations.

(l) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the geologic description requirements at TCMR 779.127 (a) and (b) to require that the geologic description must be based, in part, on analyses of samples of geologic materials collected from the proposed permit area.

(m) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the permit operation maps and plans

requirements at TCMR 780.143(c) to require that qualified registered professional engineers (not professional geologists) prepare and certify cross sections, maps, and plans for sedimentation ponds, water impoundments; coal processing waste banks, dams, and embankments; excess spoil fills; durable rock fills; and coal mine waste disposal facilities.

(n) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the explosives regulations at TCMR 816.360 to:

(1) Add to the list of protected buildings at TCMR 816.360(a)(2)(A), public buildings and community or institutional buildings;

(2) Add to the list of protected facilities at TCMR 816.360(a)(2)(B), active and abandoned underground mines;

(3) Require that operators submit to Texas blast designs for all blasting operations within 1,000 feet of the buildings listed in TCMR 816.360(a)(2)(A) and within 500 feet of the facilities, listed in TCMR 816.360(a)(2)(b); and

(4) Recodifying the second paragraph (e) after paragraph (h) (6) and in it reference 816.360 (f) and (h) rather than "paragraphs (b) and (d) of this Section."

(5) Revise paragraph (h) to reference the recodified paragraph (e), and paragraphs (h)(2)(A), (h)(2), (h)(3), (h)(4), (h)(5), and (h)(2)(A) rather than paragraphs (e), (d)(2)(A), (d)(2), (d)(3), (d)(4), (d)(5), and (d)(2)(A).

(o) By October 19, 1992 Texas shall submit to OSM a proposed amendment to the requirements for discharging water into an underground mine at TCMR 817.522(f) to replace the term "surface mining activities" with "underground mining activities".

(p) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the training and examination of blasters regulations at TCMR 850.703 and 850.706 to require that before being certified, a blaster must receive training and be examined on State and Federal laws governing storage and transportation of explosives.

(q) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the training course requirements at TCMR 850.704(b) to clarify that accredited agencies or schools must provide and require completion of the courses listed at TCMR 850.704(a).

[FR Doc. 92-19700 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 943

Texas Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Director of OSM concurs with Texas' certification that the State has abated or reclaimed all coal-related abandoned mine land problems. Texas made the certification in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101-508). Texas is now authorized to utilize abandoned mine reclamation (AMR) funds for noncoal reclamation purposes.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA
II. Background on the Texas Plan
III. Submission of Plan Amendment
IV. Director's Findings
V. Summary and Disposition of Comments
VI. Director's Decision
VII. Procedural Determinations

I. Background on Title IV of SMCRA

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal law.

Each State having within its border coal-mined lands eligible for reclamation under title IV of SMCRA may submit to the Secretary of the Interior a reclamation plan demonstrating its capability for administering an AMLR program. Upon approval of the State Reclamation Plan by the Secretary, the State may submit to OSM, on an annual basis, an application for funds to be expended in that State on specific reclamation projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR part 886.

AMR funds are to be utilized to address the problems caused by past mining in the following order. First, reclamation efforts are to be directed at correcting or mitigating the problems caused by past coal mining in the order of priority set forth in section 403(a) of SMCRA. Section 409 of SMCRA provides that certain noncoal mining-related problems may also be addressed at the same time if they involve direct threats to the public health, safety, and welfare. Second, following the completion of all coal-related impacts and certification of completion of coal reclamation, a State program may then direct its efforts to alleviating the problems caused by noncoal mining in accordance with the priorities set forth in section 411(c) of SMCRA. Finally, when all coal- and noncoal-related impacts have been addressed, section 411(e) of SMCRA provides that AMR funds may be used for construction of specific public facilities in communities impacted by mining development.

II. Background on the Texas Plan

On June 23, 1980, the Secretary of the Interior approved the Texas abandoned mine plan as submitted on April 24, 1980, and amended on May 30, and June 2 and 4, 1980. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 23, 1980, **Federal Register** (45 FR 41940).

III. Submission of Plan Amendment

Texas, at its own initiative, submitted to OSM a proposed amendment to its approved plan pursuant to SMCRA, as amended. The proposed amendment consists of two letters from the Governor of the State of Texas dated May 11 and 26, 1989, certifying that Texas had satisfied the requirements of SMCRA with regard to abandoned coal mine reclamation (administrative record Nos. TAML-38 and TAML-39). The effect of such certification, if concurred with by OSM, would be to allow Texas to use its AMF funds for noncoal reclamation projects. The Governor also stated that if any unforeseen coal problems arise, Texas would address them as funds become available.

OSM announced receipt of Texas' request for OSM's concurrence with the certification in the September 5, 1989, **Federal Register** (54 FR 36817; administrative record No. TAML-44) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the adequacy of Texas' request. The public comment period closed on October 5, 1989.

By letter dated March 22, 1990, Texas requested that OSM delay publishing a final rule **Federal Register** notice on the certification of completion of coal reclamation to allow the State time to adequately address all its coal priorities in accordance with section 403(a) of SMCRA (administrative record No. TAML–49). On April 22, 1990, OSM granted Texas' request (administrative record No. TAML–50).

By letter dated February 25, 1992 (administrative record No. TAML–51), Texas requested that OSM proceed with its processing of the State's request for certification of the completion of coal reclamation. Upon review of this request, OSM, by letter dated March 30, 1992 (administrative record No. TAML–52), requested Texas to clarify that the State had completed reclamation of all known coal-related problems and had satisfied this provision of the plan. By letter dated April 13, 1992 (administrative record No. TAML–53), Texas responded to OSM's request by submitting additional clarifying information.

OSM announced receipt of Texas' additional clarifying information in the May 21, 1992, **Federal Register** (57 FR 21640) and reopened the comment period on the proposed amendment (administrative record No. TAML–54). The reopened comment period closed on June 5, 1992.

IV. Director's Findings

Since OSM's original approval of the Texas abandoned mine plan, Texas, in accordance with the Texas Surface Coal Mining and Reclamation Act (TSCMRA), has conducted reclamation to correct or mitigate the problems caused by past coal mining. Texas completed this reclamation in the order of priority set forth in Subchapter R, section 051.07.04.804 of the State's Coal Mining Regulations as required by section 7 of TSCMRA (corresponding section 403(a) of SMCRA). Based upon Texas' May 11 and 26, 1989, certification, as clarified on April 13, 1992, and the absence of any known unreclaimed coal-related impacts, the Director concurs with Texas' certification that all coal-related abandoned mine land problems have been abated or reclaimed, and finds that Texas has satisfied the requirements of section 403 of SMCRA.

Furthermore, the Director finds, pursuant to 30 CFR 884.14(a), that (1) the public was given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies; (2) views of other Federal agencies were solicited; (3) Texas has the legal authority, policies, and administrative structure necessary to implement the abandoned mine plan amendment; (4) the plan amendment meets all requirements of OSM's AMLR program provisions; (5) Texas has an approved surface mining regulatory program; and (6) the plan amendment is in compliance with all applicable State and Federal laws and regulations.

Because Texas has, as discussed above, reclaimed all lands adversely impacted by past coal mining, Texas may submit in its annual grants requests for AMR funds to address eligible lands, waters, and facilities impacted by noncoal mining in accordance with the provisions of sections 051.07.04.803 and .804 as required by section 7 of TSCMRA (corresponding 411(b) and (c) of SMCRA). Monies available for all noncoal reclamation projects, regardless of their priority, however, may be derived only from those funds allocated to Texas under section 402(g)(1) of SMCRA.

V. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that were received by OSM and the Director's responses to them.

1. Public Comments

In accordance with 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal agencies with an actual or potential interest in the Texas abandoned mine plan.

By memorandum dated June 17, 1992, the U.S. Fish and Wildlife Service acknowledged receipt of the proposed amendment and stated it has no objection to it (administrative record No. TAML–57).

By telephone conversation on June 19, 1992, the U.S. Department of Agriculture, Soil Conservation Service, stated it had no objection to the proposed amendment (administrative record No. TAML–58).

VI. Director's Decision

Based on the above findings, the Director concurs with Texas' certification for completion of abatement or reclamation of all coal-related abandoned mine land problems, as submitted by Texas on May 11 and 26, 1989, and as clarified by it on April 13, 1992.

The Director is codifying this abandoned mine plan decision at 30 CFR part 943. In addition, the Director is taking this opportunity to revise the addresses where copies of the abandoned mine plan originally approved by OSM are available for review. This final rule is being made effective immediately to expedite the State plan amendment process.

VII. Procedural Determinations

1. National Environmental Policy Act

Approval of State AMLR plans and amendments are categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual at 516 DM 6, appendix 8, paragraph 8.4B(30).

Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to the approval of Abandoned Mine Land Reclamation programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the

actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.20 is revised to read as follows:

§ 943.20 Approval of Texas abandoned mine plan.

(a) The Texas Abandoned Mine Plan, as submitted on April 24, 1980, and amended on May 30, June 2, and June 4, 1980, is approved effective June 23, 1980.

(b) Copies of the approved program are available at:

(1) The Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Box 12967, Austin, Texas 78711, Telephone: (512) 463–6900.

(2) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Dr., suite 550, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

3. Section 943.25 is added to read as follows:

§ 943.25 Approval of amendments to Texas abandoned mine plan.

The amendment, as submitted by Texas on May 11 and 26, 1989, and clarified by it on April 13, 1992, certifying completion of coal reclamation, is approved effective August 19, 1992.

[FR Doc. 92–19708 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 944

Utah Permanent Regulatory Program and Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is approving proposed amendments to the Utah permanent regulatory program and abandoned mine plan (hereinafter referred to as the "Utah program" and "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Abandoned Mine Reclamation Act of 1990. Utah proposed the following changes to the Utah Coal Mining and Reclamation Act of 1979: (1) Revisions pertaining to activities exempt from the requirements of the Utah program; (2) removal from the Utah program of a section pertaining to rulemaking authority and procedures; (3) revisions to the Utah plan pertaining to the State's Abandoned Mine Reclamation Fund; and (4) addition of a Utah plan section setting forth procedures for certifying the completion of abandoned coal mine land reclamation. The amendment is intended to revise the Utah program and the Utah plan to be consistent with SMCRA, as amended; to incorporate the additional flexibility afforded by the amended SMCRA; and to improve operational efficiency.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program and Plan
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Utah Program and Plan

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments are codified at 30 CFR 944.15, 944.16, and 944.30.

On June 3, 1983, the Secretary of the Interior approved the Utah plan. General background information on the Utah plan, including the Secretary's findings, the disposition of comments, and approval of the Utah plan can be found in the June 3, 1983, **Federal Register** (48 FR 24876). Approval of the Utah plan is codified at 30 CFR 944.20.

II. Submission of Amendment

By letter dated July 26, 1991 (administrative record No. UT–663), Utah submitted proposed amendments to its program and plan pursuant to SMCRA. Utah submitted the proposed amendments at its own initiative. The provisions of the Utah Coal Mining and Reclamation Act of 1979 that Utah proposed to amend are: Revision of the Utah program provisions at Utah Code Annotated (UCA) 40–10–5, activities exempt from the requirements of the Utah Coal Mining and Reclamation Act of 1979; removal of the Utah program provision at UCA 40–10–6.6, rulemaking authority and procedures; revision of the Utah plan provision at UCA 40–10–25, expenditure priorities for eligible lands and water under the Utah plan; addition to the Utah plan at UCA 40–10–25.1, creation, content, and use of monies of the Abandoned Mine Reclamation Fund; addition to the Utah plan at UCA 40–10–25.2, liability limitation for abandoned mine reclamation; and addition to the Utah plan at UCA 40–10–28.1, certification of completion of coal reclamation.

OSM announced receipt of the proposed amendments in the August 20, 1991, **Federal Register** (56 FR 41314; administrative record No. UT–672) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendments. The public comment period closed on September 19, 1991. No substantive comments were received. The public hearing, scheduled for September 16, 1991, was not held because no one requested an opportunity to testify.

During its review of the amendments, OSM identified concerns relating to the Utah Coal Mining and Reclamation Act of 1979 provisions for the Utah plan at UCA 40–10–25, expenditure priorities for eligible lands and water under the Utah plan; UCA 40–10–25.1, creation, content, and use of monies of the Abandoned Mine Reclamation Fund; UCA 40–10–27(10)(b), entry upon land adversely

affected by past coal mining practices; and UCA 40–10–28.1, certification of completion of coal reclamation. OSM notified Utah of these concerns by letter dated October 3, 1991 (administrative record No. UT–688).

By letters dated December 17, 1991, and March 17, 1992 (administrative record Nos. UT–710 and UT–739), Utah responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed plan amendment.

Based upon the additional explanatory information and revisions to the proposed plan amendment submitted by Utah, OSM reopened the public comment period in the April 23, 1992, **Federal Register** (57 FR 14821; administrative record No. UT–757). The public comment period closed on May 8, 1992.

III. Director's Findings

As discussed in finding No. 1 below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed Utah program amendment submitted by Utah on July 26, 1991, is no less stringent than SMCRA. Also, as discussed in finding No. 2 below, the Director, in accordance with SMCRA and 30 CFR part 884, finds that the proposed Utah plan amendment submitted by Utah on July 26, 1991, and as revised by it on December 17, 1991, and March 17, 1992, is not inconsistent with SMCRA and is in compliance with the corresponding Federal regulations at 30 CFR 884.13 and 884.14. Thus, the Director approves the proposed amendments.

1. Utah Program

(a) Substantive Revision to Utah's Statute That Is Substantively Identical to the Corresponding Provisions of the Federal Statute

Utah proposed revisions to the following provision of the Utah Coal Mining and Reclamation Act of 1979 that are substantive in nature and contains language that is substantively identical to the corresponding provision of SMCRA (listed in parentheses):

UCA 40–10–5(1) (section 528 of SMCRA), activities exempt from the requirements of the Utah Coal Mining and Reclamation Act of 1979.

Because the proposed Utah program revision to this provision of the Utah Coal Mining and Reclamation Act of 1979 is substantively identical to the corresponding provision of SMCRA, the Director finds that this proposed program provision is no less stringent than SMCRA and approves it.

(b) UCA 40–10–5(1)(b), 2-Acre Exemption

As originally codified, Utah at UCA 40–10–5(1)(b) excluded from regulation those coal extraction operations affecting 2 acres or less. Similarly, as originally enacted, section 528(2) of SMCRA exempted from the requirements of SMCRA all coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed the section 528(2) exemption and preempted any acreage-based exemptions included in State laws or regulations.

The amendment under consideration in this rulemaking removed the language of UCA 40–10–5(1)(b) preempted by Public Law 100–34. The Director finds that UCA 40–10–5(1)(b), as revised by this amendment, is no less stringent than section 528 of SMCRA and approves it. Removal of the acreage-based exemption from the Utah Coal Mining and Reclamation Act of 1979 will avoid confusion on the part of the public, which may not be aware of the Federal preemption.

(c) UCA 40–10–5(2), Applicability of the Permitting Requirements to Governmental Units

Utah proposed to delete existing UCA 40–10–5(2), which required that "[i]n addition to nongovernmental surface mining operators subject to this chapter [UCA 40–10], any agency, unit, or instrumentality of federal, state, or local government, including any public-owned corporation of federal, state, or local government, which purposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter." Thus, proposed UCA 40–10–5(2) requires both nongovernmental and governmental surface mining operators to comply with UCA chapter 40–10. This provision is substantively identical to section 524 of SMCRA.

Utah's rationale for deleting UCA 40–10–5(2) is that this section was redundant with existing UCA 40–10–3(14) and 40–10–9(1). At existing UCA 40–10–3(14), Utah defines "person" to mean an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization. At existing UCA 40–10–9(1), which pertains to permits for surface coal mining operations, Utah requires that no "person" shall engage in or carry out surface coal mining operations within the state unless that "person" has first obtained a permit issued by Utah pursuant to an approved mining and reclamation program.

Utah's definition of "person" at UCA 40–10–3(14), in conjunction with U.C.A. 40–10–9(1), requires both nongovernmental and governmental agencies to be subject to regulation when engaged in surface coal mining operations. This is the same requirement contained in UCA 40–10–5(2), which Utah proposed for deletion. Because UCA 40–10–5(2) duplicates the existing requirements of UCA 40–10–3(14) and UCA 40–10–9(1), the Director approves Utah's proposed deletion of UCA 40–10–5(2).

(d) UCA 40–10–6.6 (1), (2), and (3), Deadline for Review and Proposal of Revision of Rules, Deadline for Revision of Rules, and Effect of Notice of Violation or Denial of Permit

Utah proposed to delete in their entirety UCA 40–10–6.6(1), deadline for review and proposal of revision of rules; UCA 40–10–6.6(2), deadline for revision of rules; and UCA 40–10–6.6(3), effect of notice of violation or denial of permit.

UCA 40–10–6.6(1) required that (1) within 6 months of Utah's effective date for promulgation of UCA 40–10–6.5 and 40–10–6.6 (April 25, 1988), the Board of Oil, Gas, and Mining (the Board) review and propose revisions to its rules in compliance with the rule stringency standard at UCA 40–10–6.5, and (2) within 12 months of this effective date, the Utah Division of Oil, Gas and Mining (Division) revise its rules in compliance with the rule stringency standard at UCA 40–10–6.5. UCA 40–10–6.5 directs the Board not to adopt rules to the Utah regulatory program that are more stringent than the Federal regulations unless the Board makes a written finding, after public comment and hearing and based upon evidence in the record, that the corresponding Federal regulations are not adequate to protect public safety and the environment of the State.

UCA 40–10–6.6(2) states that all existing rules of the Division would remain in full force and effect after the effective date for promulgation of UCA 40–10–6.5 and 40–10–6.6, pending the Board's review and the Division's revision of the Utah program rules in compliance with UCA 40–10–6.6(1).

Utah has already complied with the self-imposed deadlines in UCA 40–10–6.6 (1) and (2) for reviewing and revising its regulatory program regulations. As such, these provisions are no longer needed in the regulatory program. The Director finds that the deletion of UCA 40–10–6.6 (1) and (2), which have no direct counterparts in SMCRA, is not

inconsistent with any of the requirements of Section 503(a) of SMCRA. Also, their deletion does not adversely affect any other aspects of the Utah program. For these reasons, the Director approves the proposed deletions of UCA 40–10–6.6 (1) and (2).

Utah also proposed to delete UCA 40–10–6.6(3), effect of notice of violation or denial of permit, which required that "any person who is issued a notice of violation, or a denial of a permit or other approval, based on a rule of the Division which is more stringent than the corresponding federal regulations, may assert a partial defense to that notice, or a partial challenge to that denial, on the grounds and to the extent that the Division's rule violates this act by imposing requirements more stringent than corresponding federal regulations, unless that more stringent state rule has been adopted in compliance with this act."

On November 13, 1989, Utah (administrative record No. UT–540) submitted UCA 40–10–6.6(3) to OSM as a proposed Utah program amendment. On March 23, 1990, OSM notified Utah that UCA 40–10–6.6(3) was inconsistent with SMCRA and its implementing regulations (administrative record No. UT–561). On May 29, 1990, Utah withdrew the proposed amendment (administrative record No. UT–568). In this proposed amendment, Utah deleted UCA 40–10–6.6(3) from its statute.

Because OSM had previously found this provision to be inconsistent with SMCRA, the Director finds that Utah's proposed deletion of the provision now makes this part of the Utah program consistent with SMCRA. Therefore, the Director approves the proposed deletion of UCA 40–10–6.6(3).

2. Utah Plan

(a) Substantive Revisions to Utah's Statute That Are Substantively Identical to the Corresponding Provisions of the Federal Statute

Utah proposed revisions to the following provisions of the Utah Coal Mining and Reclamation Act of 1979 that are substantive in nature and contain language that is substantively identical to the corresponding provisions of SMCRA, as amended (listed in parentheses):

UCA 40–10–25(2)(c), (e), and (f) (sections 403(a)(1) through (6) of SMCRA), priorities for coal;

UCA 40–10–25(3)(a), (b), and (c) (section 404 of SMCRA), lands and water eligible for reclamation;

UCA 40–10–25.1(1)(a) (section 401(a) of SMCRA), creation of the Abandoned Mine Reclamation Fund;

UCA 40–10–25.1(2)(a) (section 401(b) of SMCRA), content of the Abandoned Mine Reclamation Fund;

UCA 40–10–25.2(1) and (2) (section 405(1) of SMCRA), liability limitation for abandoned mine reclamation; and

UCA 40–10–28.1(1), (2), (3), (4), (5), (6), and (7) (sections 411(a) through (g) of SMCRA), certification of completion of coal reclamation.

Because the proposed Utah plan revisions to these provisions of the Utah Coal Mining and Reclamation Act of 1979 are substantively identical to the corresponding provisions of SMCRA, the Director finds that these proposed plan provisions are not inconsistent with SMCRA and approves them.

(b) UCA 40–10–25(1) and 40–10–25.1, Expenditure Priorities for Lands and Water Eligible for Reclamation; and Creation, Content, and Use of Monies of the Abandoned Mine Reclamation Fund

Utah proposed to delete existing UCA 40–10–25(1) and UCA 40–10–25(4)(a) through (c) and incorporate the substantive requirements of these sections into newly-proposed UCA 40–10–25.1. In addition, Utah proposed a new UCA 40–10–25(1) which would require that grants received by the State under the Utah plan and monies of an existing fund, which Utah now has named the Abandoned Mine Reclamation Fund, be used in accordance with the provisions of UCA 40–10–25 through 40–10–28.1.

Section 401 of SMCRA, as amended, provides for (1) the creation of the Abandoned Mine Reclamation Fund; (2) the sources of monies to be deposited to this Fund; (3) the uses of these monies in implementing the abandoned mine reclamation program; (4) the availability of the funds; and (5) the investment of the unneeded Fund balance to earn interest.

Section 402(g) of SMCRA details provisions for the allocation of funds, including the establishment of a special trust fund of up to 10 percent of the total annual State grants, in order to accomplish the priorities set out in sections 402 and 411 of SMCRA.

The Director finds that Utah's proposed deletion of existing UCA 40–10–25(1) and 40–10–25(4)(a) through (c), incorporation of the substantive requirements of these sections into new UCA 40–10–25.1, and the addition of new UCA 40–10–25(1) are not inconsistent with sections 401 and 402 of SMCRA. The Director approves these changes.

(c) UCA 40–10–25.1(1) (b), Use of Monies in the Abandoned Mine Reclamation Fund

Utah proposed a new UCA 40–10–25.1(1) (b) that would allow "set-aside funds" established by proposed new UCA 40–10–25.1(3)(a) and the interest earned on these monies to be combined in the Abandoned Mine Reclamation Fund with monies from liens, user fees, fines, donations, and earned interest as set forth in proposed new UCA 40–10–25.1(2)(a). The provision required only that the set-aside funds be "segregated" from the other source monies. Section 402(g)(6) of SMCRA allows a State to retain up to 10 percent as "set-aside funds" of the annual State share allocation granted by the Secretary of the Interior in a special trust fund account established under law. Where both types of funding are deposited to the same account and there are no specific provisions to handle them as separate and distinct accounts, there is a potential, through accounting errors or misuse of funds, for set-aside funds to be expended for an inappropriate use or at an inappropriate time. By letter dated March 17, 1992 (administrative record No. UT–739), Utah provided a February 19, 1992, Utah Division of Finance memorandum explaining how the two accounts will be maintained as separate and distinct accounts. The Director finds that UCA 40–10–25.1(1)(b), as augmented by the February 19, 1992, Utah Division of Finance memorandum, is not inconsistent with section 402(g)(6) of SMCRA and approves it.

(d) UCA 40–10–25.1(2)(b) and (c), Investment of and Expenditures of Monies in the Abandoned Mine Reclamation Fund

Utah proposed new UCA 40–10–25.1(2) (b) and (c) that would allow monies received under proposed new UCA 40–10–25.1(2)(a) to be invested and all earned interest over $9,500 to be credited to Utah's general fund. At proposed new UCA 40–10–25.1(2)(c), the Division could at any time spend the monies received under the 40–10–25.1(2)(a) to accomplish the purposes of the abandoned mine reclamation program.

The Director finds that Utah's proposed UCA 40–10–25.1(2)(b) and (c) are consistent with section 401 of SMCRA and approves them.

(e) UCA 40–10–25.1(3)(a) and (b), Set-Aside Monies

In place of existing UCA 40–10–25(4)(a), Utah proposed new UCA 40–10–25.1(3)(a) that would allow the State to set aside funds in a special trust

account. In addition, Utah proposed new UCA 40–10–25.1(3)(b) that would allow Utah to set aside funds to be used after August 3, 1992, for the purposes set forth in UCA 40–10–25 through 40–10–28.1. The Director finds that Utah's proposed UCA 40–10–25.1(3)(a) and (b), which would allow Utah to set aside funds to be used after August 3, 1992, are not inconsistent with title IV of SMCRA and approves them.

(f) UCA 40–10–25.1(3)(c), Availability of Monies in the Abandoned Mine Reclamation Fund

Utah proposed new UCA 40–10–25.1(3)(c) that would allow monies deposited to the Abandoned Mine Reclamation Fund under the provisions of proposed new UCA 40–10–25.1(3) to be appropriated through legislative action. The Director finds that Utah's proposed UCA 40–10–25.1(3)(c), which would allow the legislature to appropriate funds from the Abandoned Mine Reclamation Fund, is not inconsistent with title IV of SMCRA and approves it.

(g) UCA 40–10–25.1(3)(d), Use of State Set-Aside Monies for Emergencies Requiring Immediate Reclamation

Utah proposed at UCA 40–10–25.1(3)(d) that the Division could expend set-aside monies at any time for emergency reclamation. The Director finds that proposed UCA 40–10–25.1(3)(d) is not inconsistent with title IV of SMCRA and approves it.

(h) UCA 40–10–27(10)(b) Lands Adversely Affected By Past Coal Mining Practices

Utah proposed to revise UCA 40–10–27(10)(b), which pertains to lands adversely affected by past coal mining practices, to reference UCA 40–10–25(2) and (3). As discussed in finding No. 2(a), the Director approves UCA 40–10–25(2)(c), (e), and (f) and (3)(a), (b), and (c). Utah, in this proposed plan amendment, proposed no revisions to existing sections 40–10–25(2)(a), (b), and (d). Section 409(c) of SMCRA provides for the funding of certain non-coal projects. The Director finds that the proposed revision to UCA 40–10–27(10)(b) is not inconsistent with section 409(c) of SMCRA and approves it.

IV. Summary and Disposition of Comments

1. Public comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendments. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency comments

Pursuant to 30 CFR 732.17(h)(11)(i), § 884.14(c), and § 884.15(a), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program and Utah plan.

By letters dated August 23, 1991, and April 9, 1992, the Department of the Army, U.S. Army Corps of Engineers, stated that the proposed amendments were satisfactory (administrative record Nos. UT–670 and UT–750).

By memoranda dated August 23, 1991, and May 4, 1992, the U.S. Fish and Wildlife Service acknowledged receipt of the proposed amendments and stated that it found nothing of significant concern in them (administrative record Nos. UT–674 and UT–761).

By memoranda dated August 28, 1991, and April 21, 1992, the Bureau of Mines stated that the proposed amendments would have no adverse impacts to nonfuel mineral resources (administrative record Nos. UT–675 and UT–756).

By letters dated September 9, 1991 and April 10, 1992, the U.S. Department of Agriculture, Soil Conservation Service acknowledged receipt of the proposed amendments and stated that it had no comments (administrative record Nos. UT–677 and UT–747).

By letters dated September 11, 1991, and April 17, 1992, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) stated that Utah's proposed amendments did not conflict with any MSHA regulations (administrative record Nos. UT–678 and UT–752).

By memoranda dated April 13 and 16, 1992, the Bureau of Land Management acknowledged receipt of the proposed amendments and stated that it found no conflicts with the amendments (administrative record Nos. UT–748 and UT–751).

By record of telephone conversation dated April 22, 1992, the U.S. Forest Service stated Utah's proposed amendments did not contain materials that concerned its interests (administrative record No. UT–755).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program and plan amendments which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et. seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its statute pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendments (administrative record No. UT–663.1).

By letter dated February 11, 1992 (administrative record No. UT–735), EPA concurred with the proposed amendments and found they demonstrated that Utah has the legal authority, administrative capability, and the technical conformity with controlling the National Pollutant Discharge Elimination System regulations necessary to maintain water quality standards promulgated under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendments to the SHPO and ACHP for comment. Neither SHPO nor ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. The Director approves Utah's proposed program amendment as submitted July 26, 1991, and proposed plan amendment, as submitted July 26, 1991, and as revised December 17, 1991, and March 17, 1992.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah program and plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, no environmental impact statement need be prepared for the regulatory program provisions of this rulemaking (finding No. 1).

Pursuant to the Department of the Interior's Manual, 516 DM 6, appendix 8, paragraph 8.4B(30), no environmental

impact statement need be prepared for the abandoned mine reclamation plan provisions of this rulemaking (finding No. 2).

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections, 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to the approval of Abandoned Mine Land Reclamation programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

3. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, § 732.15, and § 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (t) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(t) Revisions to the following sections of the Utah Code Annotated 1953, title 40, as submitted to OSM on July 26, 1991, are approved effective August 19, 1992: 40–10–5(1), activities exempt from the requirements of the Utah Coal Mining and Reclamation Act of 1979; deletion of 40–10–5(1)(b), 2-acre exemption; deletion of 40–10–5(2), applicability of the permitting requirements to governmental units; and deletion of 40–10–6.6(1), (2), and (3), deadline for review and proposal of revision of rules, deadline for revision of rules, and effect of notice of violation or denial of permit.

3. Section 944.20 is revised to read as follows:

§ 944.20 Approval of Utah abandoned mine plan.

(a) The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised is approved.

(b) Copies of the approved program are available at:

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180–1203, telephone: (801) 538–5340.

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, New Mexico 87102, telephone: (505) 766–1486.

4. Section 944.25 is added to read as follows:

§ 944.25 Approval of amendments to State abandoned mine plan.

(a) The following sections of the Utah Code Annotated 1953, title 40, pertaining to the Utah abandoned mine plan, as submitted to OSM on July 26, 1991, and revised December 17, 1991, and March 17, 1992, are approved effective August 19, 1992.

40–10–25(1)
Abandoned Mine Reclamation Program.

40–10–25(2) (c), (e), and (f)
Priorities for Coal.

40–10–25(3) (a), (b), and (c)
Lands and Water Eligible for Reclamation.

40–10–25.1(1)(a)
Creation of Abandoned Mine Reclamation Fund.

40–10–25.1(1)(b)
Use of Abandoned Mine Reclamation Fund, as augmented by a February 19, 1992, Utah Division of Finance Memorandum.

40–10–25.1(2) (a), (b), and (c)
Content and Use of Abandoned Mine Reclamation Fund.

40–10–25.1(3) (a), (b), (c), and (d)
Establishment, Availability, and Use of State Set-Aside Monies.

40–10–25.2 (1) and (2)
Liability Limitation for Abandoned Mine Reclamation.

40–10–27(10)(b)
Lands Adversely Affected by Past Coal Mining Practices.

40–10–28.1 (1), (2), (3), (4), (5), (6), and (7)
Certification of Completion of Coal Reclamation.

(b) [Reserved].

[FR Doc. 92–19707 Filed 8–18–92; 8:45 am]
BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR20–1–5512; FRL–4149–8]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION; Final rule.

SUMMARY: EPA is today approving a revision to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and Other State Regulations). EPA is approving a revisions to Chapter 340 Division 20 (General) for Excess Emissions of the Oregon Administrative Rules as submitted on January 2, 1991, from the Oregon Department of Environmental Quality. This revision will support Oregon's PM-10 Nonattainment control strategy(s) and was made in response to section 110 and Part D of the CAAA of 1990 and will improve the air quality statewide.

DATES: This action will be effective on October 19, 1992 unless notice is received before September 18, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460
Environmental Protection Agency, Air and Radiation Branch, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101
State of Oregon, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

Comments Should Be Addressed To: Laurie M. Kral, Environmental Protection Agency, Air & Radiation Branch, Docket No. OR20-1-5512, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, Telephone: (206) 553-6510.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1977, EPA promulgated a final rule for excess emissions during start-up, shutdown and malfunction from the Kennecott Copper Corporation smelter located in Salt Lake City, Utah. Also, EPA indicated that nationally uniform malfunction regulations were desirable and committed to review, and if necessary to revise, State Implementation Plan (SIP) malfunction regulations to ensure that they met the requirements of section 110 of the Clean Air Act and 40 CFR part 51. Based on these actions and the outcome of a Ninth Circuit Court of Appeals Decision (*Marathon Oil Company* v. *EPA* 564 F2d 1253 (9th Cir. 1977), EPA issued guidance on excess emission regulations. Oregon's existing regulations were reviewed and the State and EPA began the process of correcting any deficiencies.

On January 2, 1991, the Director of the State of Oregon Department of Environmental Quality (ODEQ) submitted to EPA revisions to the Oregon Administrative Rules (OAR), Chapter 340, Division 20 addressing EPA's excess emission policy.

II. Technical Evaluation

OAR Chapter 340, Division 20—Oregon's Excess Emissions Rules—OAR Chapter 340, Division 20, sections 350 to 380 were submitted to EPA for approval on January 2, 1991. In this revision, 340-20-350 was renumbered from 340-21-065 (Upset Conditions) and revised, sections 340-21-070 and 075 were repealed, and sections 340-20-355 to 380 were added.

This revision to Division 20 adds criteria which strengthens reporting and documentation procedures for all excess emissions and outlines enforcement action which may be taken for excess emissions which occur during startup, shutdown, maintenance and breakdown. These rules satisfy EPA's requirements for state implementation plan (SIP) rules regarding emissions in excess of SIP limitations.

III. Summary of Action

EPA is approving revisions to the State of Oregon Implementation Plan for OAR 340-20 (General)-350, 355, 360, 365, 370, 375 and 380. These revisions will make the State of Oregon's Excess Emission Rules consistent with the federal policy related to temporary excess emissions of air contaminants and will be acceptable statewide. This action also includes the repealing of section 340-21-070 and 340-21-075 from the State of Oregon's Air Quality Control Plan Volume 2 (The Federal clean Air Act State Implementation Plan and other State Regulations).

IV. Administrative Review

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen Dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 24, 1992.

Jim McCormick,

Acting Regional Administrator.

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

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart MM—Oregon

2. Secretion 52.1970 is amended by adding paragraph (c)(89) to read as follows:

§ 52.1970 Identification of plan

* * * * *

(c) * * *

(89) on January 2, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (the Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: OAR chapter 340, Division 20, Sections 350 to 380 (Excess Emissions). The Department of Environmental Quality also repealed OAR 340–21–070 and OAR 340–21–075 from the state of Oregon's Air Quality Control Plan Volume 2.

(i) Incorporation by reference.

(A) January 2, 1991, letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 20 (General); –350 (Purpose and Applicability); –355 (Definitions); –360 (Planned Startup and Shutdown); –365 (Scheduled Maintenance); –370 (Upsets and Breakdowns); –375 (Reporting Requirements); and –380 (Enforcement Action Criteria) as adopted by the Environmental Quality Commission on may 25, 1990, and were effective on January 2, 1991.

[FR Doc. 92–19320 Filed 8–18–92; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 52

[OR17–1–5509; FRL–4150–1]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and Other State Regulations). EPA is approving a revision to chapter 340 Division 25 (Specific Industrial Standards) of the Oregon Administrative Rules as resubmitted to EPA on November 15, 1991. This revision will control particulate matter emissions from Oregon's board products industries and is applicable statewide.

DATES: This action will be effective on October 19, 1992, unless notice is received before September 18, 1992, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460

Air Programs Branch, Environmental Protection Agency, Dockets No. OR17–1–5509, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101

Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lorinda M. Ramos, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101, Telephone: (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1972, the Oregon Department of Environmental Quality (ODEQ) submitted rules for board products industries to EPA for inclusion in the Oregon SIP. These rules were approved by EPA on May 31, 1972. On May 11, 1977, April 11, 1977, and May 30, 1979, ODEQ amended its rules for board products industries and submitted these amended rules to EPA as a revision to the Oregon SIP. EPA subsequently determined that the ODEQ had not provided adequate public notice on these rule amendments and requested that the ODEQ remedy the deficiency and resubmit the amended rules. On July 14, 1985, ODEQ further amended its rules for board products industries and after proper notice and public hearing resubmitted the amended rules to EPA on May 30, 1986. During EPA review, sections 305 and 315 were determined not to be approvable. To address EPA's concerns, ODEQ amended the rules (sections 305 and 315) and resubmitted sections 305 and 315 on November 15, 1991.

II. Technical Evaluation

OAR Chapter 340, Division 25—On May 30, 1986, ODEQ submitted a revision to OAR Chapter 340, Division 25 (Specific Industrial Standards) by revising sections 305 to 325; rules specific to the Board Products Industry. This submittal included revisions to opacity limitations for veneer dryers, required new particulate emission limitations for wood fired veneer dryers, included new requirements for operation and maintenance, new requirements for control of fugitive emissions, and new provisions which allowed ODEQ to require more restrictive emission limitations in certain circumstances. However, at that time, EPA determined that the revision, as submitted, was not approvable due to enforceability issues. Problems with the revision included a lack of compliance dates or schedules, test methods, compliance procedures, and monitoring and reporting requirements. In order to correct these problems, ODEQ revised sections 305 and 315 and submitted this revision to EPA on November 15, 1991. Therefore, EPA is purposing to approve OAR Chapter 340, Division 25, sections 310, 320, and 325 as submitted on May 30, 1986 and sections 305 and 315 as submitted on November 15, 1991.

III. Summary of Action

EPA is today approving revisions to the State of Oregon Implementation Plan for OAR 340–25 (Specific Industrial Standards) –305, –310, –315, –320-, and –325 as submitted by the Oregon State Department of Environmental Quality.

IV. Administrative Review

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

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

relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), the Administrator certifies that SIP approvals under section 107,110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its action concerning SIPs on such grounds.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 24, 1992.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671(q).

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(94) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(94) On May 30, 1986 and on November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Division 25—Board Products Industries in OAR Chapter 340 which contains OAR 340–25–305 to 315.

(i) Incorporation by reference.

(A) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 25 (Specific Industrial Standards) section–305 (Definitions); and –315 (Veneer and Plywood Manufacturing Operations) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

(C) May 30, 1986 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

[FR Doc. 92–19321 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OR21–1–5513; FRL–4149–9]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and Other State Regulations). In particular, revisions to OAR chapter 340 Division 21 (General Emission Standards for Particulate Matter) as submitted to EPA on November 15, 1991, from the Oregon Department of Environmental Quality. This revision will support Oregon's PM–10 Nonattainment control strategy(s) and was made in response to section 110 and Part D of the CAAA of 1990 and will improve the air quality statewide.

DATES: This action will be effective on October 19, 1992 unless notice is received before September 18, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Air and Radiation Branch, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

COMMENTS SHOULD BE ADDRESSED TO: Laurie M. Kral, Environmental Protection Agency, Air and Radiation Branch, Docket # OR21–1–5513, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634) the Environmental Protection Agency revised the National Ambient Air Quality Standards (NAAQS) for particulate matter. Total suspended particulate matter of "TSP" was replaced as an indicator for particulate matter for the ambient standard by a new indicator that includes only those particles with an aerodynamic diameter

less than or equal to a nominal 10 micrometers (PM–10).

To implement the revised NAAQS, EPA promulgated revisions to 40 CFR parts 51 and 52 also on July 1, 1987 (52 FR 24672). These actions established requirements for preparation, adoption, and submittal of State Implementation Plans (SIPs) and set forth the Administrator's approval and promulgation of implementation plans.

Congress then revised the Clean Air Act by passage of the Clean Air Act Amendments of 1990 (Pub. L. 101–549, November 15, 1990) resulting in changes to SIP requirements for PM–10 nonattainment areas.

To address section 172(c)(19) of the new Act, ODEQ revised chapter 340 Division 21 by adding sections 200 to 245. This revision affects point sources of PM–10 and addresses the contingency measure(s) requirements for PM–10 nonattainment areas.

II. Technical Evaluation

OAR Chapter 340, Division 21—On November 15, 1991, the Oregon Department of Environmental Quality (ODEQ) submitted a revision to OAR chapter 340, Division 21 by adding sections 200 to 245 (Industrial Contingency Requirements for PM–10 Nonattainment Areas).

These new industrial particulate emission standards, which Oregon has determined to represent Reasonably Available Control Technology (RACT), are applicable to existing industrial sources located in any PM–10 nonattainment area that fails to reach attainment of the PM–10 National Ambient Air Quality Standard (NAAQS) by applicable attainment date in the Clean Air Act. These rules establish contingency emission standards for large wood-fired boilers, particle dryers, hardboard plants, and air handling systems. In actuality, the rules would only activate point source controls for Klamath Falls since sources located in Oregon's other PM–10 nonattainment areas are currently regulated by what Oregon believes represents RACT.

In addition, these rules require a major source located outside of a PM–10 nonattainment area, which potentially may have a significant impact on the nonattainment area, to evaluate the impact. If the impact is determined to be significant, then the appropriate provisions of OAR 340–21–200 to 245 shall apply.

For control of fugitive emissions, any source regulated by these contingency measures must comply with OAR 340–30–043 (Control of Fugitive Emission).

III. Summary of Action

EPA is today approving revisions to the State of Oregon Implementation Plan for OAR 340–21 (General Emission Standards for Particulate Matter) –200, 205, 210, 215, 220, 225, 230, 235, 240, and 245.

IV. Administrative Review

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

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: June 23, 1990.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671(q).

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(93) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(93) On November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Division 21—General Emission Standards for Particulate Matter in Chapter 340 which contains OAR 340–21–200 to –245.

(i) *Incorporation by reference.* (A) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon State implementation plan.

(B) Oregon Administrative Rules, chapter 340, Division 21 (General Emission Standards for Particulate Matter) section Industrial Contingency Requirements for PM–10 Nonattainment Areas; –200 (Purpose); –205 (Relation to Other Rules); –210 (Applicability); –215 (Definitions); –220 (Compliance

Schedule for Existing Sources); -225 (Wood-Waste Boilers); -230 (Wood Particulate Dryers at Particleboard Plants); -235 (Hardboard Manufacturing Plants) -240 (Air Conveying Systems); and -245 (Fugitive Emissions) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

[FR Doc. 92-19319 Filed 8-18-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[OR 18-1-5510; FRL-4150-2]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is approving revision to the State of Oregon Implementation Plan. EPA is approving revisions to chapter 340 Division 27 (Air Pollution Emergencies) of the Oregon Administrative Rules as submitted on May 20, 1988. These revisions are made to support Oregon's PM-10 Nonattainment Area control strategy(ies) and in response to section 110 and part D of the Clean Air Act Amendments of 1990. The revisions to Division 27 will also improve air quality statewide

In addition, EPA is amending 40 CFR part 52 to include an approval of OAR 340-27-035 which requires an "operation and maintenance manual" for administering the provisions of the Emergency Episode Plan which was omitted in the document published in the **Federal Register** April 20, 1984 (49 FR 16778).

DATES: This action will be effective on October 19, 1992, unless notice is received before September 18, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Air Programs Branch, Environmental Protection Agency, Docket #OR18-1-5510, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.
Oregon Department of Environmental Quality, 811 SW. Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lorinda M. Ramos, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553-6510.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634) the Environmental Protection Agency revised the National Ambient Air Quality Standards (NAAQS) for particulate matter. Total suspended particulate matter or "TSP" was replaced as an indicator for particulate matter for the ambient standard by a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10).

To implement the revised NAAQS, EPA promulgated revisions to 40 CFR parts 51 and 52 also on July 1, 1987 (52 FR 24672). These actions established requirements for preparation, adoption, and submittal of State Implementation Plans (SIPs) and set forth the Administrator's approval and promulgation of implementation Plans.

In response to this action, the Oregon Department of Environmental Quality (ODEQ) revised its rules and submitted to EPA revisions on May 20, 1988.

II. Technical Evaluation

OAR Chapter 340, Division 27—On May 20, 1988, ODEQ submitted a revision to OAR chapter 340, Division 27 (Air Pollution Emergencies) by revising sections -005, -010, and -012. The revision to section -005 revised the significant harm levels in accordance with 40 CFR 51.151. The revision to section -010 revised the air pollution alert levels, the air pollution warning levels, and the air pollution emergency levels. In addition, an editorial change was made to rule -012.

III. Summary of Action

EPA is today soliciting public comment on its proposed approval of revisions to the State of Oregon Implementation Plan for OAR 340-27 (Air Pollution Emergencies) sections -005, -010, and -012. In addition, EPA is making a correction to 40 CFR part 52 (49 FR 16778). The April 28, 1984 **Federal Register** notice should have included approval of OAR 340-27-035 which requires an "operation and maintenance manual" for administering the provisions of the Emergency Episode Plan. This section was approved and unintentionally excluded from the prior notice.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by September 18, 1992 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

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

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

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

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

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

temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this file rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 24, 1992.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671(q).

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(95) On May 20, 1988, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Chapter 340 Division 27 (Air Pollution Emergencies) section -005, -010, and -012.

(i) *Incorporation by reference.* (A) May 20, 1988 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, chapter 340, Division 27 (Air Pollution Emergencies) section -005 (Introduction); -010 (Episode Stage Criteria for Air Pollution Emergencies) and -012 (Special Conditions) as adopted by the Environmental Quality Commission on April 29, 1988 and effective on May 19, 1988.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of Approved State Submitted Implementation Plan.

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

State of Oregon

Air Quality Control Program

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

Section

1. Introduction (1–86)

2. General Administration (1–86)

2.1 Agency Organization (1–86)
2.2 Legal Authority (1–86)
2.3 Resources (1–86)
2.4 Intergovernmental Cooperation and Consultation (1–86)
2.5 Miscellaneous Provisions (1–86)

3. Statewide Regulatory Provisions

23.1 Oregon Administrative Rules—Chapter 340 (1–86)

Division 12—Civil Penalties

Sec. 030 Definitions (11–8–84)
Sec. 035 Consolidation of Proceedings (9–25–74)
Sec. 040 Notice of Violation (12–3–85)
Sec. 045 Mitigating and Aggravating Factors (11–8–88)
Sec. 050 Air Quality Schedule of Civil Penalties (11–8–84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (11–8–84)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11–8–84)

Division 14—Procedures for Issuance, Denial, Modification, and Recovation of Permits (4–15–72)

Sec. 005 Purpose (4–15–72)
Sec. 007 Exceptions (6–10–88)
Sec. 010 Definitions (4–15–72), except (3) "Director" (6–10–88)
Sec. 015 Type, Duration, and Termination of Permits (12–16–76)
Sec. 020 Application for a Permit (4–15–72), except (1), (4)(b), (5) (6–10–88)
Sec. 025 Issuance of a Permit (4–15–72), except (2), (3), (4), (5), (6) (6–10–88)
Sec. 030 Renewal of a Permit (4–15–72)
Sec. 035 Denial of a Permit (4–15–72)
Sec. 040 Modification of a Permit (4–15–72)
Sec. 045 Suspension or Revocation of a Permit (4–15–72)
Sec. 050 Special Permits (4–15–72)

Division 20—General

Sec. 001 Highest and Best Practicable Treatment and Control Required (3–1–72)
Sec. 003 Exceptions (3–1–72)

Registration

Sec. 005 Registration in General (9–1–70)
Sec. 010 Registration requirements (9–1–70)
Sec. 015 Re-registration (9–1–70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9–1–70)
Sec. 025 Scope (3–1–72)
Sec. 030 Procedure (9–1–72), except (4)(a) Order Prohibiting Construction (4–14–89)
Sec. 032 Compliance Schedules (3–1–72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9–1–70)
Sec. 037 Stack Heights & Dispersion Techniques (4–25–86)
Sec. 040 Methods (9–11–70)
Sec. 045 Department Testing (9–1–70)
Sec. 046 Records; Maintaining and Reporting (10–1–72)
Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9–30–85)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1–6–86)
Sec. 145 Definitions (1–6–76)
Sec. 150 Notice Policy (6–10–88)
Sec. 155 Permit Required (5–31–83)
Sec. 160 Multiple-Source Permit (1–6–76)
Sec. 165 Fees (3–14–86)
Sec. 170 Procedures For Obtaining Permits (1–11–74)
Sec. 175 Other Requirements (6–29–79)
Sec. 180 Registration Exemption (6–29–79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1–6–76)

Conflict of Interest

Sec. 200 Purpose (10–13–78)
Sec. 205 Definitions (10–13–78)
Sec. 210 Public Interest Representation (10–13–78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10–13–78)

New Source Review

Sec. 220 Applicability (9–8–81)
Sec. 225 Definitions (10–16–84)
Sec. 230 Procedural Requirements (10–16–84), except (3)(D) (6–10–88)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9–8–81)
Sec. 240 Requirements for Sources in Nonattainment Area (4–18–83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10–16–85)
Sec. 250 Exemptions (9–8–81)
Sec. 255 Baseline for Determining Credit for Offsets (9–8–81)
Sec. 260 Requirements for Net Air Quality Benefit (4–18–83)
Sec. 265 Emission Reduction Credit Banking (4–18–83)
Sec. 270 Fugitive and Secondary Em ssions (9–8–81)

Sec. 275 Repealed
Sec. 276 Visibility Impact (10-16-85)

Plant Site Emission Limits

Sec. 300 Policy (9-8-81)
Sec. 301 Requirement for Plant Site Emission Limits (9-8-81)
Sec. 305 Definitions (9-8-81)
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9-8-81)
Sec. 315 Alternative Emission Controls (9-8-81)
Sec. 320 Temporary PSD Increment Allocation (9-8-81)

Stack Heights and Dispersion Techniques

Sec. 340 Definitions (4-18-83)
Sec. 345 Limitations (4-18-83)
Sec. 350 Purpose and Applicability (1-2-91)
Sec. 355 Definitions (1-2-91)
Sec. 360 Planned Startup and Shutdown (1-2-91)
Sec. 365 Scheduled Maintenance (1-2-91)
Sec. 370 Upsets and Breakdowns (1-2-91)
Sec. 375 Reporting Requirements (1-2-91)
Sec. 380 Enforcement Action Criteria (1-2-91)

Division 21—Industrial Contingency Requirements for PM-10 Nonattainment Areas

Sec. 200 Purpose (11-13-91)
Sec. 205 Relation to Other Rules (11-13-91)
Sec. 210 Applicability (11-13-91)
Sec. 215 Definitions (11-13-91)
Sec. 220 Compliance Schedule for Existing Sources (11-13-91)
Sec. 225 Wood-Waste Boilers (11-13-91)
Sec. 230 Wood Particulate Dryers at Particleboard Plants (11-13-91)
Sec. 235 Hardboard Manufacturing Plants (11-13-91)
Sec. 240 Air Conveying Systems (11-13-91)
Sec. 245 Fugitive Emissions (11-13-91)

Division 22—General Gaseous Emissions Sulfur Content of Fuels

Sec. 005 Definitions (3-1-72)
Sec. 010 Residual Fuel Oils (8-25-77)
Sec. 015 Distillate Fuel Oils (3-01-72)
Sec. 020 Coal (1-29-82)
Sec. 025 Exemptions (3-1-72)

General Emission Standards for Sulfur Dioxide

Sec. 050 Definitions (3-01-72)
Sec. 055 Fuel Burning Equipment (3-1-72)
Sec. 300 Reid Vapor Pressure for Gasoline, except that in Paragraph (6) only sampling procedures and test methods specified in 40 CFR Part 80 are approved (6-15-89)

Division 23—Rules for Open Burning

Sec. 022 How to Use These Open Burning Rules (9-8-81)
Sec. 025 Policy (9-8-81)
Sec. 030 Definitions (6-16-84) (15) "Disease and Pest Control" (11/13/91)
Sec. 035 Exemptions, Statewide (6-16-84)
Sec. 040 General Requirements Statewide (9-18-81)
Sec. 042 General Prohibitions Statewide (6-16-84)
Sec. 043 Open Burning Schedule (11/13/91)
Sec. 045 County Listing of Specific Open Burning Rules (9-8-81)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (11/13/91)

Open Burning Prohibitions

Sec. 055 Baker, Clatsop, Crook, Curry, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Lincoln, Malheur, Morrow, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco and Wheeler Counties (9-8-81)
Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6-16-84)
Sec. 065 Clackamas County (6-16-84)
Sec. 070 Multnomah County (6-16-84)
Sec. 075 Washington County (6-16-84)
Sec. 080 Columbia County (9-8-81)
Sec. 085 Lane County (6-16-84)
Sec. 090 Coos, Douglas, Jackson and Josephine Counties (9-8-81)
Sec. 100 Letter Permits (6-16-84)
Sec. 105 Forced Air Pit Incinerators (9-8-81)
Sec. 110 Records and Reports (9-8-81)
Sec. 115 Open Burning Control Areas (6-16-84)

Division 24—Visible Emissions; Motor Vehicle Emission Control Inspection Test Criteria, Methods and Standards

Sec. 300 Scope (4-1-85)
Sec. 301 Boundary Designations (9-9-88)
Sec. 305 Definitions (4-1-85)
Sec. 306 Publicly Owned and Permanent Fleet Vehicle Testing Requirements (12-31-83)
Sec. 307 Motor Vehicle Inspection Program Fee Schedule (8-1-81)
Sec. 310 Light Duty Motor Vehicle Emission Control Test Method (9-9-88)
Sec. 315 Heavy Duty Gasoline Motor Vehicle Emission Control Test Method (12-31-83)
Sec. 320 Light Duty Motor Vehicle Emission Control Test Criteria (9-9-88)
Sec. 325 Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria (9-9-88)
Sec. 320 Light Duty Motor Vehicle Emission Control Cutpoints or Standards (8-1-81); Subpart (3) (9-12-86)
Sec. 335 Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards (9-12-86)
Sec. 340 Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates (12-31-83)
Sec. 350 Gas Analytical System Licensing Criteria (9-9-88)

Division 25—Specific Industrial Standards Construction and Operation of Wigwam Waste Burners

Sec. 005 Definitions (3-1-72)
Sec. 010 Statement of Policy (3-1-72)
Sec. 015 Authorization to Operate a Wigwam Burner (3-1-72)
Sec. 020 Repealed
Sec. 025 Monitoring and Reporting (3-1-72)

Hot Mix Asphalt Plants

Sec. 105 Definitions (3-1-73)
Sec. 110 Control Facilities Required (3-1-73)
Sec. 115 Other Established Air Quality Limitations (3-1-73)
Sec. 120 Portable Hot Mix Asphalt Plants (4-18-83)
Sec. 125 Ancillary Sources of Emission—Housekeeping of Plant Facilities (3-1-73)

Primary Aluminum Plants

Sec. 255 Statement of Purpose (6-18-82)
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OAR Chapter 629-43-043 Smoke Management Plan Administrative Rule (12-12-86)
Directive 1-4-1-601 Operational Guidance for the Oregon Smoke Management Program (12-86)

4. Section 52.1970 is amended by revising paragraph (c)(65) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(65) On October 26, 1983 and December 14, 1983, the State of Oregon Department of Environmental Quality submitted four separate revisions to their plan. On October 26, 1983, the State submitted a revised air emergency episode plan (OAR 340-27-005 through 340-27-030 (effective October 7, 1983), revisions to gasoline marketing rules for the Medford-Ashland ozone nonattainment area (OAR 340-22-110(1)(a), effective October 7, 1983, and a revised ozone ambient air quality standard for the Lane Regional Air Pollution Authority (Section 31-035 Ozone, effective July 12, 1983). On December 14, 1983, the State submitted revisions to the automobile inspection and maintenance program for Portland (OAR 340-24-306 through 340-24-350, effective November 18, 1983). EPA is also approving OAR 340-27-035 which requires an "operation and maintenance manual" for administering the provisions of the Emergency Episode Plan (effective October 7, 1983).

* * * * *

[FR Doc. 92-19322 Filed 8-18-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4E3060/R1157; FRL-4079-7]

RIN 2070-AB78

Pesticide Tolerances for 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide 2,4-dichlorophenoxyacetic acid (referred to in this document as 2,4-D) in or on the raw agricultural commodity soybeans. The regulation to establish a maximum permissible level for residues of the herbicide in or on soybeans was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective August 19, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 4E3060/R1157], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 10, 1992 (57 FR 24566), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 4E3060 to EPA on behalf of the Agricultural Experiment Stations of Illinois, Iowa, Ohio, and South Dakota. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), establish a tolerance for residues of the herbicide 2,4-D in or on the raw agricultural commodity soybeans at 0.1 part per million (ppm). The Agency proposed to establish the requested tolerance with an expiration date of December 1995. Conditional registrations will be issued for 2,4-D ester and 2,4-D amine formulations concurrent with the establishment of this tolerance to control susceptible broad-leaf weeds prior to planting soybeans under no-tillage or reduced-tillage production. As a condition of registration, EPA is requiring the submission of certain additional studies described in the proposed rule.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a

hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 30, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.142, by adding new paragraph (k), to read as follows:

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(k) A tolerance that expires on December 1995 is established for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) resulting from the preplant use of 2,4-D ester or amine in or on the raw agricultural commodity as follows:

Commodity	Parts per million
Soybeans	0.1

[FR Doc. 92-19653 Filed 8-18-92; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[WO-230-02-6310-24 1A; Circular No. 2639]

RIN 1004-AB56

Sales Administration; Contract Modification, Extension, Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of regulations on sales administration and contract modification, extension, and assignment. These regulations are being amended to provide more fairness and flexibility in granting timber sale contract extensions when unusual circumstances beyond the control of a purchaser prevent completion of the contract by its expiration date. The rule provides the contracting officer authority to extend the time for cutting and removal on timber sale contracts without reappraisal in some specific situations. The rule is needed because government actions have prevented some contractors from timely completion of contracts, and requiring such contractors to pay higher, reappraised prices when delays were occasioned by the government itself is unfair.

EFFECTIVE DATE: July 23, 1991.

ADDRESSES: Suggestions or inquiries should be sent to: Director (230), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bob Bierer, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. The average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there are many factors outside the control of timber purchasers that limit the operating time on a contract. These include court injunctions, weather conditions, fire closures, and actions taken by the Federal Government to protect cultural and biological resources. Under the current regulations, there are no provisions that extend timber sale contracts without reappraisal, when delays are caused by any of the above factors. This final rule is intended to provide more fairness and flexibility in granting timber sale contract extensions, by providing for granting of extensions without reappraisal in certain circumstances.

The Bureau published a proposed rule on July 3, 1990 (55 FR 27477). After the proposed rule was published the northern spotted owl was listed under the Endangered Species Act. This listing has made it necessary for the BLM to stop or delay operations on many ongoing timber sale contracts while conferences with the Fish and Wildlife Service were held to determine what impact on the spotted owl these sales might have. These delays in some cases may make it impossible for the purchaser to complete the contracts in time for cutting and removal specified in the timber sale contract. Under the existing regulations, the BLM could not extend the time for cutting and removal on these contracts without reappraisal. There has been a rapidly rising market for stumpage in the last two years. Therefore, reappraisal of these timber sale contracts would cause the price for the timber to increase significantly. In effect, the purchaser would be penalized for not completing the contracts on time when completion was prevented by the Government. This is not a fair way to deal with the BLM's timber sale purchasers. To pursue such a course would result in much litigation between the BLM and timber sale purchasers.

Because of the additional delay resulting from the spotted owl listing and public comments received on the proposed rule, the BLM expanded the proposed rule to address other delays caused by actions of the Federal Government. A reproposed rule was issued to allow the public an opportunity to comment on the changes from the original proposed rule. The reproposed rule was published in the **Federal Register** on June 25, 1991 (56 FR 28850). The comment period was limited to 10 days because several timber contracts were scheduled to expire and performance had been impossible through no fault of the timber purchasers. Some comments on the reproposed rule indicated that they believed more time was needed for public review and comment. Because of the need to extend timber contracts that would expire between July 22 and

September 30, 1991, and to prevent penalizing purchasers for circumstances caused by the Federal Government, an interim rule was issued to take effect upon publication but allow an additional 60 days to comment after the effective date.

An interim rule was published on July 23, 1991 (56 FR 33830) with a request for comments. The comment period expired on September 23, 1991. The BLM received two letters containing comments on the interim rule. One letter was from an association and the other was from a law firm. The specific comments contained in these letters and responses to the comments are listed below:

1. A comment suggested that the rule should allow extensions that exceed one year in length. Natural catastrophes and disasters to manufacturing facilities may warrant extensions in excess of one year. The rule does provide for additional extensions upon written request by the purchaser. If, after a one year extension, a purchaser still needs more time, such purchaser may apply for an additional extension. This provision is found in the last sentence of § 5473.4(a).

2. A comment suggested that the final rule should include the possibility of delays occasioned by requests from State or local governments and elected officials. A similar comment suggested that an additional paragraph be added to subsection 5473.4(c) to cover unspecified direct interruptions in operations caused by government entities other than the Federal Government. Another comment suggested that § 5473.4(c)(5) should included closures by local agencies for any reason, in addition to fire, as justification for contract extension without reappraisal. It is unlikely that any delay, other than for fire closures, in harvesting timber from Federal lands would be requested or caused by State or local governments or elected officials. This suggestion was not adopted.

3. A comment suggested that, in cases of delays caused by the Government, the BLM should keep track of the lost time and should automatically award extensions. The mere fact that there is a delay caused by the Government does not necessarily mean that an extension of time is needed. There may be more than one delay caused by the Government in the life of the contract and the length of the delay may be very short. Automatic extensions every time there is a delay would cause unwarranted amounts of administrative work for the BLM. This rule is intended to provide a means for allowing additional time in those cases where there is a compelling need for such additional time. The Purchaser is in the best position to communicate such need to the BLM. This suggestion was not adopted.

4. A comment suggested that purchasers should be allowed extensions to harvest salvage timber from lands under any ownership, not just Federal lands. There is adequate logging capacity—equipment and personnel—operating on State and private lands to meet any need to harvest salvage timber from those ownerships by redirecting logging activities within those ownerships. Such a provision would be difficult for the BLM to administer because it has no control over harvesting activity on State and private lands. The BLM's primary responsibility is for the management of the timber resources on BLM administered lands. This suggestion was not adopted.

5. A comment suggested that the waiver of reappraisal for contract extensions should be extended to cover unusually severe circumstances, including, but not limited to, flood, landslide, or act of God. The comment stated that the interim rule limited remedy for these circumstances to an extension of 30 days and that there are unusual circumstances clearly beyond the purchaser's control that delay operations for periods exceeding 30 days without the fault or negligence of the purchaser. The regulations provide for extensions of up to one year, with provision for additional extension, for all circumstances that are beyond the purchaser's control and without his fault or negligence except market fluctuations. The regulations do require reappraisal at the time of the extension if the delay was not imposed by the United States or any State government agency. The rationale for this provision is that the purchaser should not be entitled to any windfall profits due to a rising market in situations where the Government was not the cause of such delay. The comment also stated that the revenue to the Government would be reduced by requiring the purchaser to consider costs that could result from acts of God at the time of bidding. The risk from acts of God have always been a consideration in bidding on BLM timber sale contracts, and this rule will not make any change in the amount of risk.

6. A comment suggested that the requirement for a showing of a "good faith effort" in § 5473.4(c) is vague. The comment recommended changing the language to "on a showing that the purchaser performed as the average prudent operator would be expected to perform in a like time period". This comment has merit and the suggested language change was adopted in the final rule.

The final rule published today incorporates many changes suggested in responses to the original proposed rule, the reproposed rule, and the interim rule. Editorial changes have been adopted to make the regulations more clear. The rule provides that an extension may be granted for lost time as a result of: (1) Additional requirements incorporated in contract modifications requested by the Government; (2) delays necessitated by requirements for consultation with FWS under the Endangered Species Act; (3) reviews for cultural resources; (4) court injunctions obtained by parties outside the contract; or (5) fire closures imposed by State agencies. The extensions will provide additional time, during the operating season, equal to time lost as a result of these reasons. The extensions referred to above will be granted without reappraisal.

The rule also provides that short extensions of up to 30 days of operating time may be granted without reappraisal, if the cause for delay in cutting and removal was beyond the purchaser's control and without his fault or negligence.

The principal author of this final rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total value of BLM timber contracts may approach $100 million, but the proportion of these that may be subject to extension under this rule is minuscule, and of those that may be subject to extension, most will have been partially performed before the extension is needed. Therefore, the annual effect on the economy will not remotely approach the threshold specified in the Executive Order. There would be no cost increases imposed on the lumber industry, and there would thus be no increases in consumer costs or prices resulting from the rule, and no substantial effects on government agencies or competition. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between business entities based on their size.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

For the reasons stated above, under the authorities stated below, parts 5460 and 5470, Group 5400, subchapter E, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below.

Dated: June 25, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

PART 5460—SALES ADMINISTRATION

1. The authority citation for part 5460 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

§ 5463.1 and 5463.2 [Amended]

2. The amendment to § 5463.1 and the removal of § 5463.2 made by the interim rule published on July 23, 1991 (56 FR 33830) is confirmed as final.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

3. The authority citation for part 5470 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

4. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

5. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the contracting officer may grant an extension of time, upon written request by the purchaser. Such extension will not to exceed one year, and will require an appraisal, if the delay was not imposed by the United States or any State government agency as provided by paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request by the purchaser.

(b) Notwithstanding the provisions of paragraph (a) of this section requiring reappraisal if the delay was not imposed by the United States or any State government under paragraph (c) of this section, the contracting officer may grant an extension of time, without reappraisal, not to exceed enough time to provide 30 days of operating time, if the delay was due to causes beyond the purchaser's control and without his fault or negligence. No additional extensions may be granted without reappraisal under the provisions of this paragraph.

(c) On a showing that the purchaser performed as the average prudent operator would be expected to perform in a like time period prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

(3) Reviews for cultural resource values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) As used in this section, "operating time" means a period of time during the operating season, and "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

(e) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives. The State Director may also waive reappraisal for such extension.

6. Section 5473.4–1 is amended by revising paragraph (a) to read as follows:

§ 5473.4–1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the

contracting officer of the material sold will be in accordance with this section.

* * * * *

[FR Doc. 92-19683 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB78

Endangered and Threatened Wildlife and Plants; Grizzly Bear; Removal of the Special Rule Allowing a Limited Special Hunt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; removal.

SUMMARY: The U.S. Fish and Wildlife Service removes 50 CFR 17.40(b)(i)(E), the special rule that allows take of grizzly bears through a special hunt in northwestern Montana in order to respond to a memorandum opinion of the U.S. District Court.

EFFECTIVE DATE: This rule is effective on August 19, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, NS312, University of Montana, Missoula, Montana 59812.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above) at telephone (406) 329-3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) Endangered Species Program. The Service may prepare special rules providing for the conservation of threatened species including taking prohibitions. The Service published a Grizzly Bear Special Rule (50 CFR 17.40) in 1975 dealing with limiting the number of grizzly bears killed from all human-related causes. This special rule included authorization of a limited special hunt of grizzly bears in northwestern Montana. A revision of this special rule was published in the **Federal Register** (51 FR 33753) in 1986.

On April 20, 1992, the Service published in the **Federal Register** (57 FR 14378) a proposed rule to further amend the special rule by removing the authorization of the special hunt in Montana, and a notice of intent to develop a revised special rule consistent with the Memorandum Opinion of the U.S. District Court, District of Columbia, in *The Fund for Animals, Inc.* v. *Turner*, Civil No. 91-2201(MB) dated September 27, 1991. This opinion declared 50 CFR 17.40(b)(1)(i)(E) to be invalid and enjoined the Service from authorizing the grizzly bear hunt.

Summary of Comments and Recommendations

In the April 20, 1992, proposed rule, all interested parties were requested to submit data or comments on the proposed rule. The comment period closed on May 20, 1992. Press releases were sent to 154 media sources in Montana and Wyoming.

A total of 15 letters of comment on the proposed rule were received. Eight letters expressed opposition to removal of the special hunt authorization and seven letters expressed support for removal of the special hunt authorization. The main issue reiterated in the letters in opposition to the proposed removal was that a regulated hunt would prevent or reduce habituation to people by enforcing the bears' natural wariness of humans. The Service has no substantive data to support or refute this assumption. No other substantive comments were received.

The Service hereby removes 50 CFR 17.40(b)(1)(i)(E) that allows a special hunt of grizzly bears in northwestern Montana. This removal of the authorization of the special hunt in Montana in no way changes the remainder of the Grizzly Bear Special Rule in 50 CFR 17.40(b).

There are no significant changes between the proposed rule published in 57 FR 14378 and this final rule.

National Environmental Policy Act

An environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, was prepared for the 1986 revision (51 FR 33753) of the Grizzly Bear Special Rule. The elimination of the sport hunt of grizzly bears, which is the result of the removal of 50 CFR 17.40(b)(1)(i)(E), was covered under Alternative D of this environmental assessment. This environmental assessment is available to the public from Dr. Chris Servheen (see **ADDRESSES** above).

Author

The primary author of this notice is Patricia Worthing, Region 6 Recovery Coordinator, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, telephone (303) 236-7398.

List of Subjects in 50 CFR Part 17

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

Regulation Removal

For the reasons set out in the preamble, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as follows:

PART 17—[AMENDED]

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.

§ 17.40 [Amended]

2. § 17.40(b)(1)(i)(E) is removed and reserved.

Dated: July 27, 1992.

Bruce Blanchard,

Acting Director.

[FR Doc. 92-19656 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of closures.

SUMMARY: NMFS is rescinding the closures to directed fishing for Pacific cod in the Central and Eastern Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary to achieve the total allowable catch (TAC) of Pacific cod in these areas.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), August 17, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments are invited on this action until September 14, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska, 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource

Management Specialist, Fisheries Management Division, NMFS, 907/586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The directed fisheries for Pacific cod in the Central and Eastern Regulatory Areas were previously closed April 3, 1992 (57 FR 11433), and April 8, 1992 (57 FR 11918), respectively.

The Director of the Alaska Region, NMFS, has determined that the TAC of Pacific cod in the Central and Eastern Regulatory Areas has not been reached. Therefore, in accordance with § 672.22(a)(2)(ii)(D), NMFS is rescinding the previous closures and is reopening directed fishing for Pacific cod in the Central and Eastern Regulatory Areas, effective 12 noon, A.l.t., August 17, 1992, through 12 midnight, A.l.t., December 31, 1992. The public should consult the applicable regulations and closures for restrictions and requirements in this fishery.

Classification

This action is taken under 50 CFR 672.22(a)(2)(ii)(D) and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impracticable, unnecessary, or contrary to the public interest. Without this opening, the remaining TAC in these two areas would not be available for harvest, resulting in negative economic impacts on the fishing industry. Under § 672.22(b)(2), interested persons are invited to submit written comments on this opening to the above address until September 14, 1992.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 14, 1992.

David S. Crestin,

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

[FR Doc. 92–19754 Filed 8–14–92; 2:32 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 161
Wednesday, August 19, 1992

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-92-8]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

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

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 19, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

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

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

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

Issued in Washington, DC, on August 13, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Rulemaking

Docket No.: 26563.
Petitioner: John A. Cohan.
Regulations Affected: 14 CFR 91.119.
Description of Petition: The petitioner proposed to amend § 91.119 of the Federal Aviation Regulations (FAR) to establish a minimum altitude for helicopters other than those operated by municipal, county, state, or federal authority for emergency purposes, rescue operations, or police and fire protection.
Petitioner's Reason for the Request: The petitioner states that he is aware of ongoing complaints regarding low flying aircraft over noise-sensitive areas in his locality, and these complaints prompted this petition. The petitioner contends that voluntary avoidance of noise-sensitive areas, as well as cooperative efforts among aviation associations, airport managers, and aircraft operators, have failed to produce satisfactory results.
Disposition: Denied on July 31, 1992.

[FR Doc. 92-19759 Filed 8-18-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-ANE-05]

Airworthiness Directives; Teledyne Continental Motors Model O-470, IO-470, IO-520, TSIO-520 and IO-550 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Teledyne Continental Motors (TCM) Model O-470, IO-470, IO-520, TSIO-520 and IO-550 series engines. This proposal would require inspection to ensure installation of the correct oil pick-up tube, and, if necessary, removal and replacement of the oil pick-up tube and oil sump. This proposal is prompted by reports that certain TCM rebuilt and overhauled engines may have been assembled using the incorrect oil pick-up tube. The actions specified by the proposed AD are intended to prevent engine failure.

DATES: Comments must be received by September 18, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-05, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. This service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–05." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–05, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion: The FAA has determined that certain Teledyne Continental Motors (TCM) rebuilt and overhauled Model O–470, IO–470, IO–520, TSIO–520 and IO–550 series engines have been assembled with the incorrect oil pick-up tube installed. Two cases have been confirmed to date. Both the correct and the incorrect oil pick-up tubes have a screen at the free end while the other end is attached to the intake side of the oil pump. The incorrect tube is slightly longer than the correct tube. The longer length permits the screen at the end of the incorrect tube to contact the bottom of the sump and can "dimple" the sump. Because of this contact, the screen is partially blocked which will result in lower than normal oil flow and oil pressure. An additional problem develops if sludge collects around the pick-up tube thereby further restricting oil flow and pressure. This condition, if uncorrected, could result in an engine failure.

The FAA has reviewed and approved the technical content of TCM Service Bulletin M91–10, Revision 1, dated November 27, 1991, that describes procedures for the inspection for an incorrect oil pick-up tube.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection for the installation of the incorrect oil pick-up tube, and, if necessary, replacement of incorrect oil pick-up tube and oil sump with serviceable parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 180 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions including replacing the tube and sump, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,350 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $272,700.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Teledyne Continental Motors: Docket No. 92–ANE–05

Applicability: Teledyne Continental Motors (TCM) rebuilt and overhauled Model O–470, IO–470, IO–520, TSIO–520, and IO–550 series engines listed by serial number in TCM Service Bulletin (SB) No. M91–10, Revision 1, dated November 27, 1991, installed on but not limited to Cessna, Piper, and Beechcraft aircraft.

Compliance: Required as indicated unless previously accomplished.

To prevent an engine failure, accomplish the following:

(a) Within the next 50 hours time in service after the effective date of this AD, inspect engines for an incorrect oil pick-up tube in accordance with the instructions of TCM SB No. M91–10, Revision 1, dated November 27, 1991.

(b) If an incorrect oil pick-up tube is installed, prior to further flight remove the oil pick-up tube and oil sump, and replace with serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

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

Issued in Burlington, Massachusetts, on July 30, 1992.

Donald F. Perrault,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–19725 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–ASW–01]

Airworthiness Directives; Boeing Vertol Model 234 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Boeing Vertol Model 234 series helicopters, that currently requires inspection of the

bolted connection of the forward and aft transmission first stage sun and spiral bevel ring gear. This action would require a revision to the inspection intervals and criteria used during these inspections, as well as add a visual inspection of the pinion and spiral bevel ring gear. This proposal is prompted by reports that certain of the affected helicopters have experienced loose nuts on the bolted connection more frequently than was anticipated in the previous AD. The actions specified by the proposed AD are intended to prevent wear of the ring gear flange surface, failure of the bolted connection leading to transmission failure, and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–01, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Helicopters, P.O. Box 16858, Philadelphia, PA 19142. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Propulsion Branch, ANE–174, New England Region, 181 S. Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–01." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–01, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

Discussion: On October 22, 1984, the FAA issued AD 84–22–04, Amendment 39–4943 (49 FR 44093, November 2, 1984), to require an inspection of the forward and aft transmission first stage sun and spiral bevel ring gear bolted joint assembly within 50 hours' time in service, or upon accumulating 500 hours' time in service since new, or since last disassembly, and every 300 hours thereafter. That action was prompted by reports of inadequate torque of the nuts on the assembly bolts, and in one instance, separation of the nut and washer from an assembly bolt. That condition, if not corrected, could result in major damage to the transmission and subsequent loss of the helicopter.

Since the issuance of that AD, the affected helicopters used in logging operations have experienced loose bolts more frequently than previously experienced during normal operations. This condition is due to the increased number of loading cycles per hour during logging operations. Based on the results of the manufacturer's repetitive inspections and analysis of ring gear assemblies on helicopters used in logging operations as well as normal operations, a Spectrometric Oil Analysis Program (SOAP) sample and a visual inspection of the pinion and ring gear teeth for tooth scuffing is proposed prior to each torque check for all helicopter operations. The SOAP sample is also proposed at intervals not to exceed 25 hours' time in service. Inspection intervals specified in the existing AD pertain to all affected helicopters with no reference to landing cycles, ground-air-ground cycles, or external load lifts per hour. It is further proposed that the affected helicopters that accomplish six or more landings, ground-air-ground cycles, or external load lifts per hour, or any combination thereof, will be subject to revised inspection intervals as stated in the compliance section of this proposed rule.

Since this condition described is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 84–22–04, Amendment 39–4943 (49 FR 44093, November 2, 1984) to require more frequent inspection intervals, the addition of a visual inspection of the pinion and ring gear for scuffing, and "SOAP" inspections.

The FAA estimates that 7 helicopters of U.S. registry would be affected by this proposed AD, that it would require 100 SOAP and 100 torque inspections per year per helicopter, that it would take approximately 2 work hours with a crew of 2 per helicopter to accomplish the proposed 50 hour inspection and 1 work hour with 1 person to accomplish the proposed SOAP sampling inspection. The average labor cost is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $192,500 each year.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4943 (49 FR 44093, November 2, 1984), and by adding the following new airworthiness directive (AD):

Boeing Vertol Company: Docket No. 92–ASW–01. Supersedes AD Number 84–22–04; Amendment 39–4943, Docket Number 84–ASW–46.

Applicability: All Boeing Vertol Model 234 series helicopter, certificated in any category, equipped with forward rotor transmission, part numbers (P/N's) 234D1200–2, –3, and –4, and/or aft rotor transmission, P/N's 234D2200–3 and –4.

Compliance: Required as indicated, unless previously accomplished.

To prevent possible failure of the first stage sun and spiral bevel ring gear installed in either the forward or aft transmission, accomplish the following:

(a) For helicopters that are subject to six of more landings, ground-air-ground cycles, external load lifts per hour, or any combination thereof, conduct the following:

(1) Within the next 10 hours' time in service after the effective date of this AD, or prior to the accumulation of 150 hours' time in service since new or since last disassembly of the spiral bevel ring gear bolted connection, whichever occurs later, accomplish the following:

(i) Conduct a Spectrometric Oil Analysis Program (SOAP) sample inspection in accordance with the Boeing Maintenance Manual.

(ii) Visually inspect the pinion and spiral bevel ring gear for scuffing. If scuffing is found: remove both pinion and sun/bevel gear assemblies, disassemble the gear assemblies, inspect them in accordance with the Boeing 234–5 Overhaul Manual, and replace defective parts.

(iii) Perform a bolt torque check of the bolted connection in accordance with the Boeing Maintenance Manual.

(2) Repeat the inspections and checks of paragraph (a)(1) in intervals not to exceed 50 hours' time in service if no nuts in a bolted connection rotate at a torque between 275 and 300 in-lb. Conduct supplementary SOAP sample inspections in intervals not to exceed 25 hours' time in service after the last SOAP sample inspection.

(3) Repeat the inspection of paragraph (a)(1) in intervals not to exceed 25 hours' time in service if no more than two nuts in a bolted connection rotate at a torque between 275 and 300 in-lb.

(4) Replace the transmission with an airworthy unit prior to further flight if three or more nuts rotate at a torque between 275 and 300 in-lb., or any nuts rotate at a torque at or below 275 in-lb.

(b) For helicopters that are subject to less than six landings, ground-air-ground cycles, external load lifts per hour, or any combination thereof, conduct the following inspections and checks:

(1) Within the next 50 hours' time in service after the effective date of this AD, or prior to the accumulation of 500 hours' time in service since new, or since last disassembly of the spiral bevel ring gear bolted connection, whichever occurs later, accomplish the following:

(i) Conduct a SOAP sample inspection in accordance with the Boeing Maintenance Manual.

(ii) Visually inspect the pinion and spiral bevel ring gear for scuffing. If scuffing is found, remove both pinion and sun/bevel gear assemblies, disassemble the gear assemblies, inspect the gears in accordance with the Boeing 234–5 Overhaul Manual, and replace defective parts.

(iii) Perform a bolt torque check of the bolted connection in accordance with the Boeing Maintenance Manual.

(2) Repeat the inspections of paragraph (b)(1) in intervals not to exceed 300 hours' time in service if no nuts in a bolted connection rotate at a torque between 275 and 300 in-lb.

(3) Repeat the inspections of paragraph (b)(1) in intervals not to exceed 100 hours' time in service if not more than two nuts in a bolted connection rotate at a torque between 275 and 350 in-lb.

(4) Replace the transmission with an airworthy unit prior to further flight if three or more nuts rotate at a torque between 275 and 300 in-lb., or any nuts rotate at a torque at or below 275 in-lb.

(5) Conduct supplementary SOAP sample inspections in intervals not to exceed 50 hours' time in service after the last SOAP sample inspection.

Note: Boeing Helicopters Service Bulletin No. 234–03–1010, Revision 4, dated December 15, 1991, pertains to this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, New York Aircraft Certification Office.

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

Issued in Forth Worth, Texas, on August 4, 1992.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92–19757 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–ANE–54]

Airworthiness Directives; General Electric Company CF6–45/–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric (GE) CF6–45/–50 series turbofan engines. This proposal would require a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool, and replacement if found cracked or below minimum thickness, or reidentification with a reduced life limit if found with a reduced thickness. This proposal is prompted by reports of fatigue cracking of the stage 12 compressor disk. The actions specified by this AD are intended to prevent engine stall, aborted takeoff, or inflight engine shutdown.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–54, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE–142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12

New England Executive Park, Burlington, Massachusetts 01803–5299, (617) 272–5047; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–54." The postcard will be date stamped and returned to the commenter.

Discussion

There have been two reports of circumferential cracks in the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spools on General Electric (GE) CF6–45/–50 series turbofan engines. The stage 12 compressor disk web-to-rim transition area is an integral part of the stage 11–13 compressor spool. Only the spool is identified by part number; the disk cannot be independently replaced. The cracked disks resulted in the release of the stage 12 compressor disk blades from the stage 11–13 compressor spool, causing an engine stall and rejected takeoff in each incident. This condition, if not corrected, can result in engine stall, aborted takeoff, or inflight engine shutdown.

This AD would require a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool. Stage 11–13 compressor spools with stage 12 compressor disks found cracked or with a minimum thickness below 0.070 inches must be replaced before further flight. Stage 11–13 compressor spools with stage 12 compressor disks found with a minimum thickness greater than 0.070 inches but less than 0.074 inches must be reidentified with a new part number and given a reduced cycle life limit in accordance with GE CF6–50 Service Bulletin (SB) No. 72–1006, Revision 1, dated November 14, 1991. Stage 11–13 compressor spools with stage 12 compressor disks found with a minimum thickness greater than 0.074 inches would maintain the original cycle life limit.

Those stage 11–13 compressor spools identified by serial number in GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991, would be inspected at the next engine shop visit, or within 3,500 cycles in service after the effective date of this AD, whichever occurs first. All other stage 11–13 compressor spools would be inspected at the next piece-part exposure. The FAA anticipates that all stage 11–13 compressor spools will have completed piece-part exposure by December 31, 1997.

The FAA has reviewed and approved the technical contents of GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991, that describes a one-time inspection of the stage 11–13 compressor spool stage 12 compressor disk web-to-rim transition area, and criteria for new life limits, reidentification, or removal of stage 11–13 compressor spools.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool, and replacement if found cracked or below minimum thickness, or reidentification with a reduced life limit if found with a reduced thickness. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 2,000 GE CF6–45/–50 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines on U.S. registered aircraft would be affected by this AD, that it would take approximately 90 total manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. Required parts would cost approximately $80,000 per engine. Based on these figures, total cost impact of the proposed AD on U.S. operators is estimated to be $25,485,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVE

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. 91–ANE–54.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on but not limited to McDonnell Douglas DC–10, Airbus A300, and Boeing 747 aircraft.

Compliance Required as indicated, unless accomplished previously.

To prevent engine stall, aborted takeoff, or inflight engine shutdown, accomplish the following:

(a) Perform a visual and fluorescent penetrant inspection (EPI) for cracks, and perform a mechanical gage or ultrasonic

thickness measurement of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool in accordance with GE CF6–50 Service bulletin (SB) No. 72–1006, Revision 1, dated November 14, 1991, as follows:

(1) For those stage 11–13 compressor spools listed in Table 1 of GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991, at the next engine shop visit, or within 3,500 cycles in service after the effective date of this AD, whichever occurs first.

(2) For all other stage 11-13 compressor spools, at the next piece-part exposure, or by December 31, 1997, whichever occurs first.

(b) For stage 11–13 compressor spools that have cracked stage 12 compressor disk web-to-rim transition areas, or that have stage 12 compressor disk web-to-rim transition areas measuring less than 0.070 inches thick, remove from service prior to further flight, and replace with a serviceable stage 11–13 compressor spool.

(c) For stage 11–13 compressor spools that have stage 12 compressor disk web-to-rim transition areas with a minimum thickness greater than or equal to 0.070 inches but less than 0.074 inches, reidentify the stage 11–13 compressor spool with a new part number in accordance with GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991. The reidentified stage 11-13 compressor spool has a life limit of 16,000 cycles since new (CSN).

(d) For stage 11–13 compressor spools that have stage 12 compressor disk web-to-rim transition areas with a minimum thickness of 0.074 or more inches, mark "SB 72–1006" next to the part number and serial number on the forward spacer arm in accordance with GE CF6–50 SB No. 72–1006 Revision 1, dated November 14, 1991. The life limit of this stage 11–13 compressor spool remains at 19,000 CSN.

(e) For the purpose of this AD, an engine shop visit is defend as the induction of an engine into a shop for maintenance.

(f) An alternative method of compliance or adjustment of the compliance time, that provides an acceptable level of safety, may be used is approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on June 29, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–19761 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–ASW–13]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc., (BHTI) Model 212 helicopters. This proposal would require repetitive inspections of the main rotor yoke assembly on these helicopters. This proposal is prompted by 12 reports of cracks in the main rotor yoke assembly at the pillow block holes. The actions specified by the proposed AD are intended to prevent and detect corrosion, pitting, and cracks in the pillow block bolt bushing holes of the main rotor yoke assembly, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–13, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas 76193–0007. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, 4400 Blue Mound Road, Bldg. 3B, Fort Worth, Texas 76193–0170, telephone (817) 624–5168, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–13." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–13, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

Discussion

There have been 12 reports of cracked main rotor yoke assemblies on certain BHTI Model 212 helicopters. The cracks that originated at the pillow block bolt bushing holes were attributed to corrosion pitting, which led to fatigue cracks with slow crack progression. A daily visual inspection of the yoke is contained in the BHTI Model 212 maintenance manual. In addition to the daily visual inspection, the manufacturer recommends a magnetic particle inspection of the yoke assembly during the main rotor hub overhaul at an interval of 2,400 hours' time in service. Apparently, these bushing hole cracks had gone undetected during the daily inspection but were detected during the overhaul inspection. After reviewing this information, the FAA agrees that more frequent inspections are necessary to maintain the airworthiness of the helicopter.

Since this condition described is likely to exist or develop on other helicopters of the same type design, the proposed AD would require, within 100 hours' time in service for certain yokes, an inspection for corrosion, mechanical damage, and a magnetic particle

inspection for cracks in the yoke assembly. Thereafter these proposed inspections would be required at intervals of 1,200 hours' time in service from the last inspection. The present inspection interval of 2,400 hours' time in service would be reduced by one-half, but the new interval would coincide with the tension-torsion strap removal at 1,200 hours' time in service.

The FAA estimates that 168 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $36,960 each year. This total cost figure assumes that no operator has accomplished the requirements of this AD, but the FAA estimates that half of these inspections will be conducted during normal overhaul of these helicopters.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc. (BHTI): Docket No. 92–ASW–13.

Applicability: Bell Model 212 helicopters, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor yoke assembly accomplish the following:

(a) For main rotor hub assemblies with main rotor yokes, part number (P/N) 204–011–102 (all dash numbers), having 1,100 or more hours' time in service since new or the last overhaul on the effective date of this AD, perform the following within the next 100 hours' time in service, and thereafter at intervals not to exceed 1,200 hours' time in service:

(1) Remove the main rotor yoke from the hub assembly. Visually inspect the pillow block bushing holes for corrosion and mechanical damage. Inspect the yoke for cracks using the magnetic particle method as specified in BHTI component repair and overhaul manual.

(2) If no cracks are found, or if corrosion or mechanical damage is present which cannot be removed within the rework limits of the BHTI component repair and overhaul manual, replace the main rotor yoke with an airworthy part.

(b) For main rotor hub assemblies with main rotor yokes, P/N 204–011–102 (all dash numbers), having less than 1,100 hours' time in service on the effective date of this AD, comply with paragraphs (a)(1) and (2) of this AD prior to attaining 1,200 hours' time in service, and thereafter at intervals not to exceed 1,200 hours' time in service from the last inspection.

(c) If no cracks are found and the yoke is airworthy, reinstall it accordance with the BHTI component repair and overhaul manual.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193–0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(e) The visual and magnetic particle inspection specified in Bell Helicopter Textron, Inc., Alert Service Bulletin 212–90–60, Part III dated March 23, 1990, is an equivalent means of compliance with this AD.

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

Issued in Fort Worth, Texas, on July 17, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92–19762 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–ANE–53]

Airworthiness Directives; Textron Lycoming ALF502R and ALF502L Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R and ALF502L series turbofan engines. This proposal would require recoating certain third stage compressor disks that had been coated with Sermetal W corrosion protection coating. This proposal is prompted by reports that the protective coating flakes off the disks. The actions specified by this proposed AD are intended to prevent corrosion and cracking of the third stage compressor disks, which would result in engine failure.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–53, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, Stratford Division, 550 Main Street, Stratford, Connecticut 06497–7593. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Engine Certification Office, ANE–142, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7087; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–53." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–53, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

The FAA has determined that certain third stage compressor disks that were coated with Sermetal W corrosion protective coating may have an adhesion problem due to improper surface preparation during the coating process. This improper surface preparation causes the protective coating to flake, which exposes third stage compressor disks to excessive corrosion and stress cracking. Maintenance inspection has revealed that this condition, if not corrected, could result in corrosion and cracking of the third stage compressor disks, which could result in engine failure.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin No. ALF502R 72–259, dated August 13, 1991, which describes marking, inspecting, recoating or replacing third stage compressor disks; and Textron Lycoming Service Bulletin No. ALF502L 72–259 dated August 13, 1991, which also describes marking, inspecting, recoating or replacing third stage compressor disks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repairing and marking, or replacing either third stage compressor disks or the third stage disk assembly, which includes the third stage compressor disk. The actions would be required to be accomplish in accordance with the service bulletin described previously.

There are approximately 1,030 ALF502R and ALF502L model engines of the affected design in the worldwide fleet. The FAA estimates that 320 engines are installed on aircraft of U.S. registry that would be affected by this AD, that it would take approximately 20 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $352,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Textron Lycoming: Docket No. 91–ANE–53.

Applicability: Textron Lycoming ALF502R and ALF502L series turbofan engines installed on but not limited to British Aerospace BAe–146 and Canadair Challenger CL–600 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion and cracking of the third stage compressor disks, that could result in engine failure, accomplish the following:

(a) Repair and mark, or replace, third stage compressor disks, Part Number (P/N) 2–101–263–02, P/N 2–101–263–05, P/N 2–101–263–09, P/N 2–101–263–R10, or third stage disk assemblies P/N 2–101–630–04, P/N 2–101–630–05, P/N 2–101–630–08; at the next part exposure after the effective date of this AD, but no later than 7,500 cycles since new, in accordance with Textron Lycoming Service Bulletin No. ALF502R 72–259, dated August 13, 1991, or Service Bulletin No. ALF502L 72–259, dated August 13, 1991, as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on July 23, 1992.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-19763 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-ANE-55]

Airworthiness Directives; Textron Lycoming ALF502R and ALF502L Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R and ALF502L series turbofan engines. This proposal would require rework of the third stage turbine disk blade slot, and a reidentification of the third stage turbine rotor shaft assembly to show compliance with this AD. This proposal is prompted by reports of cracks found at the base of the blade retention rivet slot on 48 turbine disks. The actions specified by the proposed AD are intended to prevent third stage turbine disk failure that can result in inflight engine shutdown.

DATES: Comments must be received by September 18, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-55, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, telephone (617) 273-7087; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-55." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-55, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

Discussion

The FAA has received reports of cracks found in the base of the blade retention rivet slot on 48 third stage turbine disks on Textron Lycoming ALF502R and ALF502L turbofan engines. Cracks in the base of the blade retention rivet slot can result in third stage disk failure. Investigation of the 48 cracked disks revealed that cracks initiated within as few as 3000 cycles in service (CIS) since new. In addition, the FAA has determined that the cracks continued to propagate over the next 10,000 cycles at a rate consistent with engine test results. The proposed AD would require rework of the third stage rotor turbine disk blade slot to eliminate stress concentrations in the blade retention rivet slot. This proposed AD would also require the reidentification of the third stage turbine rotor shaft assembly in accordance with Textron Lycoming Service Bulletin Nos. ALF502R 72-270, and ALF502L 72-720, both dated May 21, 1991. The third stage turbine disk is part of the third stage turbine rotor shaft assembly. This condition, if not corrected, could result in third stage turbine disk failure and inflight shutdown.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin No. ALF502R 72-270 and Service Bulletin No. ALF502L 72-270, both dated May 20, 1991. Both documents describe rework of the third stage turbine disk blade slot and reidentification of the third stage turbine rotor shaft assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require rework of the third stage turbine disk blade slot and reidentification of the third stage turbine rotor shaft assembly, in accordance with the service bulletins previously described.

There are approximately 900 ALF502R and ALF502L turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately 10 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per manhour. Required parts would cost approximately $30 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $174,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the

criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 30 continues to read as follows:

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

§ 39.13 [Amended]

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

Textron Lycoming: Docket No. 91–ANE–55.

Applicability: Textron Lycoming ALF502R and ALF502L turbofan engines installed on but not limited to British Aerospace BAe–146 and Canadair Challenger CL600 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent third stage turbine disk failure, which could result in engine shutdown, accomplish the following:

(a) For ALF502R series engines with installed third stage turbine rotor shaft assemblies, Part Number (P/N) 2–143–040–12, P/N 2–143–040–15, or P/N 2–143–040–016, rework the third stage turbine disk blade slots and reidentify the third stage turbine assembly with a new part number in accordance with the Accomplishment Instructions of Textron Lycoming Service Bulletin (SB) No. ALF502R 72–270, Revision 1, dated March 31, 1992, or replace with a serviceable part as follows:

(1) For third stage turbine disks with 15,000 or more cycles in service (CIS) on the effective date of this AD, within 1,000 CIS after the effective date of this AD.

(2) For third stage turbine disks with 10,000 or more CIS but less than 15,000 CIS on the effective date of this AD, within 1,000 CIS, after the effective date of this AD, or at the next shop visit, whichever occurs later, but prior to accumulating 16,000 CIS since new.

(3) For third stage turbine disks with less than 10,000 CIS on the effective date of this AD, at the next blade removal, but prior to accumulating 13,000 CIS since new.

(4) For third stage turbine disks not reworked in accordance with the requirements of this AD and installed on Textron ALF502R engines as replacement disks when complying with this paragraph, accomplish the requirements of this paragraph as to that replacement disk.

(b) For ALF502L series engines with installed third stage turbine rotor shaft assemblies, Part Number (P/N) 2–143–040–10, P/N 2–143–040–11, P/N 2–143–040–12, P/N 2–143–040–15, or P/N 2–143–040–16, rework the third stage turbine disk blade slots and reidentify the third stage turbine assembly with a new part number in accordance with the Accomplishment Instructions of Textron Lycoming SB ALF502L 72–270, Revision 1, dated March 31, 1992, or replace with a serviceable part as follows:

(1) For third stage turbine disks with 15,000 or more CIS on the effective date of this AD, within 1,000 CIS after the effective date of this AD.

(2) For third stage turbine disks with 10,000 or more CIS but less than 15,000 CIS on the effective date of this AD, within 1,000 CIS after the effective date of this AD or at the next shop visit, whichever occurs later, but prior to accumulating 16,000 CIS since new.

(3) For third stage turbine disks with less than 10,000 CIS on the effective date of this AD, at the next blade removal, but prior to accumulating 13,000 CIS since new.

(4) For third stage turbine disks not reworked in accordance with the requirements of this AD and installed on Textron ALF502L engines as replacement disks when complying with this paragraph, accomplish the requirements of this paragraph as to that replacement disk.

(c) For the purpose of this AD, a shop visit is defined as the induction of an engine into a shop for maintenance.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manger, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on July 10, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–19764 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 92–AEA–7]

Proposed Alteration of VOR Federal Airway V–106

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airway V–106 by extending the airway from the Johnstown, PA, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Morgantown, WV, VORTAC. Altering V–106 would enhance the flow of traffic in the Pittsburgh, PA, terminal area.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA–500, Docket No. 92–AEA–7, Federal Aviation Administration, Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address

listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AEA-7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-106 from the Johnstown, PA, VORTAC to the Morgantown, WV, VORTAC. Altering V-106 by extending the airway would allow for a new arrival route in the Pittsburgh, PA, terminal area. This action would enhance the flow of traffic. Domestic VOR Federal airways are published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-106 [Revised]

From Morgantown, WV; INT Morgantown 019°T(024°M) and Johnstown, PA, 253°T(259°M) radials; Johnstown; INT Johnstown 068° and Selinsgrove, PA, 259° radials; Selinsgrove; INT Selinsgrove 067° and Wilkes-Barre, PA, 237° radials; Wilkes-Barre; Lake Henry, PA; INT Lake Henry 068° and Pawling, NY, 281° radials; Pawling; Barnes, MA; Gardner, MA; Manchester, NH; to Kennebunk, ME.

* * * * * *

Issued in Washington, DC, on August 11, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-19728 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-25]

Proposed Alteration of VOR Federal Airway V-595; OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend Federal Airway V-595 from Redmond, OR, to Portland, OR. Currently, there is no direct route to Portland from Redmond. Altering V-595 by extending the airway from Redmond to Portland would provide a shorter route and save fuel.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 91-ANM-25, Federal Aviation Administration, 1601 Lind Avenue, Southwest, Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANM-25." The postcard will be date/time stamped and returned to the commenter. All communications

received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend V–595 from Redmond, OR, to Portland, OR. Currently, there is no direct instrument flight rules route between these points. This airway extension would save fuel and improve flight planning. Domestic VOR Federal airways are published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71. [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–595 [Revised]
From Medford, OR; Redmond, OR; to Portland, OR

* * * * *

Issued in Washington, DC, on August 10, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–19730 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–6]

Proposed Alteration to VOR Federal Airways; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airways V–116 and V–221 by realigning the airways from the Salem, MI, (SVM) VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Jackson, MI, (JXN) VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME). Altering V–116 and V–221 would simplify clearances and routings for airspace users.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 92–AGL–6, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V–116 and V–221. This action is necessary to ensure that the HARWL intersection coincides with the airways. The HARWL intersection serves as a departure fix for Detroit Metro and satellite airports. Realigning these airways between the Salem VORTAC and the Jackson VOR/DME would reduce chart clutter and simplify clearances and routings for airspace users. Domestic VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–116 [Revised]

From INT Kansas City, MO, 076° and Napoleon, MO, 005° radials, via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Jackson, MI; INT Jackson 890° T (094° M) and Salem, MI, 252° T (255° M) radials; Salem; Windsor, ON, Canada; INT Windsor 092° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

* * * * *

V–221 [Revised]

From Bible Grove, IL, via Hoosier, IN; Shelbyville, IN; Muncie, IN; Fort Wayne, IN; Litchfield, MI; Jackson, MI; INT Jackson 089° T (094° M) and Salem, MI, 252° T (225° M) radials; Salem; INT Salem 082° and Aylmer, Canada, 261° radials; INT Aylmer 261° and Erie, PA, 303° radials; Erie. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on August 10, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–19732 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AWP–7]

Proposed Alteration of Federal Airways V–105 and V–257; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airways V–105 and V–257 located in the State of Arizona. This action is necessary to ensure that aircraft operating along V–105 and V–257 would not conflict with the KARLO FOUR arrival route for Phoenix Sky Harbor International Airport. Modifying these airways would improve operations and the utilization of airspace.

DATES: Comments must be received on or before October 8, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500 Docket No. 92–AWP–7, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed

in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V–105 and V–257 between the Drake, AZ, (DRK) VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Phoenix, AZ, (PXR) VORTAC. In January 1992, the Phoenix VORTAC was relocated 4 miles west of its previous location. Relocating the Phoenix VORTAC has created an inconsistency in the transmitted signals from the NAVAID on the Phoenix 319° radial when using the published KARLO FOUR arrival route. This problem was averted by moving the KARLO FOUR arrival route to the Phoenix 321° radial. Consequently, the KARLO FOUR arrival route is now too close to V–105 and V–257. Modification to the airways is necessary to improve operations and the utilization of airspace in the Phoenix area. Domestic VOR Federal Airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1 The airways listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 domestic VOR Federal Airways

* * * * *

V–105 [Revised]

From Tucson, AZ, via INT Tucson 300° and Stanfield, AZ, 145° radials; Stanfield; Phoenix, AZ; INT Phoenix 348°T(336°M) and Drake, AZ, 157°T(143°M) radials; Drake; 25 miles, 22 miles 85 MSL; Boulder City, NV; Las Vegas, NV; INT Las Vegas 266° and Beatty, NV, 142° radials; 17 miles, 105 MSL Beatty; 105 MSL Coaldale, NV; 82 miles 110 MSL; to Mustang, NV

* * * * *

V–257 [Revised]

From Phoenix, AZ, via INT Phoenix 348°T(336°M) and Drake, AZ, 157°T(143°M) radials; Drake, INT Drake 003° and Grand Canyon, AZ 211° radials; Grand Canyon; 38 miles 12 AGL, 24 miles 125 MSL, 16 miles 95 MSL, 26 miles 12 AGL, Bryce Canyon, UT; INT Bryce Canyon 338° and Delta, UT, 186° radials, Delta; 39 miles, 105 MSL INT Delta 004° and Malad City, ID, 179° radials; 20 miles, 118 MSL, Malad City; Pocatello, ID; DuBois, ID; Dillon, MT; Coppertown, MT; INT Coppertown 002° and Helena, MT, 272° radials; INT Helena 272° and Great Falls, MT, 222° radials; Great Falls, 73 miles, 56 MSL, Havre, MT. The airspace within Restricted Areas R–6401 and R–6403 is excluded.

* * * * *

Issued in Washington, DC, on August 12, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–19733 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 92–AWP–13]

Proposed Establishment of Temporary Restricted Area R–2540; Capay, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a temporary Restricted Area R–2540, within a 1-mile radius of lat. 38°45'22"N., long. 122°01'00"W., in the vicinity of Capay, CA. The Desert Research Institute, University of Nevada, in conjunction with the National Oceanic and Atmospheric Administration (NOAA) and the National Aeronautics and Space Administration (NASA), has requested the establishment of a temporary restricted area to conduct a research project on fog in the Sacramento Valley, CA, area. This project would involve the launching of a moored balloon from the surface to 2,500 feet above ground level (AGL). The moored balloon would be airborne for approximately ten specified days between November 15, 1992, and March 15, 1993. R–2540 would be activated for a duration of 24 to 48 hours on specific days if the required atmospheric conditions exist.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No. 92–AWP–13, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules

and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish a temporary Restricted Area R–2540, within a 1-mile radius of lat. 38°45'22"N., long. 122°01'00"W., in the vicinity of Capay, CA. The restricted area would be used to collect data on fog conditions in the Sacramento Valley, CA, area. The Desert Research Institute, in conjunction with NOAA and NASA, proposes to launch a moored balloon in R–2540. The proposed temporary restricted area would be in effect for approximately ten selected days between November 15, 1992, and March 15, 1993, with time duration of 24 to 48 hours.

The moored balloon is 7.5 cubic meters (21.6 feet long and 5.9 feet in diameter) and would be secured by kevlar line. The balloon is equipped with a rapid deflation device and light weight (7 oz.) strobe lights. Attached to the balloon would be an instrument package weighing 2.5 kilograms.

The balloon and instrument package are expected to reach a height of approximately 100 feet above the fog tops which are typically in the range of 1,200 to 1,500 feet. The balloon would operate below the maximum height of 2,500 feet AGL.

It is necessary to establish a temporary restricted area to contain the moored balloon in protected airspace. Restrictions affecting R–2540 would be applied when fog conditions are present. The proposed temporary restricted area would be used only for this research project and would be released to the Federal Aviation Administration for public use during periods it is not required. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.8 dated November 1, 1991.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The proposed temporary restricted area would be in effect for approximately ten selected days between November 15, 1992, and March 15, 1993. This restricted area would be activated for a duration of 24 to 48 hours.

This proposal is considered under DOT/FAA Order 1051.1 to be a "*Categorically Excluded Action*", however, subject to the procedures of part 101 of the Federal Aviation Regulations. It has been determined that this research project would result in no environmental impact.

This temporary restricted area would prohibit the flight of nonparticipating aircraft through the area but would not direct nonparticipating aircraft to operate in any set or established route outside the restricted area. R–2540 would be established with such small lateral and vertical dimensions that it would impose minimal if any impact on nonparticipating aircraft. Because of these factors, no action is required by the FAA to regulate the flow of nonparticipating aircraft outside R–2540.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. § 73.25 is amended as follows:

R–2540 Capay, CA [New]

Boundaries: Within a 1-mile radius of lat. 38°45'22"N., long. 122°01'00"W.

Designated altitudes. Surface to and including 2,500 feet AGL.

Time of use. As scheduled by NOTAM 24 hours in advance for the period November 15, 1922, to March 15, 1993. Restricted area void after 2359 hours local time on March 15, 1993.

Controlling agency. Travis AFB Approach Control.

Using agency. The Desert Research Institute, University of Nevada.

Issued in Washington, DC, on August 12, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–19731 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-159-84]

RIN 1545-AG63

Differential Earnings Rate and Recomputed, Differential Earnings Rate of a Mutual Life Insurance Company; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the differential earnings rate and the recomputed differential earnings rate, which are used in determining the deduction for policyholder dividends of a mutual life insurance company.

DATES: The public hearing will be held on Monday, December 7, 1992, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Monday, November 16, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 111 Constitution Avenue N.W., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI-159-84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 809 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rule of § 601.610(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, November 16, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 12:45 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-19459 Filed 8-18-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[FI-159-84]

RIN 1545-AG63

Differential Earnings Rate and Recomputed Differential Earnings Rate of a Mutual Life Insurance Company

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the differential earnings rate and the recomputed differential earnings rate, which are used in determining the deduction for policyholder dividends of a mutual life insurance company. The proposed regulations provide that these rates cannot be negative. The applicable law was enacted as part of the Tax Reform Act of 1984. The proposed regulations provide guidance to mutual life insurance companies.

DATES: Written comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for Monday, December 7, 1992, beginning at 1 p.m., must be received by November 16, 1992.

ADDRESSES: Send comments, requests to appear at the public hearing and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI-159-84), room 5228, Washington DC 20044. In the alternative, comments may be hand delivered to CC:CORP:T:R, Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. See notice of hearing published elsewhere in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Katherine A. Hossofsky (202) 622-3477 (not a toll-free call). Concerning the hearing, Carol Savage of the Regulations Unit, (202) 622-8452 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide guidance relating to the differential earnings rate and the recomputed differential earnings rate under section 809 of the Internal Revenue Code (Code). The proposed regulations reflect the addition of section 809 to the Code by section 211(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 750).

Rev. Rul. 88-80, 1988-2 C.B. 129 and Notice 88-106, 1988-2 C.B. 444, stated that regulations would be issued under section 809 that would provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative.

Formula For Reducing Policyholder Dividends

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808 for policyholder dividends is reduced (but not below zero) by the differential earnings amount. The differential earnings amount is the portion of policyholder dividends deemed to be a distribution of a mutual company's profits to policyholders in their capacity as owners of the company. See H.R. Rep. No. 432 (part 2), 98th Cong., 2d Sess., 1422 (1984); S. Prt. No. 169, 98th Cong., 2d Sess., 548-549 (1984). In effect, otherwise deductible policyholder dividends equal in amount to the differential earnings amount are not deductible. Any excess of the differential earnings amount over the policyholder dividends deduction allowable under section 808 is taken into account as an adjustment to reserves under subsections (a) and (b) of section 807.

A mutual life insurance company's differential earnings amount for any taxable year is an amount equal to the product of the company's average equity

base for the year multiplied by the differential earnings rate for the year.

The differential earnings rate is the excess of (a) the imputed earnings rate for the taxable year over (b) the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins. The imputed earnings rate for any taxable year is an amount which bears the same ratio to 16.5 percent as the current stock earnings rate for the taxable year bears to the base period stock earnings rate.

To correct for the difference between the average mutual earnings rate for the calendar year in which the taxable year begins and the average mutual earnings rate for the second preceding calendar year, section 809(f) of the Code provides a mechanism whereby the differential earnings amount for the taxable year is recomputed in the following taxable year. This amount is known as the recomputed differential earnings amount. The recomputed differential earnings amount for any taxable year is calculated in the same manner as the differential earnings amount for the taxable year, except that the average mutual earnings rate for the calendar year in which the taxable year begins is substituted for the average mutual earnings rate for the second calendar year preceding the ten calendar year in which the taxable year begins. The revised rate is known as the recomputed differential earnings rate. (The term recomputed differential earning rate was initially defined in Announcement 86–36, 1986–12 I.R.B. 27.) If the recomputed differential earnings amount for any taxable year exceeds the differential earnings amount for the taxable year, the excess is included in life insurance gross income for the succeeding taxable year. Conversely, if the differential earnings amount exceeds the recomputed differential earnings amount, the excess is allowed as a life insurance deduction for the succeeding taxable year.

Explanation of Provision

The Internal Revenue Service publishes both the tentative and final differential earnings rate and recomputed differential earnings rate. These rates are used by mutual life insurance companies in calculating their federal income tax liability. The tentative recomputed differential earnings rate for 1986 was a negative rate that was published in Announcement 88–47, 1988–12 I.R.B. 56. Subsequently, the Internal Revenue Service issued Notice 88–106, which stated that regulations under section 809 would provide that the differential earnings rate may not be a negative rate. See also Rev. Rul. 88–80, 1988–2 C.B. 129, Rev. Rul. 89–106, 1989–2 C.B. 108 and Rev. Rul. 91–52, 1991–2 C.B. 331.

Congress added section 809 to limit the deductibility of dividends paid by mutual life insurance companies to their policyholders in recognition of the fact that these dividends are, to some extent, distributions of the companies' earnings to the policyholders as owners. Section 809(a) states that the deduction allowed under section 808 "shall be reduced (but not below zero) by the differential earnings amount." The use of the term "reduce" reflects Congress's intention that the purpose of section 809 is to limit an otherwise deductible amount, not to create a new deduction. A negative differential earnings rate or a negative recomputed differential earnings rate would allow mutual life insurance companies to deduct an amount in excess of dividends paid to policyholders. This would be contrary to the intent of section 809. Accordingly, the proposed regulations provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative.

The proposed regulations also define the term "recomputed differential earnings rate."

Effective Date

Notice 88–106 set forth guidance that would be contained in forthcoming regulations. The notice stated that regulations would be issued that would provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative. Rev. Rul. 88–80 stated that the final recomputed differential earnings rate for 1986 was zero even though the calculated rate was negative, and indicated that when the regulations were issued they may be effective prior to the date of issuance. As the proposed regulations involve the application of the guidance provided in Rev. Rul. 88–80, concerning the 1987 taxable year, the proposed regulations provide an effective date of taxable years beginning after December 31, 1986.

Special Analysis

It has been determined that these 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, the proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. A hearing with respect to these proposed regulations will be held on Monday, December 7, 1992, beginning at 1 p.m. Written comments and requests to speak (with outlines of oral comments) must be received by November 16, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Comments are specifically requested as to the future impact that the disallowance of a negative differential or recomputed differential earnings rate will have on mutual life insurance companies.

All written comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal author of these proposed regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.809–1 through 1.812–8

Income taxes, Insurance companies, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.809–9 is added to read as follows:

§ 1.809–9 Computation of differential earnings rate and the recomputed differential earnings rate.

(a) *In general.* Neither the differential earnings rate under section 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount

under section 809(f)(3) may be less than zero.

(b) *Definitions*—(1) *Recomputed differential earnings amount.* The recomputed differential earnings amount, with respect to any taxable year, is the amount equal to the product of the life insurance company's average equity base for the taxable year, multiplied by the recomputed differential earnings rate for that taxable year.

(2) *Recomputed differential earnings rate.* The recomputed differential earnings rate for any taxable year equals the excess of the imputed earnings rate for the taxable year, over the average mutual earning rate for the calendar year in which the taxable year begins.

(c) *Effective date.* The regulations are effective for all taxable years beginning after December 31, 1986.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-19360 Filed 8-18-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) submitted by Alabama on June 26, 1992. The amendment would revise the State's procedures for ranking and selecting AMLR projects.

This notice sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing.

DATES: Written comments must be received on or before 4 p.m. on September 18, 1992. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on September 14, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 3, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office.

Birmingham Field Office, 135 Gemini Circle, suite 215, Birmingham, Alabama 35209, Telephone: (205) 290-7283.

Alabama Surface Mining Commission, First Federal Bank Building, 2nd Floor, 1811 Second Avenue, Jasper, Alabama 35501, Telephone: (205) 221-4130.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, (205) 290-7283.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95-87, 30 U.S.C. 1202 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendment to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "**ADDRESSES.**"

The Secretary has adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director, proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Discussion of Amendments

By letter dated June 26, 1992, Alabama submitted a reclamation plan amendment to OSM (Administrative Record NO AL-0484). The proposed amendment consists of revised narratives to replace once section of the approved Alabama Plan as provided for by 30 CFR 884.13. Specifically, the Plan is being revised to modify the procedures utilized by the State for ranking and selecting AMLR projects.

III. Public Comment Procedure

In accordance with the provision of 30 CFR 884.14, OSM is now seeking comments on whether the amendment proposed by Alabama satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

Public Hearings

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. September 3, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who

wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to the approval of Abandoned Mine Land Reclamation programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-19702 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Indiana Permanent Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is announcing receipt of proposed changes to two amendments previously submitted by Indiana as modifications to the State's permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments (Program Amendments Number 91–8 and 92–1) consist of proposed changes to the Indiana Surface Mining Rules provisions concerning cultural and historic resources, and OSM Regulatory Reform I and II issues, respectively. The amendments are intended to resolve outstanding issues that remain present in the approved Indiana program resulting from changes to the Federal program. The proposed changes to amendments 91–8 and 92–1 were submitted by Indiana in a letter dated June 15, 1992 (Administrative Record No. IND–1098. The proposed changes are intended to correct previously submitted amendments to three rules: 310 IAC 12–2–2; 310 IAC 12–3–13; and 310 IAC 12–3–112.

This notice sets forth the times and locations that the Indiana program proposed program amendments 91–8 and 92–1, and the proposed changes to the amendments will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed changes.

DATES: Written comments must be received on or before 4 p.m. on September 3, 1992.

ADDRESSES: Written comments should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the amendments, the proposed changes to the amendments, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed changes to amendments 91–8 and 92–1 by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated June 15, 1992 (Administrative Record No. IND–1098),

the Indiana Department of Natural Resources (IDNR) submitted to OSM proposed changes to program amendments 91–8 and 92–1. Program amendment 91–8 was received by OSM on July 10, 1991, (Administrative Record No. IND–0902), and concerns changes to Indiana's cultural and historic resources rules. Program amendment 92–1 was received by OSM on March 30, 1992 (Administrative Record No. IND–1057), and concerns changes to Indiana's rules to address Regulatory Reform I and II changes to the Federal regulations.

OSM published a notice in the **Federal Register** on August 9, 1991 (56 FR 37868), announcing receipt of amendment 91–8 and opening the public comment period. The comment period ended on September 9, 1992.

OSM published a notice in the **Federal Register** on May 21, 1992 (57 FR 21634), announcing receipt of amendment 92–1 and opening the public comment period. The comment period ended on June 22, 1992.

The proposed changes to amendments 91–8 and 92–1 are as follows:

1. 310 IAC 12–2–2 Areas Unsuitable for Mining; Procedures

Rule 310 IAC 12–2–2 which was submitted with amendments 91–8 and 92–1, is removed and replaced by the version of rule 310 IAC 12–2–2 which was submitted on June 15, 1992. Indiana explained that the original submittals of this rule were incorrect and that the submitted change corrects the problem

2. 310 IAC 12–3–13 Exploration of More Than 250 Tons; Special Requirements

Rule 310 IAC 12–3–13, which was submitted with amendment 92–1, is removed and replaced by the version of rule 310 IAC 12–3–13 which was submitted on June 15, 1992. Indiana explained that the original submittal of this rule was incorrect and that the submitted change corrects the problem.

3. 310 IAC 12–3–112 Permit Approval or Denial

Rule 310 IAC 12–3–112, which was submitted with amendments 91–8 and 92–1, is removed and replaced by the version of rule 310 IAC 12–3–112 which was submitted on June 15, 1992. Indiana explained that the original submittals of this rule were incorrect and that the submitted change corrects the problem.

The full texts of the proposed changes to program amendments 91–8 and 92–1 are available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed changes to amendments 91–8 and 92–1 are no less effective than the Federal regulations. If approved, the proposed changes will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the proposed changes to amendments 91–8 and 92–1 proposed by Indiana satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the changes are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections 9(a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–19701 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50600; FRL–3999–4]

RIN 2070–Ab27

Dialkyldialkoxysilane; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as dialkyldialkoxysilane, which is the subject of two premanufacture notices (PMNs). This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use

designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be submitted to EPA by September 18, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if confidential business information is involved) to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room E–105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance covered in this SNUR is OPPTS–50600. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit VI. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the substance identified generically as dialkyldialkoxysilane for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances. Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provision which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

On December 13, 1990 EPA received a PMN for dialkyldialkoxysilane. EPA found potential health effects for the substance based on analogy to other alkoxysilanes. The potential health effects were for irritation to the skin and eye and liver and lung toxicity. EPA also found potential environmental effects based on the quantitative structural activity relationship (QSAR) of the substance to other neutral organic compounds. EPA expected toxicity to aquatic organisms at concentrations as low as 30 ppb. Notwithstanding these potential toxic effects, EPA did not make an unreasonable risk finding for human health or the environment for the PMN because exposures and releases were expected to be low. EPA anticipates minimal releases to surface waters which EPA estimated not to exceed 30 ppb. In addition, human health exposures were expected to be low, based on a material safety data sheet (MSDS) that prescribed dermal and respiratory protection in case of exposure and an estimated vapor pressure for the substance of 0.0003 torr based on the boiling point of the substance.

On March 21, 1991, EPA received another PMN for the same chemical substance. Because the submitter of the earlier PMN had not yet submitted a notice of commencement, EPA evaluated the second PMN as a new chemical. The submitter of the second PMN submitted several toxicity tests for the substance. Acute studies showed slight skin and eye irritation and negligible oral toxicity and dermal sensitization. Ames and mouse micronucleus tests were negative for mutagenicity. An acute oral 28–day study showed liver toxicity effects at 1,000 mg/kg/day. Also included in the data was a measured vapor pressure for the substance of 0.2 to 0.3 torr. This is approximately 100 times the previously estimated vapor pressure. It also considerably increases the potential inhalation exposure for workers. For the initial PMN received by the Agency the estimates increased from 3 mg/day to 300 mg/day for 12 workers for 250 days per year during manufacturing. It also increased the estimates of 0.003 mg/day to 0.3 mg/day for six workers for 250 days per year during use.

Based on the new inhalation exposure estimates EPA finds under section 5(e)(1)(A)(i) and (ii)(I) of TSCA that this substance may present an unreasonable risk of injury to health. When presented with EPA's finding, the submitter of the second PMN elected to perform the recommended 90–day subchronic inhalation study (40 CFR 798.2650) to address the potential lung toxicity while suspending the 90–day review period, pursuant to § 720.75(b), for the second PMN.

The submitter of the earlier PMN may at any time commence manufacture or import of the PMN substance allowing both PMN submitters to commercialize the substance. To prevent any unreasonable risk before completion and evaluation of the 90–day inhalation study EPA is proposing this significant new use rule. The rule will establish that it is a significant new use to manufacture, import, or process the substance without establishing a program whereby each worker who may be exposed to the substance by inhalation must wear a category 19C supplied-air respirator. The Administrator has made this determination having considered all relevant factors, including those in TSCA section 5(a)(2)(A) through (D).

Any manufacturer, importer, or processor who proposes to engage in such activity will be required to notify EPA before commencing the activity. The testing being conducted by the second PMN submitter, a 90–day subchronic inhalation study (40 CFR 798.2650), will address the potential health risk. After completion and evaluation of the study EPA will reassess if and what kind of respiratory protection is needed.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after the proposed date of this rule will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substances between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50600).

VI. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50600). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,552 to $12,166, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 12, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c)

2. By adding new § 721.9500 to subpart E to read as follows:

§ 721.9500 Dialkyldialkoxysilane.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as dialkyldialkoxysilane is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) Any manner or method of manufacturing, importing, or processing associated with any use of the substance without establishing a program whereby each person who is reasonably likely to be exposed to the substance by inhalation in the work area in the form of a vapor is provided with and required to wear at a minimum a NIOSH-approved category 19C supplied-air respirator operated in pressure demand, other positive pressure, or continuous flow mode and to use the respirator in accordance with 29 CFR 1910.34 and 30 CFR Part 11.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (d).

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 92–19749 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52e

RIN 095–AD48

National Heart, Lung, and Blood Institute Grants for Prevention and Control Projects

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend the current regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the Public Health Service (PHS) Act, as amended. The NIH proposed to: Correct the authority citation and PHS Act section numbers included in the regulations, add references to several HHS regulations that apply to awards made under the regulations, and make minor language changes.

DATES: Written comments must be received on or before October 19, 1992.

ADDRESSES: Comments should be addressed to John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B–11, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: John J. Migliore, at the address above, or telephone (301) 496–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the PHS Act, as amended (42 U.S.C. 285b–1), were last amended on February 25, 1980 (45 FR 12249). Subsequently, on November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99–158) was enacted, amending the provisions of the PHS Act that authorize NIH programs. As a result of this statutory amendment, the sections of the PHS Act that authorized various National Heart, Lung, and Blood Institute programs were renumbered. This necessitates changing the section numbers referenced in the regulations. The NIH proposes to amend the current regulations at 42 CFR part 52e to make these changes in the regulations and to add references to several HHS regulations that apply to awards made under this Part. In addition, the NIH proposes to revise the section headings in accordance with Department efforts to simplify the regulatory language in its regulations, and make several minor langauge changes. The NIH announced its intention to make these changes in the Unified Agenda of Federal Regulations most recently published on October 21, 1991 (56 FR 53327). The following statements are provided as public information.

1. Regulatory Impact Statement

This proposed rule has been reviewed in accordance with the requirements of Executive Order No. 12291. The Secretary has determined that it does not constitute a major rule as specified in the Order, and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

This proposed rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C chapter 6). The Secretary has determined that compliance with the regulations would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

3. Paperwork Reduction Act

Section 52e.4 of this proposed rule contains information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). This information collection and its associated burden has been reported to OMB and approved under OMB Approval Number 0925–0001.

4. Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbered programs affected by these proposed regulations are:

93.837 Heart and Vascular Diseases Research

93.838 Lung Diseases Research

93.839 Blood Diseases and Resources Research.

5. List of Subjects in 42 CFR Part 52e

Grant programs-health; Health; Medical research.

Accordingly, it is proposed to amend Part 52e of Title 42 of the Code of Federal Regulations to read as set forth below.

Dated: April 2, 1992.

Approved: May 21, 1992.

James O. Mason,

Assistant Secretary for Health.

Louis W. Sullivan,

Secretary.

PART 52e—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

1. Revise the authority citation to read as follows:

Authority: 42 U.S.C. 216, 285b–1.

2. Revise the Table of Contents to read as follows:

Sec.
52e.1 To what programs do these regulations apply?
52e.2 Definitions.
52e.3 Who is eligible to apply?
52e.4 How to apply.
52e.5 What are the project requirements?
52e.6 How will NIH evaluate applications?
52e.7 What are the terms and conditions of awards?
52e.8 Other HHS regulations that apply.
52e.9 Additional conditions.

3. Revise the headings for §§ 52e.1, and 52e.3 through 52e.7 to read as follows:

52e.1 To what programs do these regulations apply?
* * * * *
52e.3 Who is eligible to apply?
52e.4 How to apply.
52e.5 What are the project requirements?
52e.6 How will NIH evaluate applications?
52e.7 What are the terms and conditions of awards?
* * * * *

4. Amend § 52e.1 by revising paragraph (a) to read as follows:

§ 52e.1 To what programs do these regulations apply?

(a) The regulations of this part apply to grants under section 419 of the Act (42 U.S.C. 285b–1) for projects to: (1) Demonstrate and evaluate the effectiveness of new techniques or procedures for the diagnosis, prevention, and treatment of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis and treatment of these diseases in children; (2) develop and evaluate methods of educating health practitioners concerning the prevention and control of these diseases; and (3) develop and evaluate methods of educating the public concerning the prevention and control of these diseases.

* * * * *

5. Revise § 52e.2 to read as follows:

§ 52e.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.)

Council means the National Heart, Lung, and Blood Advisory Council, established under section 406 of the Act (42 U.S.C. 284a).

Director means the Director of the National Heart, Lung, and Blood Institute and any official to whom the authority involved may be delegated.

Emergency medical services means the services utilized in responding to the perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

HHS means the Department of Health and Human Services.

National Program means the National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program referred to in section 421 of the Act (42 U.S.C. 285b–3).

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

PHS means the Public Health Service.

§ 52e.4 [Amended]

6. Amend § 52e.4 by removing the acronym and offsetting commas ", NHLBI," in paragraphs (a) and (c) introductory text, and inserting the phrase "[Approved under OMB Control Number 0925–0001]" after paragraph (c)(9).

7. Amend § 52e.6 by revising paragraph (a) introductory text to read as follows:

§ 52e.6 How will NIH evaluate applications?

(a) Within the limits of funds available, after consultation with the Council, the Director may award grants to applicants with proposed projects which in the Director's judgment will best promote the purposes of section 419 of the Act, taking into consideration among other pertinent factors:

* * * * *

8. Revise § 52e.8 to read as follows:

§ 52e.8 Other HHS regulations that apply.

Several other regulations apply to grants under this part. These include but are not necessarily limited to:

42 CFR Part 50, Subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR Part 93—New restrictions on lobbying

51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Prevention from Research Risks, NIH (Revised September 1986), or successor

§§ 52e.5, 5e.7, and 52e.9 [Amended]

9. Remove the acronym "NHLBI" and any offsetting commas each place it appears in the following provisions:

(a) Section 52e.5 (a) introductory text and (b);

(b) Section 52e.7(b); and

(c) Section 52e.9.

[FR Doc. 92–19723 Filed 8–18–92: 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 395

[FHWA Docket No. MC-92-30]

RIN 2125-AD04

Hours of Service of Drivers; On-Duty Time

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to amend a portion of the hours of service regulations for commercial motor vehicle drivers. This rulemaking, if promulgated, would permit the on-duty time limitation of 60-hours in 7 consecutive days and 70-hours in 8 consecutive days to begin anew after the driver had an off-duty recovery period of 24 consecutive hours or more. The intent of this is to provide the opportunity for improved efficiency in operations consistent with highway safety.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-92-30, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All answers to questions should refer to the appropriate question number and all comments on specific provisions should refer to the appropriate section and paragraph number. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Scapellato, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The current hours of service regulations were promulgated by the Interstate Commerce Commission (ICC) in 1937 and became effective March 1, 1939. Under the current provisions of § 395.3(b) (1) and (2) of the Federal Motor Carrier Safety Regulations (FMCSRs), no motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after: (1) Having been on duty 60 hours in any period of 7 consecutive days if the employing motor carrier does not operate every day of the week; or (2) having been on duty 70 hours in any period of 8 consecutive days if the motor carrier operates motor vehicles every day of the week.

A driver may accumulate 70 hours on duty in as few as 5 consecutive days. Before the driver may drive a commercial motor vehicle (CMV) again, however, the accumulated total hours on duty must be reduced to an amount less than the regulated maximum of 70 hours over 8 consecutive days. In this situation, the driver must take 3 consecutive days, 72 consecutive hours, off-duty to reduce the total below the regulated maximum in order to drive again, and then may only drive the number of hours that brings the driver back to 70 hours for the previous 8 consecutive days.

A limited exemption to the hours of service regulations was granted in *Qualifications and Maximum Hours of Service of Employees of Motor Carriers and Safety of Operation and Equipment*, 89 M.C.C. 19 (March 29, 1962), at 30. This exemption, codified at 49 CFR 395.3(d), states, In the instance of drivers of motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. This exemption permits drivers engaged in these operations to break their accumulated on-duty hours at any time by going off duty for a period of 24 or more consecutive hours.

Some anomalies in the current hours of service limits have been identified by representatives of the long-haul motor carrier industry as having a detrimental effect on drivers' morale, efficiency, effectiveness, and, ultimately, productivity, as well as the employing motor carriers' economic competitiveness and safety compliance. The most significant complaint is that drivers are often forced to take two to three days off and wait far from home or in unfamiliar surroundings in order to accumulate enough off-duty time to resume driving. The contention is that on-duty time which may have started to accumulate as long as 8 days previously does not have an effect on a driver's ability to drive on any given day. They further maintain that requiring a driver to take up to 3 days of off-duty time, especially when the driver may be within a short distance of the home terminal, is not only unproductive to the motor carrier but reduces driver morale.

Additional concerns have been expressed by motor carriers engaged in other types of operations whose employees' primary, non-driving duties require them to spend limited time behind the wheel of a commercial motor vehicle. They have stated that the current 70-hour rule places artificial constraints on their activity by requiring drivers to take multiple consecutive days off because of an accumulation of hours based on non-driving time.

Both of these situations may indeed have adverse economic impacts. Furthermore, it has been questioned whether drivers utilize the extended off-duty period in a manner that promotes safe resumption of driving duties.

Discussion of Comments to Regulatory Review Docket

On January 28, 1992, the President instructed the Secretary of Transportation and other agencies to work together to streamline the regulatory process and ensure that the regulated community is not subject to duplicative, inconsistent, or unnecessarily burdensome regulations. On February 17, 1992, the Department of Transportation published a request for comments entitled Regulatory Review (see 57 FR 4744, FHWA Docket 92-12). This notice requested public comments on which Departmental regulations substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape.

Approximately 400 commenters to this docket suggested that the hours of service regulations be amended. The majority of the commenters suggested permitting the 60/70 hour (in 7 or 8 days) on duty requirement be set to zero if the driver has 24 consecutive hours off duty. In 368 letters, many of which were identical, commenters argued that these hours of service regulations are out of step with today's modern equipment, super highways, and operating practices. Six other commenters claimed that the current limit is out of date, unduly burdensome, impairs operating efficiency, lowers drivers' earning potential, and encourages drivers to violate the regulations. Two commenters recommended eliminating the 70 hour/8 day cap, one recommended raising the maximum driving hours from 10 to 12, and one recommended that drivers be permitted to be on-duty 15 hours before

the 8-hour break, regardless of whether the time was spent driving or performing other work.

One commenter expressed the concern that a lack of effective regulation would result in a rise in accidents and other safety hazards, raising the economic and social costs of transportation. Another commenter suggested that certain of the regulations of part 395 should be changed because of the costs and burdens associated with them, as well as the possibility that they may be incompatible with the body's natural circadian rhythms.

Research

Although there have been several studies conducted over the past 20 years on CMV driver fatigue, the FHWA is not aware of results that show a direct relationship between driving hours or total on-duty hours and levels of driver alertness. While it is uniformly accepted that long work hours can adversely affect alertness, other factors, such as the number of consecutive work days, the starting and ending times of those workdays, and the degree of mental and physical effort expended play very important roles.

The FHWA is currently sponsoring several studies of CMV driver fatigue and loss of alertness to provide a technically sound basis for evaluating existing hours of service requirements and to develop countermeasures for reducing fatigue and increasing driver alertness. Two ongoing studies are the Driver Fatigue and Alertness Study, conducted by Essex Corporation and the Trucking Research Institute; and Literature Review and Critique of Past Research on Rest and Recovery Cycles of Commercial Motor Vehicle Drivers, conducted by Work Systems Research. In addition, the FHWA has been directed to perform additional studies to respond to congressional directives to undertake research on the causes of, and potential countermeasures to, the problem of driver fatigue under the Department of Transportation and Related Agencies Appropriations Act, 1992 (see H.R. Rep. No. 156, 102d Cong., 1st Sess. 103 (1991)).

Discussion of Proposal

Drivers subject to the hours of service regulations do not operate in a monolithic industry, loosely referred to as the motor carrier industry. There are many occupations, such as mechanics, construction workers, telephone linemen, utility workers, foresters, custom harvesters, film production workers, etc., whose operation of vehicles falling within the applicable definition "commercial motor vehicle" is only incidental to their principal job functions. They may drive to or from job sites where the bulk of their day's work is performed, so that the driving function occupies only a minor part of their on duty time. Their degree of contact with other vehicles driven on public streets and highways, on lengthy trips and adverse driving conditions, where the effect of fatigue is most critical, is considerably less than that of individuals whose principal function is driving. In this regard, they are similar to the oilfield and pipeline workers for whom the previously mentioned exemption already applies. For these drivers, the 60- and 70-hour rule can create a hardship, without an equivalent safety benefit. There are other job categories, such as retail merchandise and food delivery workers, driver-salesmen, suppliers and other regular route workers, whose driving and non-driving functions are relatively equal. Their degree of contact is greater than that of the previously mentioned category, but there may be other aspects of their operations which reduce the likelihood of adverse impacts from fatigue and the need for close regulation. Their operations may be so regular that their hours are controllable, their reporting times and finishing times are predictable, they can be easily tracked from the start of their work day to the finish, and the amount of time behind the wheel and engaged in other on-duty activities is well known. For these drivers, the 60- and 70-hour rule has little or no relevancy to their work schedule. There may be no strong safety benefit to subject them to such a rule.

Individuals whose principal function is to operate a commercial motor vehicle are also affected by the 60/70 hour rule. These individuals tend to maximize their driving time and may or may not use the 5 additional allowable daily hours on-duty, not driving, prior to taking the mandatory 8 hours off-duty. As a result, they may reach their maximum on-duty time of 70 hours within 5 days. As discussed earlier, the mandatory 3 days off-duty, if taken at a point in the driving schedule unrelated to a driver's proximity to the home terminal, may be counterproductive to these drivers obtaining needed rest. Because their primary task is driving, these drivers' degree of contact with other vehicles on public streets and highways is the highest of all groups discussed.

The 60- and 70-hour rules were originally developed as countermeasures to the potential hazards caused by the operations of large vehicles by long-haul drivers. There is little evidence, however, to support a compulsory extended break in driving time to catch up with the potential accumulation of fatigue. The FHWA believes that a commonsense rule should prevail, provided drivers have the opportunity to decline to drive on the basis of fatigue without fear of retaliation. As discussed earlier, there have been concerns that applications of these rules to many motor carriers' operations have produced anomalies in scheduling. These anomalies are said to be detrimental to both driver morale and motor carrier productivity because they force drivers to take extended off-duty periods when they may be only a short distance from the home terminal.

To date, the FHWA has no evidence that demonstrates that the exemption for certain drivers who transport oilfield equipment impairs their ability to safely operate a commercial motor vehicle. The FHWA is, therefore, proposing to expand that provision to other types of commercial motor vehicle operations.

The proposed revision would permit commercial motor vehicle drivers to begin a new 60/70 hour period (with the resumption of on-duty status) following an off-duty period of 24 or more consecutive hours. To insure that a person who may not be sufficiently alert to operate a motor vehicle at the end of the 24-hour off-duty period does not have to drive, the provisions of § 392.3, Ill or fatigued operator, will be extended to cover such situations. Cross-referencing to the proposed revision in § 395.3(d) will make it clear that any driver may decline to drive with impunity if he or she has accumulated as many as 60 hours on duty in any 7 day period, or 70 hours on duty in any 8 day period. Attempted retaliatory action by a motor carrier against a driver who refuses to drive under these circumstances could easily result in the establishment of a prima facie case under section 405 of the Surface Transportation Assistance Act (49 U.S.C. App. 2305) before the Occupational Safety and Health Administration.

The FHWA recognizes the need to revisit the hours of service regulations. Reducing the on-duty/off-duty cycle may bring the regulations in closer conformity with motor carrier industry needs and practices. Various segments of the motor carrier industry have sought application of the oilfield worker's exemption to all motor carriers for a number of years. Although the proposed rest period would be somewhat condensed, a driver must still comply with the daily hours of service regulations.

The FHWA envisions an enhanced level of compliance with both the 10-hour and 15-hour rules, as well as those resulting from this proposal, because the limitations more closely characterize the actual operations of motor carriers. Furthermore, the FHWA foresees improved enforcement of hours of service violations and better compliance with records of duty status requirements with the elimination of the anomalies of the 60- and 70-hour rules. The FHWA will vigorously pursue the collection of civil penalties against motor carriers who continue to condone such excess hours after these changes.

The FHWA specifically requests comments on the following questions:

1. Under the current regulations, a driver may operate on a cycle consisting of 10 hours of driving, 5 hours on-duty not driving, and 8 hours off-duty. This cycle may be repeated 4 successive times, followed by a final 10 hours on-duty. The driver would reach the maximum 70 hour on-duty time in 102 elapsed hours (4.25 days) and would then be required to take 72 hours off duty (3 days). Under the proposal, the same 70-hour work cycle as described above would be separated by 24 hours off duty (1 day). A driver could be on-duty 100 hours in an 8-day period. Under another scenario employing the proposed 24 hour off-duty period, in which a person drove 10 hours with 8 to 9 hours off in between and a 24-hour off-duty period every sixth day, that driver could accrue 96 hours driving in an 8 day period. These work cycles can be repeated indefinitely. Will the change to the recovery period be adequate to assure a driver has had opportunity to obtain necessary rest? Will this time be sufficient to offset accumulated fatigue?

2. What has been the experience in the oilfield and pipeline industries where the present exemption has been used? Do drivers who have operated under the exemption feel they have had ample opportunity to accumulate rest? Has the exemption affected carrier/driver compliance with the regulation?

3. What have motor carriers done to reduce the need to put drivers on off-duty status for as long as 3 consecutive days (examples might include relay terminals and "pony express" operations, team drivers, shorter daily duty schedules which permit more consecutive days of work, other methods)?

4. Should driving hours and/or on-duty hours be adjusted in conjunction with the rest and recovery hours and to what extent?

For example:

(a) A maximum of 12 hours of on-duty time in a 24-hour period,

(b) The 12 hours of on-duty time in (a) might include an increase in the maximum driving time from 10 hours to 12 hours, with required rest breaks,

(c) Off-duty time increased from 8 hours to 10 hours with no changes to on-duty and driving time,

(d) On-duty time decreased from 15 hours to 13 hours.

(e) Other scenarios?

5. What is the minimum length of time off-duty to allow a driver to adequately recover from a 60- or 70-hour on-duty cycle? How would this time vary according to the number of consecutive long working days (for example, four 15-hour days compared to six 10-hour days)?

6. Should the degree of required recovery time be related to the extent of over-the-road driving exposure? For instance, should the required period of rest and recuperation be longer for those individuals whose primary function is driving? Should it be shorter for operators whose driving duties constitute a limited proportion of their on-duty time (20 percent or less)? Why or why not?

7. Should specific motor carrier operations, such as transportation of hazardous materials or passengers, be excluded from the proposal? Why or why not?

8. Should a reduced rest and recovery period be allowed before one 60/70 hour period, but not before two successive periods with only one 24-hour rest period?

9. What steps does a motor carrier currently follow to assure that a driver is fit, willing, and able to drive safely upon return to duty, before dispatch? What additional steps would be necessary should the proposed rule be adopted?

10. What conditions, if any, should be placed on a driver once the 60- or 70-hour duty cycle is restarted after only 24 hours off duty?

11. Should motor carriers and drivers wishing to take advantage of this proposal be required to install and use automatic on-board recording devices?

Commenters are not limited to responding to the above questions. They are encouraged to submit any facts or views relevant to rest and recovery time as it affects the safe operation of commercial motor vehicles.

Rulemaking Analyses and Notices, Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being considered by the FHWA in this document would amend the driver's hours of service requirements for commercial motor vehicle drivers subject to the FMCSRs. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. The potential economic impact of this rulemaking is not known at this stage. Therefore, a full regulatory evaluation has not yet been prepared. Comments are specifically requested on the costs and benefits associated with this proposed change.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency will evaluate the effects of this proposal on small entities. This proposal, if adopted, would increase the number of on-duty hours permitted in 7 and 8 consecutive days to permit the cumulative hours total to be reset after the driver has been off-duty for a period of time of at least 24 consecutive hours. The FHWA believes that the cost of this change will be minimal. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Nothing in this document preempts any State law or regulation. The proposed rule, if adopted, would not limit the policymaking discretion of the States. States would not be required as part of the Motor Carrier Safety Assistance Program to adopt this rule for intrastate safety regulations, but they would have to adopt this amendment for the enforcement of interstate operations. The issues addressed in this proposal, therefore, have no federalism implications.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 392 and 395

Driver's record of duty status, Highway Safety, Highways and Roads, Hours of service of drivers, Motor carriers, Reporting and recordkeeping requirements.

Issued on: August 13, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is proposing to amend title 49, Code of Federal Regulations, parts 392 and 395, as follows:

PART 392—[AMENDED]

1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; and 49 CFR 1.48.

§ 392.3 [Amended]

2. In § 392.3, the undesignated paragraph is designated as (a) and new paragraph (b) is added as follows:

§ 392.3 Ill or fatigued operator.

* * * * *

(b) A driver who is operating under the provisions of § 395.1.(1) of this chapter, may refuse to drive on the basis of fatigue, if the driver has otherwise accrued the maximum on-duty time allowed under § 395.3(b) (1) or (2).

PART 395—[AMENDED]

3. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; and 49 CFR 1.48.

§ 395.1 [Amended]

4. In § 395.1, new paragraph (1) is added as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(1) *Rest and Recovery.* Any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more consecutive hours. However, a driver who has otherwise accrued the maximum on-duty time allowed under § 395.3(b) (1) or (2) may refuse to drive on the basis of fatigue, pursuant to § 392.3, and no motor carrier shall use a driver who has refused under these circumstances.

* * * * *

[FR Doc. 92–19770 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition To List the Ferruginous Hawk

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner did not present substantial information to indicate that the petition to list the ferruginous hawk (*Buteo regalis*) may be warranted.

DATES: The finding announced in this notice was made on March 2, 1992.

ADDRESSES: Questions or comments concerning this finding should be submitted to Mr. Steven Anschutz, Nebraska State Supervisor, U.S. Fish and Wildlife Service, 203 West Second Street, Grand Island, Nebraska 68801. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Faanes, see ADDRESSES above, telephone (308) 381–5571.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service also is required to promptly commence a review of the status of the involved species.

The Service received and made a 90-day finding on the following petition:

A petition from the Ferruginous Hawk Project was dated June 1, 1991, postmarked May 28, 1991, and received by the Service on May 31, 1991. The petition requested the Service to list the ferruginous hawk (*Buteo regalis*) as an endangered species. Status review for the ferruginous hawk was first initiated by a Notice of Review published December 30, 1982 (47 FR 58454).

The petition stated that the ferruginous hawk is a wide-ranging species in the prairie and intermountain region of the United States during the nesting season. The petition and accompanying documentation indicated that the survival of the species is threatened by a long-term population decline, human disturbance, and past and present habitat destruction and modification.

Upon receipt of the petition, the Service intensified its review of the status of the ferruginous hawk, and determined that the petition did not present substantial information to warrant the requested action. The results of the intensified review are presented below.

Biological Information

The ferruginous hawk has been considered a Category 2 species since 1982 when it first appeared on a Notice of Review. Although the Category 2 listing does not provide any special protection under the Act, the species is protected by the Migratory Bird Treaty Act (16 U.S.C. 703–712).

The Ferruginous hawk is the largest of the North American buteonine hawks, and is often said to be declining in numbers (Woffinden 1975, Powers and Craig 1976, Murphy 1978, Bechard 1981, Evans 1980, Houston and Bechard 1984, Schmutz 1984, Schmutz et al. 1984). Past declines have been exhibited by abandonment of many historical nest sites, although ferruginous hawks are still common in many parts of their breeding range.

The range of this species extends from North Dakota and Texas west to eastern Washington, eastern Oregon and

Nevada, and north into the prairie provinces of Canada (Olendorff and Fish 1985). Ferruginous hawks winter in the southwestern United States (California to Oklahoma and Texas) and Mexico (American Ornithologists Union 1983). Ferruginous hawks are irregularly found in winter in Colorado (Ryder 1969, Johnson and Enderson 1972, Stahlecker and Behlke 1974), the Dakotas (Steenhoff 1984), Nebraska (Mathisen and Mathisen 1968), and Idaho (U.S. Bureau of Land Management 1977, Craig 1979).

Declines in ferruginous hawk numbers have been blamed on urbanization, agricultural development, overgrazing, and both intentional and inadvertent human disturbance (Olendorff and Fish 1985). Detailed analyses of historical populations of ferruginous hawks have not been made for most of the United States (Olendorff and Fish 1985).

Continual direct human disturbance is an overriding negative factor to which ferruginous hawks are poorly adapted (Porter and White 1977). White and Thurow (1985) reported that ferruginous hawks were more sensitive to disturbance when jack rabbit populations were low. If prey habitat can be managed to provide a more stable or alternative food supply when one prey species declines severely, then ferruginous hawks will benefit (Olendorff and Fish 1985). Likewise, if numerous nest sites are made available, the birds have a greater opportunity to avoid disturbance in a given year by selecting more secluded sites. On the other hand, loss of prey habitat and nest sites causes instability and/or decreases in ferruginous hawk populations (Stewart 1975, Bechard 1981, Houston and Bechard 1984, Schmutz 1984).

Unlike many other *Buteo* hawks, ferruginous hawks are rather restrictive in their selection of prey items. In 7 of 13 study areas summarized by Olendorff and Fish (1985), ground squirrels were the most important prey items identified. Further, Woffinden (1975), Woffinden and Murphy (1977), Smith and Murphy (1978, 1979), Thurow et al. (1980), Smith et al. (1981), and White and Thurow (1985), clearly established the correlation between jack rabbit numbers and the percentage of ferruginous hawk territories occupied, eggs laid, and young fledged. The maintenance of high breeding densities, reproductive rates, and recruitment of ferruginous hawks is dependent on high prey populations and the stability of the habitats on which these prey species depend.

Ferruginous hawks have an inherently high breeding potential compared to other large diurnal raptors. This high reproductive potential allows rapid recovery of populations when prey increases after natural or man-caused declines. Woffinden and Murphy (1989), however, indicated that ferruginous hawks did not return to Cedar Valley, Utah, following a severe jack rabbit decline, even though jack rabbit populations had since increased.

Impacts of human activities on ferruginous hawks fall into four broad categories: (1) Increased human disturbance which results in decreased reproductive performance; (2) direct mortality; (3) habitat alteration which decreases prey; and (4) habitat alteration which decreases nest site availability. Blair (1978) established that human activity is avoided by this hawk. He measured the distance from 36 active nest sites and 36 randomly selected points to the nearest human activity. Mean distance from nest sites to disturbance was significantly greater than from random points by about 1 km (0.6 mi) (3.31 versus 2.47 km) (2.0 to 1.5 mi). Blair also found higher clutch sizes and greater hatching success at nests more distant from human disturbance, although the findings were not supported by statistical tests.

Intensive agricultural development renders grasslands, shrublands and pinyon-juniper forests essentially useless as ferruginous hawks nesting habitat, although not necessarily as foraging habitat (Olendorff and Fish 1985). A Habitat Suitability Index model prepared for ferruginous hawks (Jasikoff 1982) assumed that if 10 percent of an area is disturbed, not necessarily developed, then the suitability index for ferruginous hawks would decrease. If 75 percent or more of an area is disturbed, the suitability index would be zero. The point at which the suitability index value is zero may be less than 75 percent if the disturbance is cultivation (Schmutz 1984).

Olendorff and Stoddardt (1974) found only 1 of 71 ferruginous hawks nests in northeastern Colorado in cultivated land. Roth and Marzluff (1989) found only 5 ferruginous hawk nests where cropland was over 50 percent but 59 nests where rangeland prevailed. Cottrell (1981) noted that in eastern Oregon cultivated lands were used as nest areas significantly less than expected on the basis of availability (only 1 of 46 nests in farmland). Gilmer and Stewart (1983) noted very low ferruginous hawk nesting densities in the Drift Plain biotic region of North Dakota which is dominated by cropland, compared to the Missouri Coteau and Coteau Slope regions which are characterized by high proportions of native mixed-grass prairie.

The reason for avoidance of frequently plowed fields by ferruginous hawks involves a combination of lower prey densities in monotypic agriculture, absence of trees for nest placement, and springtime activities of farmers—a time when raptors in general are more susceptible to human disturbance (Olendorff and Fish 1985). As the crops grow, plowed or not, prey becomes increasingly less vulnerable due to the concealment provided by crop height. If no other prey is available and if it is not energetically efficient to feed several young at the nest, reproductive performance is adversely affected (Olendorff and Fish 1985).

Criteria for Listing

Section 4(a)(1) of the Act states that a species may be listed as an endangered or threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

Following is the Service's evaluation of each of these five factors.

(1) Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range

Population Status

The factors summarized above describe a highly sensitive, wide-ranging, habitat-specific hawk. Determination of its population status over its extensive range is difficult due to the reasons discussed below.

Monitoring populations in small areas on the breeding grounds is potentially misleading because the abundance of nesting birds may reflect cyclic fluctuations in prey abundance rather than actual hawk population fluctuations (Smith et al. 1981). Woffinden and Murphy (1989) concluded that traditional short-term, fixed boundary studies, as most have been with ferruginous hawks, may not accurately assess the status of the species in some areas. Wiens (1984) argued that long-term studies are critical proper understanding of the structure of populations.

In 1979, Mr. Mayo Call, a consulting wildlife biologist in Afton, Wyoming, surveyed State and Provincial wildlife agencies in the Western United States

and Canada. The purpose of Mr. Call's survey was to determine a continental population figure for the ferruginous hawk. In 1991, the petitioner completed a similar survey contacting the same wildlife agencies. Upon receipt of the petition, the Service contacted these same agencies, as well as other individuals, in an attempt to obtain more precise population figures throughout the ferruginous hawk's extensive range. In addition to contacting the State and Provincial resource agencies, the Service also placed a request for information in the Ornithological Newsletter, which is distributed regularly to each member of the American Ornithologist's Union, Cooper Ornithological Society, Society of Field Ornithologists, and the Wilson Ornithological Society. The Service also placed a similar request in the newsletter of the American Birding Association. Federal land management Agencies in each of the States within the species' United States range were also contacted for information.

The results of the 1979 and 1991 surveys are summarized in Table 1. The data indicate that in 1979 the continental population of ferruginous hawks was 2,810 to 3,590 pairs (average of 3,200 pairs) (Call, unpub. data). The petitioner's survey yielded a population figure of 3,293 to 4,291 pairs (average of 3,792 pairs). The population appears to have increased by 483 to 701 pairs (average of 592 pairs) at a minimum. The literature review completed by the Service in addition to survey of additional resource personnel added 1,463–1,713 pairs in North America for a minimum population of 5,220 to 6,004 pairs. This estimate does not include nonbreeding birds ecologically known as "floaters," which are difficult to census.

TABLE 1.—ESTIMATED NUMBER OF NESTING PAIRS OF FERRUGINOUS HAWKS BY LOCATION IN NORTH AMERICA. DATA ARE FROM A 1979 UNPUBLISHED SURVEY BY MR. MAYO CALL, A 1991 SURVEY BY THE PETITIONER, AND A REVIEW OF THE LITERATURE CONDUCTED BY THE SERVICE

State/Province	1979	1991	Review
Arizona	5–10	25	25
California	0	1	1
Colorado	150–175	300–400	300–400
Idaho	200–250	72	100
Kansas	25–50	35–50	50–100
Montana	175–250	190–450	190–450
Nebraska	25	35	35
Nevada	350–450	240	240
New Mexico	10	22	35
North Dakota	350–450	200	200
Oklahoma	10–20	20–33	20–33
Oregon	125–150	200	250
South Dakota	350–375	400	400
Texas	5–10	0	0
Utah	200–225	190–300	190–300
Washington	30–40	63	62
Wyoming	400–600	800	800
Canada	500–700	500–1,000	2,322–2,572
Totals	2,810–3,590	3,293–4,291	5,220–6,004
Mean	3,200	3,792	5,612

A State-by-State and Province-by-Province summary of the species' status follows.

Arizona

The population was estimated at 5–10 pairs in 1979 (Call, unpub. data). The petitioner estimated 25 pairs in 1991.

Historically, the ferruginous hawk was an uncommon but widely distributed summer resident of the grassy plains of northern Arizona, and a local and irregular summer resident in southeastern Arizona (Phillips et al. 1964). Currently, the largest ferruginous hawk nesting population exists in the drainages of the Little Colorado River and Cataract Creek (Coconino Plateau). No population estimates are available for this area, but eight nesting areas are known from the northern part of the State (Hall et al. 1988). Active breeding areas are presently only in northwestern Arizona where two ferruginous hawk nests are known (Rosenberg et al. 1981). The Kingman District of the Bureau of Land Management reported (in litt.) that ferruginous hawks have not been detected since 1986 in their traditional breeding areas in the Hualapai Valley, northeast of Kingman, Arizona, between the Cerbat and Music Mountains. The Bureau of Land Management believes further that if the species is still nesting in the area there may be less than five pairs present. In winter, ferruginous hawks are fairly common in northern and southeastern Arizona, and relatively rare elsewhere in the State (Phillips et al. 1964, Milsap 1981). Other sources indicate recent winter concentrations in agricultural areas near Parker, Arizona; in western Arizona surrounding Phoenix; in Yavapai County in central Arizona; and in the Sulfur Springs Valley in 1984). The winter population appears to be stable (Hall et al. 1988).

California

The population was zero in 1979 (Call, unpub. data). The petitioner listed one pair in 1991. Historic information on the ferruginous hawk in California is scanty. Grinnell and Miller (1944) regarded the species primarily as a winter visitor; however, the authors stated that "a few individuals occur in summer and may nest in the northwestern corner of the state of Modoc County."

Areas of potential nesting habitat in northeastern California were well covered by knowledgeable raptor biologists in the late 1970's and 1980's. Although there were occasional summer sightings, no nesting locations were known until 1987 when Bureau of Land Management personnel found a nest in Lassen County.

Potential nesting habitat appears to be extensive in California, and biologists have long wondered about possible reasons for the virtual absence of the species in that State. Intrusion of junipers and sagebrush on grasslands may have negatively affected potential nesting habitat.

Ferruginous hawks are found in low numbers in grassland and agricultural areas throughout the State in winter and fall. Although it may be undergoing some decline due to agricultural and urban conversions, winter habitat remains extensive.

Colorado

The population was estimated at 150–175 pairs in 1979 (Call, unpub. data). The petitioner estimated 300–400 pairs in 1991.

Olendorff (1978) studied nesting raptors on a 1,072 km² (414 mi²) study area of the Pawnee National Grasslands in northeastern Colorado during 1970–1972. Habitat of the study area was made up of 6.5 percent cultivated land; the remainder was native grassland. Nesting success among ferruginous hawks was 69.8 percent among 53 nests during the study.

Stalmaster et al. (1991) studied nesting ferruginous hawks in a 743 km² (287 mi²) area in northwest Colorado and northeast Utah from 1981 to 1988. Desert cottontails and white-tailed prairie dogs were the principal food items (94 percent of biomass). Prey declined more than 97 percent from 1983 to 1986. In response, hawks occupied fewer territories, produced fewer young, and increased the diversity of their diets. Nest failures increased from 25 percent in 1983 to 74 percent in 1986. Hawk reproduction increased in 1987 and 1988 once prey density increased. Whereas abundant food supplies often attract new individuals to a breeding area (Smith and Murphy 1978), the authors believed that given the nomadic tendency of ferruginous hawks, eruptions of prey populations in one area may buffer the effects of food deprivations in other areas.

Leslie (1990) revisited Olendorff's (1978) study area on the Pawnee National Grasslands and compared 1990 data with that collected by Olendorff in 1972. Although populations of other raptors increased from 109 to 200 percent, ferruginous hawk populations decreased by 38.5 percent, from 26 pairs in 1972 to 16 pairs in 1990.

Idaho

The population in 1979 was estimated at 200–250 pairs (Call, unpub. data). Petitioners estimated 72 pairs in 1991. Dr. Mark Bechard, Raptor Research Center, Boise State University (pers. comm., 1992), stated that the minimum population in Idaho was 100 breeding pairs.

Kochert et al. (1986) studied ferruginous hawk reproduction on a 976 km² (377 mi²) study area of the Snake River Birds of Prey Area from 1976 to 1980, and again in 1985. During the study a maximum of 23 and a minimum of 13 territories were occupied in a single year. The proportion of traditional territories occupied each year ranged from 50 to 82 percent. Prey abundance did not appear to influence occupancy rates or the frequency with which particular nesting territories were occupied. Their data indicated that ferruginous hawks on the study area tended to occupy territories intermittently for short durations. Thurow et al. (1980) reported similar observations for ferruginous hawks in southern Idaho, with 39 percent of their territories being occupied at intermittent intervals for 7 to 9 years.

Howard (1975) studied nesting ferruginous hawks in the Curlew and Raft River Valleys of Idaho and Utah during 1972 to 1973, finding 42 and 54 pairs those years. Northern pocket gophers made up 57.4 percent of the prey items in the crested wheatgrass community. Howard believed that the total number of young ferruginous hawks produced per year may be related to jack rabbit densities.

Kansas

The population was estimated at 25–50 pairs in 1979 (Call, unpub. data). The petitioner estimated 35–50 pairs in 1991. Mr. Stanley Roth, the principal ferruginous hawk researcher in Kansas (Lawrence High School, Lawrence, Kansas), estimates 50–100 pairs in 1992 (pers. comm., 1992).

Roth and Marzluff (1989) studied the ecology of ferruginous hawks in an eight-county area of the upper reaches of the Smokey Hill River in northwestern Kansas from 1979 through 1987. They found 100 nesting areas and 181 different active nests in their study. On the average, 38 nest sites were active each year. Activity declined through 1985, but increased again in 1986 and 1987. Prairie dogs are a major prey item for ferruginous hawks in western Kansas. Prairie dog towns are abundant in western Kansas, and the infrequent occurrence of ferruginous hawk nests further than 8 km (5 mi) from prairie dog towns, which Roth and Marzluff (1989) observed, may reflect a behavioral response to prey abundance by the hawks placing nests near their prey source.

Montana

The population was estimated at 175–250 pairs in 1979 (Call, unpub. data). The petitioner estimated 190–450 pairs in 1991. However, several authors suggest that the population of ferruginous hawks in Montana appears to be stable or declining slowly (Ensign 1983, DuBois and Becker 1987, Harmata 1991).

Myers (1987) evaluated ferruginous hawks nesting on a 417 km² (161 mi²) intensive study area in southwestern Montana during 1985 and 1986. Myers found 316 nests in an estimated 97 nesting territories. Ferruginous hawks in southwestern Montana appear to be more productive than those in eastern Montana, with 1.45 to 1.85 young fledged per occupied nest, compared to 0.3 to 0.38 young fledged per nest in eastern Montana. Ensign (1983) studied ferruginous hawks on 492 km² (190 mi²) of public land in southeastern Montana during 1981 and 1982. Ninety-one nests were located during the study representing an estimated 95 percent of all nests present in the study area. Ensign believed that the present status of breeding populations of ferruginous hawks in Montana is uncertain. Nesting concentrations occur in the extreme southwest (Myers 1987) in Beaverhead County, and in the extreme southeast in Carter County. In addition, scattered nesting has been reported in the northern tier of counties east of Havre.

Nebraska

The population was estimated at 25 pairs in 1979 (Call, unpub. data). The petitioner estimated 35 pairs in 1991.

Nevada

The population was estimated at 350–450 pairs in 1979 (Call, unpub. data). The petitioner estimated 240 pairs in 1991.

Few long-term studies of ferruginous hawks nesting have been conducted in Nevada. Neel et al. (1989) reported that 66 occupied nesting territories were extant on the Egan Resource Area in 1982. Bradley et al. (1991) reported that the number of occupied nests on the Egan Resource Area had declined to 34 in 1991.

New Mexico

The population was estimated at 10 pairs in 1979 (Call, unpub. data). The petitioner estimated 22 pairs in 1991. The literature indicates a minimum population of 35 pairs.

Ligon (1961) reported this species as nesting "sparingly" throughout New Mexico. Ramakka and Woyewodzic (1991) studied ferruginous hawks on a 161,900 ha (400,000 ac) belt about 16 km (10 mi) wide between Farmington and Cuba, New Mexico. Subsequent monitoring and inventory efforts expanded the study area to 550,400 ha (1,359,500 ac). They found 72 ferruginous hawk nests by the end of 1988. Based on their observations of nest use in successive seasons, they believed that

the nests represent a minimum of 35 different nesting territories.

North Dakota

The population was estimated at 350–450 pairs in 1979 (Call, unpub. data). The petitioner estimated 200 pairs in 1991.

Gaines (1985) studied birds in 1983 and 1984 in Kidder and Stutsman Counties on a 1,259 km² (486 mi²) study area.

Seventy-five occupied ferruginous hawk nests were located in 1983 and 79 nests in 1984. These numbers were similar to those found by Gilmer and Stewart (1983) during 1977 to 1979. Nesting success for 1983 to 1984 was 62.1 percent, which was lower than 71.1 percent in 1977 to 1979. An average of 1.6 young fledged per occupied nest during the 2 years. Gaines reported that many ferruginous hawks were using his study area and that there is much grassland habitat relative to other biogeographic regions. Not far to the east in the Red River Valley, both ferruginous hawks and grasslands are essentially absent, and the predominant land use is cropland.

Oklahoma

The population was estimated at 10–20 pairs in 1979 (Call, unpub. data). The petitioner estimated 20–33 pairs in 1991.

Oregon

The population was estimated at 125–150 pairs in 1979 (Call, unpub. data). The petitioner estimated 200 pairs in 1991. The literature indicates a minimum population of 250 pairs.

Lardy (1980) located 32 ferruginous hawk pairs on the 312 km² (120 mi²) North Harper Study area. Lardy also surveyed Oregon wildlife biologists and determined that 100 active ferruginous hawk nests had been identified in Oregon. Based on these numbers, Oregon wildlife biologists estimated that there are about 250 pairs in the State. Specifically, the population was estimated at: Gilliam County—2 pairs, Morrow County—10 pairs, Umatilla County—5 pairs, Union County—0 pairs, Wallowa County—25 pairs (55 estimated), Grant County—0 pairs; Baker County—2 pairs, Harney County—13 pairs (100 estimated), and Malheur County—36 pairs (50 estimated). Henjum (1987) inventoried nesting raptor populations in Union and Baker Counties, finding zero ferruginous hawk pairs in Union County, but 33 pairs in Baker County. This is an increase of 31 pairs over Lardy's (1980) count.

South Dakota

The population was estimated at 350–375 pairs in 1979 (Call, unpub. data). The petitioner estimated 400 pairs in 1991.

Few long-term or short-term studies of ferruginous hawks have been conducted in South Dakota. Blair and Schitoskey (1982) studied ferruginous hawks on a 7,000 km² (2,703 mi²) area in northwestern South Dakota, including all of Harding County in 1976 and 1977. They found 24 pairs in 1976 and 17 pairs in 1977. The density of ferruginous hawks on their study area was lower than that found in other areas of the Dakotas.

Texas

The population was estimated at 5–10 pairs in 1979 (Call, unpub. data). The petitioner estimated zero pairs in 1991.

Schmutz (1987a) studied the winter ecology and survival of ferruginous hawks in an 11-county area of northwestern Texas. Ferruginous hawks were the most abundant raptor with an estimated 2,464 individuals present. Based on sightings of 2 banded individuals and 47 unbanded, the total grassland population of individuals and 47 unbanded, the total grassland population of ferruginous hawks east of the Rocky Mountains contained 14,000 individuals. The distribution of ferruginous hawks in the study area in relation to land use suggested that patches of grassland supporting prairie dogs intermixed with extensive cultivation attracted many ferruginous hawks. Schmutz (1987a) reported that the distribution of ferruginous hawks in the study area in relation to land use suggests that agricultural practices and extensive human activity had no negative effect on this hawk during the winter period.

Utah

The population was estimated at 200–225 pairs in 1979 (Call, unpub. data). The petitioner estimated 190–300 pairs in 1991.

Woffinden and Murphy (1989) conducted the most extensive long-term study of ferruginous hawks in the literature. Their study area included 238 km² (92 mi²) of a 932 km² (360 mi²) area in parts of Cedar, Rush, Skull, and Dugway Valleys in west-central Utah. In 1967, 13 nesting pairs fledged 8 young ferruginous hawks. The following year 14 pairs produced 28 young. Production remained high through 1972 when 31 young were fledged from 16 occupied territories. Then ferruginous hawk reproductive effort declined sharply with a drop in prey numbers. Wagner and Stoddardt (1972) suggested that jack rabbit populations were cyclic with peak numbers occurring every 7–10 years. Jack rabbit populations in Woffinden and Murphy's study area declined again prior to the 1984 season when another intensive search was conducted. No hawks were observed in the area during the 1986 nesting season. One prey species, the black-tailed jack rabbit, normally made up about 95 percent of the ferruginous hawk prey biomass (Smith and Murphy 1973). Even though jack rabbit population in Cedar Valley peaked during the 1980 nesting season, an expected increase in ferruginous hawk numbers did not occur. Thus, members of this local population failed to respond positively to increasing prey numbers, and the ferruginous hawk may currently be extirpated from the area as a nesting species. Even though the ferruginous hawk population appeared to be on the increase during the early part of the study, the demise of the population may be explained by the interaction of low production and estimated mortality rates. The authors suspect that extinction was influenced by high mortality rates and habitat alteration. Circumstantial evidence suggests that some individuals may also have left the study area in response to low prey densities.

Washington

The population was estimated at 30–40 pairs in 1979 (Call, unpub. data). The petitioner estimated 63 pairs in 1991. The Washington Department of Wildlife estimated 62 nesting pairs in 1987.

The first comprehensive study of the ferruginous hawk in Washington was conducted by Bowles and Decker (1931), who described nests, clutch sizes, food habits, interspecific relations, and habitat use. Since that time, the lands of eastern Washington have undergone tremendous change, resulting from intensive dryland wheat farming, irrigation, water development, and urban sprawl (Fitzner et al. 1977). Fitzner et al. (1977) studied ferruginous hawks in a 38,848 km² (15,000 mi²) area including 12 counties in southeastern Washington. They found 31 nest sites. In 1974, 23 nest sites were located, of which 9 were active. A survey of the available nesting habitat revealed that no fewer than 15, and perhaps 20 pairs, of adult birds bred in the State. Of these, 12 or 13 pairs will likely produce young each year.

The ferruginous hawk is listed by the State of Washington as a threatened species because its occurrence level is low. However, the margin of the species' normal range only extends into eastern

Washington; therefore, numbers are not expected to be high. The last Statewide survey, conducted in 1987, totaled 62 nesting pairs after searching 103 historic territories. To date, those territories seem to be secure without a major threat of destruction or disturbance. The Washington Department of Wildlife is planning another comprehensive population survey in 1992.

Wyoming

The population was estimated at 400–600 pairs in 1979 (Call, unpub. data). The petitioner estimated 800 pairs in 1991. Quantified information is lacking on the historical population status of ferruginous hawks in Wyoming. McCreary (1939) indicated that the species was common and widespread. The current breeding distribution of the ferruginous hawk is Statewide in Wyoming, excluding the mountainous areas. Raptor surveys and incidental reports have revealed 483 nesting locations in Wyoming (Oakleaf 1986). Estimates by degree of latitude and longitude (latilongs) indicate that the Statewide population certainly exceeds 800 nesting pairs (Oakleaf 1986). The widespread distribution and abundance of the ferruginous hawk tends to place this species at a lower priority for attention from the Wyoming Game and Fish Department's nongame program (Oakleaf 1985).

Canada

Based on evidence of a 50 percent reduction in the breeding range of the ferruginous hawk in Canada, the Committee on the Status of Endangered Wildlife in Canada assigned "threatened" status to this species in 1980 (Schmutz 1989). An attempt is being made in Canada in 1992 to downlist the ferruginous hawk from threatened to rare because of the increasing population size (W. Harris, Saskatchewan Provincial Wildlife Agency, pers. comm., 1992).

The population was estimated at 500–700 pairs in 1979 (Call, unpub. data). The petitioner estimated 500–1,000 pairs in 1991. Schmutz (1989) reported 1,772 pairs in Alberta in 1987. Smith (1987) estimated a minimum population of 170 nesting pairs in Saskatchewan. W. Harris (pers. comm., 1992) stated that the minimum breeding population in Saskatchewan in 1991 was 500 breeding pairs and may be closer to 750 pairs. DeSmet and Conrad (1991) reported an estimated population of 50 pairs in Manitoba. These estimates provide a minimum population of 2,322–2,572 pairs in Canada.

Manitoba

Ferruginous hawks were probably never widely distributed in historic times. In 1984, Ratcliff and Murray (1984) located a ferruginous hawk nest in southwestern Manitoba, the first known nest record in the province in 57 years. During 1987, 11 nests were found in the extreme southwest from Broomhill to Lyleton. Ferruginous hawks were observed in 23 other townships north to St. Lazare and east to Ninga. During 1988, 32 nests were found north to Lenore and Rivers, and east to Shilo, Treesbank, and Hilton. Adults were also observed in 17 other townships during the breeding season north to St. Lazare, and east to Oak Hammock Marsh north of Winnipeg. Whether or not ferruginous hawk populations have expanded in Manitoba during the 1980's is open to speculation (DeSmet and Conrad 1991).

Saskatchewan

Macoun and Macoun (1909) reported that on their westward travel in 1906, they noted ferruginous hawks "regularly and commonly" between Yorkton and Edmonton. Houston and Bechard (1984) provided a detailed account of the breeding distribution and its retraction over time. Currently ferruginous hawks are reasonably abundant in an L-shaped area including 20 percent of their former range, bordering Alberta and Montana. W. Harris (unpubl. data) recorded a steady increase from 13 nests in 1980 to 20 nests in 1988 on a 400 km ^{2} (155 mi ^{2}) area in extreme southwestern Saskatchewan. In Saskatchewan as well as Alberta, the northern areas of the ferruginous hawks' historic range that have been vacated by the species have been invaded by aspen stands from the aspen parkland to the north (Houston and Bechard 1984).

Alberta

Schmutz (1987b) searched for ferruginous hawks on 76 study plots in 1982 and 83 plots in 1987. The number of ferruginous hawks recorded was 45 in 1982 and 76 in 1987; a 69 percent increase. An estimate by Schmutz (1991) suggested that 1,772 pairs of ferruginous hawks nested in the study area in 1987; about 700 more than in 1982. Ninety-five percent confidence intervals were 653–1,511 pairs in 1982; 1,283 to 2,261 pairs in 1987. The results of this work suggest that ferruginous hawks now nest more abundantly and more widely in southeastern Alberta than they did 5 years ago.

Winter Range

Warkentin and James (1988) examined data from the annual Christmas Bird Count to assess changes in the distribution and abundance of the ferruginous hawk across its wintering range from 1952 to 1984. A significant increase in numbers occurred over this period; most pronounced over the last 11 years. By combining all regions to create a yearly mean of hawks per 1,000 miles covered, it was found that over the 33-year period there has been a highly significant increase in the number of ferruginous hawks recorded on Christmas Bird Counts.

Considering only the first 24 years of data, there was no significant change in the population recorded on the counts. Data from 1984 were analyzed to assess the impact of recently added counts on the rapid increase in the number of ferruginous hawks seen, beginning about 1974. The mean number of hawks seen on all counts added since 1974 and included in the 1984 count was not significantly different from the mean of those counts in 1984 from locations which had also been a part of the 1974 count. Much of the increase in numbers can be attributed to changes over the last decade. Of primary interest is the fact that over the last 11 years there has been a dramatic overall increase in ferruginous hawk numbers (Warkentin and James 1988).

The comparison between the mean number of ferruginous hawks seen for the established and more recent counts suggests that this increase is not attributable simply to the inclusion of new areas with disproportionately large numbers of ferruginous hawks. Possible reasons for the increase include: (1) Greater awareness of raptor conservation, (2) greater awareness of researchers concerning sensitivity for ferruginous hawks to disturbance, and (3) the introduction of artificial nest structures in several areas. The result has been an apparent increase in nesting density and reproductive success, which may also have contributed to increased population levels (Schmutz et al. 1984).

(2) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Service found no information to suggest that the ferruginous hawk population has been hampered by any of the criteria in this factor. The Service is not aware of any commercial or recreational activities that would impact this species, because it is a nongame animal and therefore not hunted.

The Service is further not aware of any extensive collection of ferruginous hawk specimens for scientific or educational purposes.

(3) Disease or Predation

The Service is aware of only one instance of ferruginous hawk mortality from disease. Cooper and Pugsley (1984) diagnosed a malignant mesothelioma (tumor) in a 4-year old female ferruginous hawk that had been kept in captivity. Several references cited in Olendorff and Fish (1985) describe predation on nestling ferruginous hawks. However, no widespread problem with predation is known throughout the species' range.

(4) The Inadequacy of Existing Regulatory Mechanisms

The ferruginous hawk currently receives Federal protection through the Migratory Bird Treaty Act (16 U.S.C. 703–712) Treaty Act). The Treaty Act protection extends to the bird, its nest, eggs, or any parts thereof. Further, the Bureau of Land Management has made significant strides in ferruginous hawk management, particularly under the authority of the Federal Land Policy and Management Act of 1976 (Management Act). The principal management responsibility of the Bureau of Land Management, in relation to wildlife, concerns habitat (Olendorff et al. 1989). The Management Act formalizes the principles of multiple use and sustained yield as Bureau of Land Management missions. The Bureau of Land Management has developed and implemented several intensive habitat management efforts for ferruginous hawk with the Management Act as its authority (Olendorff et al. 1989).

(5) Other Natural or Manmade Factors Affecting its Continued Existence

No such factors were identified or recognized at this time.

Summary

The foregoing discussion indicates that the ferruginous hawk is highly variable in its annual population levels. Much of this variability may be due to fluctuations in the prey species on which the hawk feeds. Habitat alteration may also play an important role in short-term date that are available, however, indicate that the continental population of ferruginous hawks, at least at the moment, appears to have increased over the last 13 years. Circumstantial evidence suggests further that the species is currently adapting positively to various management techniques designed to enhance its population, not least of which is the establishment of artificial nest structures. After review of the petition, accompanying documentation, references cited therein, and other information obtained, the Service found that the petition presented information insufficient to conclude that the requested action may be warranted.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Grand Island, Nebraska, Field Office, See **ADDRESSES** above.

Author

This notice was prepared by Mr. Craig A. Faanes (see **ADDRESSES** above).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Dated: August 6, 1992.

Richard N. Smith,

Acting Director, Fish and wildlife Service.

[FR Doc. 92–19657 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Findings and Commencement of Status Reviews for Three Petitions to List Four Species as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day findings on pending petitions to add four species to the Lists of Endangered and Threatened Wildlife and Plants. Three petitions to list four species have been found to present substantial information indicating that the requested actions may be warranted.

DATES: The findings announced in this notice were made on November 27, 1991, for the San Francisco lessingia and Mission Delores campion; February 27, 1992, for the Vail Lake ceanothus; and August 7, 1991, for the Mount Hermon June beetle. Comments and materials related to these petition findings may be submitted to the appropriate Field Supervisor at the addresses given below until further notice.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor at the following addresses: U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (Vail Lake ceanothus and Mount Hermon June beetle); or U.S. Fish Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803 & 1823, Sacramento, California 95825 (San Francisco Lessingia and Mission Delores campion). The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above **ADDRESSES.**

FOR FURTHER INFORMATION CONTACT: Steve Chambers, Office Supervisor, at the above Ventura address (telephone 805/644–1766); or Wayne White, Field Supervisor, at the above Sacramento address (telephone 916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published in the **Federal Register.** If the Service finds that a petition presents substantial information indicating that a requested action may be warranted, then the Service initiates a status review on that species. The Service announces positive 90-day findings on three petitions to list four species as endangered. The Service has, therefore, initiated formal status reviews on three plants: *Lessingia germanorum* var. *germanorum* (San Francisco lessingia), *Silene verecunda* ssp. *verecunda* (Mission Dolores campion), and *Ceanothus ophiochilus* (Vail Lake ceanothus); and the Mount Harmon June beetle (*Polyphylla barbata*). Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned actions are warranted, not warranted, or warranted but precluded by higher priority listing actions, within 1 year of the receipt of a petition that presents substantial information.

The Service has determined that the following petitions present substantial information that the requested actions may be warranted.

On May 29, 1991, the Service received a petition to emergency list five candidate plants; the Persidio clarkia (*Clarkia franciscana*), Marin dwarf-flax

(*Hesperolinon congestum*), San Francisco lessingia (*Lessingia germanorum* var. *germanorum*), San Francisco Owl's-clover (*Orthocarpus floribundus*), and Mission Delores campion (*Silene verecunda* ssp. *verecunda*) as endangered. Mr. Brian O'Neill, General Superintendent of the Golden Gate National Recreation Area, submitted the petition dated May 28, 1991.

The petitioner stated that the five plants, which occur on the Presidio of San Francisco, California, are threatened by base closure activities on the Presidio. This "increasing activity" will occur until 1995 when the transition is complete from the Department of Defense, United States Army, to the Department of the Interior, National Park Service. Examples of transition threats cited in the petition were hazardous or toxic waste site studies and clean-up, and increased traffic and recreational activities.

Pursuant to section 12 of the Act, *Clarkia franciscana*, *Hesperolinon congestum*, and *Orthocarpus floribundus* were among 3,187 taxa included in a Smithsonian Institution report of plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document 94–51, was presented to Congress on January 9, 1975. On July 1, 1975 (40 FR 27823), the Service published a notice in the **Federal Register** accepting the House document as a petition within the context of section 4(b)(3) of the Act. As a result of this pending petition, the Service has found annually in October since 1983 that the petitioned listing of *Clarkia franciscana*, *Hesperolinon congestum*, and *Orthocarpus floribundus*, among the other taxa included in the Smithsonian report, is warranted but precluded due to other higher priority listing actions pursuant to section 4(b)(3)(B)(iii) of the Act. Consequently, the Service has evaluated the petitioner's requested action only for the plants not subject to a pending petition; *Lessingia germanorum* var. *germanorum* and *Silene verecunda* ssp. *verecunda*.

Lessingia germanorum var. *germanorum*, an annual plant in the Asteraceae (sunflower) family, historically was restricted to the coastal dune scrub community on the San Francisco Peninsula. Because of the loss of three historic populations in the city of San Francisco, the variety was believed to be restricted to remnant sandy habitats on the Presidio, San Francisco County, California (Smith and Berg 1988). However, Elizabeth McClintock and Paul Reeberg discovered a population west of Reservoir Hill on San Bruno Mountain in San Mateo County in 1989.

A field review of the Presidio population in June 1989 by representatives of the Army and California Department of Fish and Game revealed 4 colonies totalling more than 310 plants growing on remnant dune and other sandy deposits. The Presidio population is threatened by sand quarrying activities, trampling by pedestrians, invasive alien vegetation (i.e., weeds, ornamental groundcovers and trees), and activities associated with maintenance of base landscaping (i.e., lawn moving, fertilizing). According to a 1991 update to the rare plants on San Bruno Mountain (Victoria Harris, Thomas Reid Associates, Palo Alto, California, pers. comm., August 14, 1991), surveyors noted in 1990 that 15 percent of this population has been destroyed by bulldozer activity. The San Bruno Mountain population is threatened by urban development, trampling by pedestrians, and competition from non-native plants.

Silene verecunda ssp. *verecunda*, a perennial herb in the Caryophyllaceae (pink) family, ranges from coastal areas in San Francisco south to Santa Cruz in Santa Cruz County. The subspecies occupies open, generally grassy areas in sandy to rocky soils in coastal strand, coastal prairie, and coastal scrub plant communities (Young 1979). According to California Natural Diversity Data Base records, populations of the campion exist on Mount Davidson and the Presidio in San Francisco County; Edgewood County Park, McNea Ranch, Montara Mountain, San Bruno Mountain in San Mateo County; and Arroyo Las Trancas and Swanton in Santa Cruz County. Though the fate of these populations is not well documented, populations at Lake Merced and Mission Delores are reportedly extinct (Young 1979).

The Presidio population, which occurs on the dunes above Baker Beach, consisted of only seven plants in 1985. The San Bruno Mountain population, which grows in the rocky habitat on the south side of the Southeast Ridge, may be threatened by trampling. Though the distributional and threat data seem to be weak, the range of the campion overlaps a rapidly urbanizing portion of the San Francisco Bay area.

Lessingia germanorum var. *germanorum* is included as a category 1 candidate species in the Service's February 21, 1990, Plant Notice of Review (55 FR 6184); *Silene verecunda* ssp. *verecunda* is included as a category 2 candidate species. A category 1 candidate species is a species for which the Service has enough substantial information on biological vulnerability and threats to list them as endangered or threatened; however, these listing actions are precluded by other proposals of higher priority. A category 2 candidate species is a species for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

On September 16, 1991, the Service received a petition from Steve Boyd of Riverside, California, to list Vail Lake ceanothus (*Ceanothus ophiochilus*) as endangered. The petition was dated September 13, 1991.

Vail Lake ceanothus, a perennial shrub in the Rhamnaceae (buckthorn) family, was first discovered in 1989 and has recently been described as a new species (Boyd *et al.* 1991). The plant belongs to the *Cerastes* section of the genus *Ceanothus*, which is distinguished from the section *Euceanothus* by the following morphological characteristics: persistent leathery leaves with stomata in sunken pits; thick, darkly-colored corky stipules; and flowers arranged in axillary umbels. Vail Lake ceanothus is distinguished from other members of the section *Cerastes* by its leaves, which are smaller and narrower, and which have strongly swollen lower surface. The plant is also distinguished from other members of *Cerastes* in southern California in that the flowers are blue to pinkish-lavender rather than the usual white to cream-white. Specimens of Vail Lake ceanothus currently being grown at Rancho Santa Ana Botanic Garden have retained the distinct morphological characteristics observed in the wild, countering the suggestion that the distinctive morphological characteristics were merely a variation induced by edaphic influences.

The petitioner submitted information indicating that the plant occurs on the eastern flank of Oak Mountain near Vail Lake in southwestern Riverside County, within a chaparral community dominated by Vail Lake ceanothus, chamise (*Adenostema fasciculata*), California buckwheat (*Ericogonum fasciculatum*), and black sage (*Salvia mellifera*). The one known population is represented by approximately 3,000 to 5,000 individuals that cover an area of approximately 20 acres. While the genus *Ceanothus* has historically been collected by botanists frequently and is well represented within herbarium collections, specimens of Vail Lake ceanothus have never been collected from any other locale. This taxon is apparently restricted to a rock outcrop that is characterized by its high

pyroxenite content and low levels of calcium and available phosphorus. According to Dr. Douglas Morton of the U.S. Geological Survey, the substrate is so unusual it is unlikely to occur elsewhere (Boyd 1991).

The petition states that the population is threatened with habitat alteration and destruction resulting from proposed urban development. The entire range of the plant occurs on a large (7,000 acre) privately-owned parcel that is owned by Devere Anderson Enterprises. The county of Riverside is currently preparing an Environmental Impact Report to address a change in zoning for the Vail Lake Specified Plan. Most of the habitat is currently undisturbed, though up to 3 percent of the population was recently destroyed by road grading.

The plant is also threatened with habitat alteration resulting from fire suppression, which would change succession within the fire-adapted chaparral community of which the ceanothus is a part. Unlike other ceanothus, Vail Lake ceanothus does not crown sprout, but relies on fire to stimulate germination of the seed bank.

On February 11, 1991, the Service received a petition dated February 5, 1991, from Mr. Stephen McCabe, Conservation Chair, Santa Cruz County Chapter, California Native Plant Society, to emergency list the Mount Hermon June beetle (*Polyphylla barbata*) as an endangered species.

The Mount Hermon June beetle, a category 2 candidate species, has only been found in the immediate vicinity of the community of Mount Hermon in Santa Cruz County, California. The beetles of this genus are associated with inland marine sand deposits known as the sandhills. The limited range of the beetle may be due to a combination of factors that include soil preferences and food sources. The petitioner reported that since members of this genus usually require some moisture in the sandy or otherwise loose soil they inhabit, it may be that the beetle is limited to certain areas within the sandhills habitat. Given the known limited distribution of the Mount Hermon June beetle, the local geology, and the typical habitat preferences, it is believed that the beetle is confined to the sandhills ecosystem.

The petitioner stated that the primary factor that threatens the Mount Hermon June beetle is the continued loss of the sandhills habitat by commercial sand mining operations. The prime remaining intact piece of sandhills habitat (the Quail Hollow Quarry) is being mined. Sand mining activities continue on the sandhill habitat at the nearly Olympia Quarry. The long-term plans of the quarry operators are to mine the entire properties. Previous commercial sand mining activities are reported to have eliminated the other adjacent sandhill habitat.

Based on scientific and commercial information contained in the above petitions, referenced in the petitions, and otherwise available to the Service at this time, the Service has determined that the petitions to list *Lessingia germanorum* var. *germanorum* (San Francisco lessingia); *Silene verecunda* ssp. *verecunda* (Mission Delores campion); *Ceanothus ophiochilus* (Vail Lake ceanothus); and the Mount Hermon June beetle (*Polyphylla barbata*) present substantial information that listing may be warranted for these species.

These findings initiate a status review for each of the above species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of all four of the species mentioned above.

References Cited

Boyd, S., Ross, T., and L. Arnseth. 1991. *Ceanothus ophiochilus* (Rhamnaceae): A distinctive, narrowly endemic species from Riverside County, California. Phytologia 70(1):28–41.

Boyd, S. 1991. Letter addressed to Mr. Everett McCracken, Jr., President, California Fish and Game Commission, Sacramento.

Smith, J.P., and K. Berg. 1988. Inventory of rare and endangered vascular plants of California. California Native Plant Society Special Publ. No. 1.

Young, P. 1979. *Silene verecunda* Watson ssp. *verecunda*, Delores Campion. California Native Plant Society. Unpublished report.

Author

This notice was prepared by Jim Bartel, Sacramento Field Office (see **ADDRESSES** section); Dennis Carlson and Connie Rutherford, Ventura Field Office (see **ADDRESSES** section); and Elizabeth Sharpe, Portland Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232 (503/231–6131).

List of Subjects in 50 CFR Part 17

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

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

Dated: July 13, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–19658 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Public Meeting and Extending the Public Comment Period on the Selkirk Mountains Woodland Caribou (Rangifer tarandus caribou) Revised Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting and extending time period for public comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that a public meeting will be held on the Revised Selkirk Mountains Woodland Caribou Recovery Plan, and that the comment period has been extended to October 19, 1992. The public meeting and extension of the comment period will allow all interested parties to submit written comments on the proposal. The notice of document availability for the Selkirk Mountains Woodland Caribou Recovery Plan was published on June 10, 1992 (57 FR 24652).

DATES: The comment period on the recovery plan is reopened and extended until October 19, 1992. The public meeting will be held from 2 to 4 p.m. and from 7 to 9 p.m. on September 3, 1992, in Bonners Ferry, Idaho.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 or 503/231–6131. The public meeting will be held at the old Bonners Ferry High School auditorium located on Oak Street in Bonners Ferry, Idaho. Written comments and materials concerning the recovery plan should be sent to the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles H. Lobdell, Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho at 208/334–1931.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act) requires the development of recovery plans for listed species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of such new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Selkirk Mountains woodland caribou lives in old growth forest types above 4,000 feet elevation in the Selkirk Mountains of northern Idaho and northwestern Washington. The species faces extinction due to human caused mortality and habitat deterioration. The woodland caribou, which weighs 200 to 400 pounds, is not quite 4-feet tall at the shoulder, and is the only member of the deer family able to travel when snow reaches the depth it does in the Selkirks. Large hooves and long dewclaws aid stability where footing is treacherous. These natural snowshoes keep caribou from sinking into all but the loosest snow. To survive, caribou have evolved behaviors, such as staying in dense cedar-hemlock stands during early winter where the forest canopy slows the accumulation of deep snow and some green browse is available. Later in the season, as the snow hardens and supports their weight, caribou leave the lower elevation forests for open ridges above. There they walk on top of the snow to reach arboreal lichen (old men's beard) hanging from tree branches high above the forest floor. They have, over time, come to depend on this mossy-looking plant for food to get through the winter.

The revised recovery plan resulted from a year-long effort by scientists from State and Federal agencies and the University of Idaho. It calls for reducing human-caused mortality by preventing poaching and misidentification by hunters; and maintaining habitat by reducing fire and insect impacts to forest habitat and through better management of timber harvesting. Once finished, the plan will guide the actions of all Federal and State agencies whose actions affect the conservation of this species. The ultimate goal is to restore the species to a secure status in its native ecosystem.

The Service has scheduled a public meeting to present information and receive comments on the revised recovery plan on the Selkirk Mountains woodland caribou on September 3, 1992, from 2 to 4 p.m. and from 7 to 9 p.m. at the old Bonners Ferry High School auditorium located on Oak Street in Bonners Ferry, Idaho. Parties wishing to make a statement should bring a written copy of their statement to the meeting. Oral questions and statements will be accepted, but may be limited in length if the number of parties present at the meeting necessitates such a limitation. There are, however, no limits to the length of written comments which may be presented at the public meeting or mailed to the Service. Written comments should be submitted to the Service on or before October 19, 1992, to the **ADDRESSES** given above.

Author

The primary author of this notice is Mr. Richard P. Howard, U.S. Fish and Wildlife Service, Boise Field Office, 7696 Overland Rd., room 576, Boise, Idaho 83705.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 10, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-19659 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 57, No. 161
Wednesday, August 19, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Region; Exemption From Appeal of the Decision to Control Southern Pine Beetle in Indian Mounds Wilderness

AGENCY: Forsest Service, USDA.

ACTION: Notice: exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to suppress southern pine beetle infestations within Indian Mounds Wilderness, Sabine National Forest, Texas during the current outbreak when they are threatening pine forests on adjacent private lands.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Wesley A. Nettleton, Group Leader, Entomology, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347–2961.

SUPPLEMENTARY INFORMATION: The Forest Stewardship Act of 1990 authorizes the protection of federally-owned forest lands from insects and diseases. The 1964 Wilderness Act in section 4(d)(1), states; "In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable." Further, the April 6, 1987, Record of Decision, USDA Forest Service, Suppression of the Southern Pine Beetle (SPB) for Final Environmental Impact Statement stated that control of individual SPB infestation will not be conducted unless site specific analysis, including a biological evaluation of the individual infestation, indicates that the spot(s): "Occur within ¼ mile of susceptible host type on State and private land or high-value Federal forest resources other than commercial timber". The SPB spots will normally be allowed to run their natural course in this wilderness. Before any control action is taken, a site-specific environmental analysis must be completed and affected and interested publics informed about potential control-related activities. If landowners are not taking vigorous control efforts to reasonably protect themselves from SPB infestations occurring on their land, no action would be taken to protect them from infestations in wilderness.

SPB spots have crossed the wilderness boundary this year and others are active within the wilderness and within ¼ mile of susceptible host pine forests on private commercial forests and residential subdivisions. Due to the current major SPB outbreak within Indian Mounds Wilderness, an analysis is currently underway on a proposed action to suppress the SPB infestations that are predicted to cross the wilderness boundary onto private lands where owners show evidence of actively managing their land to suppress SPB infestations, or are maintaining a high degree of forest health. The analysis includes control methods identified in the selected alternative in the Record of Decision for SPB-FEIS, and it will also include the use of behavioral chemicals that have been proven effective in local experimental work by the Texas Forest Service. The environmental document being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public. Given the existing rapid expansion of infestations, time for action is critical. Any additional delay will result in further loss to presently undamaged timber resources on private lands.

Dated: August 14, 1992.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 92–19860 Filed 8–17–92; 11:47 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Changes in Hydric Soils of the United States

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.31(a)(3)(i), the Soil Conservation Service, United States Department of Agriculture gives notice of a change in the Hydric Soils of the United States as listed in the third edition of the Hydric Soils of the United States, Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. Mausbach, National Leader, Technical Soil Services, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, telephone (202) 720–1812.

SUPPLEMENTARY INFORMATION: The third edition of the Hydric Soils of the United States was published June 1991, and a notice of change published in the Federal Register, October 11, 1991, vol. 56, no. 198, page 51371. The changes published herein reflect soils added and deleted since the 1991 publication.

The national list of hydric soils changes as additional soil series are recognized and defined and/or properties of existing soil series are updated based on additional data. These changes reflect refinements in knowledge of the soils of the United States. New soil series are recognized as soils are mapped in previously unmapped areas. These new series have always met hydric soil criteria, whether recognized as series or not, and thus represent an insignificant change in acreage of hydric soils. Soils that are removed from the list are mostly dry phases of existing hydric soils. These dry phases would not have met wetland hydrology criteria, thus represent an insignificant change in acreage of wetlands.

The list of hydric soils is computer generated using the hydric soil criteria and a database of properties of each soil series of the United States. The database is also used to generate interpretations of how soils perform for many land uses. Therefore, some changes in the list of hydric soils result from adding phases for a hydric soil to refine another interpretation. This split of addition of a hydric phase causes an increase in the number of hydric soils, but does not affect the acres of the hydric soil. Data for all soil series are in the Soil Interpretations Record and may

be reviewed by contacting a local office of the Soil Conservation Service in the appropriate state.

Dated: August 6, 1992.

Thomas Calhoun,

Acting Director, Soil Survey Division.

Soils on the October 91 Hydric List, But Not on the January 92 Hydric List

[The "Hydric Criteria Number" Column Indicates What Caused the Soil To Be Included in the Hydric List. See the "Criteria for Hydric Soils" To Determine the Meaning of This Column]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Altoona (WI0263) [4]											
Bivans (FL0378) Typic Albaqualfs.	Hyper thermic.	SP	1.01–1.5	Jun-Sep	>6.0	None				0–5%	3W
										5–8%	4W
										8–12%	6W
Boulogne (FL0498) Typic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>6.0	None				All	3W
Chaires (FL0251) Alfic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>=6.0	None				All	4W
Flemington (FL0017) Typic Albaqualfs.	Hyper thermic.	SP	1.0–1.5	Jun-Sep	>6.0	None				0–5%	3W
										5–8%	4W
										8–12%	6W
Fredon (NJ0038) Aeric Haplaquepts.	Mesic	SP	0.5–1.5	Oct-Jun	>6.0	None—Occasional.	Brief	Jan-Apr		0–3%	3W
										3–8%	3W
Gansner, Ponded (CA 1438) [4].											
Lynne (FL0009) Ultic Haplaquods.	Hyper thermic.	P	0.5–1.5	Jul-Sep	>=6.0	None				All	3W
Oakhurst (TX0896) Vertic Albaqualfs.	Thermic	MW	6.0		6.0	None				1–3%	3E
										3–5%	4E
										5–8%	6E
Olustee (FL0048) Ultic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>6.0	None				All	3W
Pledger (TX0304) Typic Pelluderts.	Thermic	MW	>6.0		>6.0	Rare—Common	Brief	Jan-Dec		Rare	2W
										Freq	5W
										Occa	2W
Prebish, Stony (MN0563) [4].											
Ravendale (CA1027) Entic Chromoxererts.	Mesic	MW	>6.0		>6.0	Rare—Occasional.	Brief—Long.	Jan-Apr		0–2%	6S
Saugatuck (MI0045) Aeric Haplaquods.	Mesic	SP	0.5–2.0	Nov-May	>6.0	None				All	4W
Talquin (FL0248) Entic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>=6.0	None				All	4W
Waldron, Loamy Substratum (MO0213) Aeric Fluvaquents.	Mesic	SP	1.0–3.0	Nov-May	>6.0	Rare—Occasional.	Brief—Long.	Dec-May		All	2W

[1] Some soil interpretation records representing phases of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] Some drainage classes for this soil are not hydric.
[4] This soil record has been removed from the database since it last appeared in the hydric list.

Soils on the January 1992 Hydric List, But Not on the October 1991 Hydric List [The "Hydric Criteria Number" Column Indicates What Caused the Soil To Be Included in the Hydric List. See the "Criteria for Hydric Soils" To Determine the Meaning of This Column]

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Albaton, Dry (IA0107) Vertic Fluvaquents.	Mesic	VP	+4.–2.0	Nov-Jul	<6.0	Frequent	Brief	Mar-Oct	2B3,3	All	6W
Alvodest, Somewhat Poorly Drained (OR1467) Natric Camborthids [3].	Mesic	SP	+.5–3.0	Dec-Apr	<6.0	Rare			3	All	7W
Anan (AK0362) Typic Cryaquents.	Cryic	VP, P	0.5–1.0	Jan-Dec	<6.0	Frequent	Long	Jul-Nov	2B3,4	0–2%	6W
Auganaush (MN0635) Mollic Ochraqualfs.	Frigid	P	1.0–3.0	Nov-Jun	<6.0	None			2B3	Drained	2W
										Undrained	4W

SOILS ON THE JANUARY 1992 HYDRIC LIST, BUT NOT ON THE OCTOBER 1991 HYDRIC LIST [THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN]—Continued

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Belize, Drained (LA0195) Typic Hydraquents.	Thermic	P	0.5–1.5	Jan-Dec	<6.0	Rare			2B3	All	4W
Bardwell, Winter Flooding (KY0192) Fluventic Hapludolls [2].	Thermic	W	3.0–6.0	Feb-Mar	<6.0	Frequent	Long	Dec-May	4	0–6% 6–12% 12–20% 20–25%	3W 2E 4E 6E
Bayvi, Limestone Substratum (FL0563) Cumulic Haplaquolls.	Thermic	VP	0–1.0	Jan-Dec	<6.0	Frequent	V Brief	Jan-Dec	2B3	All	8W
Bear Lake, Very Poorly Drained (ID1699) Typic Calciaquolls.	Frigid	VP	+2–1.0	Dec-Aug	<6.0	Frequent	V Long	Dec-Sep	2B3,3,4	0–1%	5W
Bellslake (ID6023) Fluvaquentic Humaquepts.	Frigid	VP	+1.–1.5	Oct-Aug	<6.0	Frequent	V Long	Dec-Jun	2B3,4,4	All	5W
Bemis, Stony (ME0139) Aeric Cryaquepts.	Cryic	P	0–1.0	Sep-Jun	<6.0	None			2B3	All	7S
Berner (MN0628) Terric Borosaprists.	Frigid	VP	+1.–2.0	Nov-Jun	<6.0	None			1	Drained Undrained	4W 6W
Bigsag (MT1077) Typic Halaquepts.	Frigid	P	1.0–3.0	Dec-Jun	<6.0	Rare-Occasional.	Brief-Long	Mar-May	2B3	Rare Occas	7W 7W
Bigsandy, Saline (MT1335) Typic Fluvaquents.	Frigid	P	1.0–2.0	Dec-Jun	<6.0	Occasional	Long	Apr-Jun	2B3	All	7W
Boley (OK0362) Aeric Fluvaquents.	Thermic	P	0–1.0	Nov-Jun	<6.0	Frequent	V Brief-Brief.	Apr-Sep	2B3	All	5W
Borah (ID1639) Aquic Calcixerolls [1].	Frigid	P	1.0–2.0	Apr-Aug	<6.0	Occasional	Brief	Apr-May	2B3	All	5W
Boulder Lake, Poorly Drained (NV2551) Aquic Chromoxererts.	Frigid	P	+.5–1.5	Dec-Jun	<6.0	None			2B3,3	All	6W
Brandsvold (MN0625) Typic Argiaquolls.	Frigid	P	1.0–3.0	Mar-Jun	<6.0	None			2B3	All	2W
Brinnum, Alkali (NV2573) Typic Halaquepts [1].	Mesic	VP	0.5–1.5	Sep-May	<6.0	Occasional	Long	Oct-May	2B3	0–2%	5W
Capitola (WI0423) Mollic Ochraqualfs.	Frigid	P, VP	+1 –1.0	Oct-Jun	<6.0	None			2B3,3	Drained Undrained	3W 6W
Cathro, Frequently Flooded (MI0108) Terric Borosaprists.	Frigid	VP	+2–1.0	Jan-Dec	<6.0	Frequent	Brief-V Long.	Mar-May.	1,3	All	8W
Cheniere, Frequently Flooded (LA0202) Typic Udipsamments G5T11,2.	Thermic	SE	>6.0		<6.0	Frequent	Long	Jan-Dec	4	Freq	5W
Chichagof (AK0348) Histic Cryaquepts.	Cryic	VP	0–1.0	Jan-Dec	<6.0	Occasional	V Brief	Oct-Apr	2B3	All	7W
Chunilna (AK0352) Typic Cryaquands.	Cryic	VP	0–1.5	Apr-Sep	<6.0	None			2B3	0–7%	6W
Citypoint (WI0441) Typic Borosaprists.	Frigid	VP	+1–1.0	Nov-Jan	<6.0	None			1	All	7W
Clara (FL0560) Spodic Psammaquents.	Thermic	P	0–1.0	Jan-Dec	>=6.0	None-Common	Brief	Jan-Mar	2B1	None, Rare Common	4W 6W
Clara (FL0561) Spodic Psammaquents.	Thermic	VP	+2–0	Jan-Dec	>=6.0	None			2B1, 3	All	6W
Colvin, Occasionally Flooded (ND0417) Typic Calciaquolls.	Frigid	P	0–1.0	Mar-Jun	<6.0	Occasional	Brief	Mar-Jun	2B3	All	3W
Cormant (MN0002) Mollic Psammaquents.	Frigid	P	0.5–2.5	Apr-Jul	>=6.0	None			2B2	All	4W

SOILS ON THE JANUARY 1992 HYDRIC LIST, BUT NOT ON THE OCTOBER 1991 HYDRIC LIST [THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN]—Continued

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Crestmeade (MO0319) Typic Agrialbolls.	Mesic	P	0.5–1.5	Nov–Apr	<6.0	None			2B3	0–1%	2W
										1–3% Eroded	2E
										1–3% Sev Er	3E
										3–5% Eroded	3E
										3–5% Sev Er	4E
Degarmo, Wet (OR1386) Cumulic Haplaquolls [1].	Frigid	P	1.0–4.0	Mar–Sep	<6.0	Frequent	Brief	Mar–Jun	2B3	All	5W
Dosa (CA2426) Aquic Chromoxererts.	Mesic	SP	+.5–2.5	Dec–Apr	<6.0	None			2A, 3	0–2%	5W
Duckston, Ponded (NC0269) Typic Psammaquents.	Thermic	P	+1.–0	Jan–Dec	>=6.0	None-Common	Brief	Jan–Dec	2B1, 3	All	7W
Edwards, Sandy Substratum (MI0616) Limnic Medisaprists.	Mesic	VP	+1–1.0	Sep–Jun	<6.0	None			1, 3	All	5W
Fredon, Poorly Drained (NJ0138) Aeric Haplaquepts [1].	Mesic	P	0–.5	Oct–Jun	<6.0	None-Occasional.	Brief	Jan–Apr	2B3	0–3% Drained	3W
										Undrained	4W
Frost, Ponded (LA0087) Typic Glossaqualfs.	Thermic	P	+2–0	Jan–Dec	<6.0	Frequent	V Long	Jan–Dec	2B3, 3, 4	All	7W
Granby, Clayey Substratum (MI0623) Typic Haplaquolls.	Mesic	P,VP	+1–1.0	Nov–Jun	>=6.0	None			2B2, 3	Drained	4W
										Undrained	5W
Haslie (MN0629) Limnic Borosaprists.	Frigid	VP	0–1.0	Nov–Jul	<6.0	None			1	Drained	4W
										Undrained	6W
Haslie, Ponded (MN0630) Limnic Borosaprists.	Frigid	VP	+2–0	Jan–Dec	<6.0	None			1,3	All	8W
Herdcamp (SD0498) Typic Haplaquolls.	Mesic	VP	0–1.0	Apr–Oct	<6.0	Frequent	Brief	Mar–Nov.	2B3	All	6W
Hershal, Occasionally Flooded (OR1473) Cumulic Haplaquolls.	Mesic	P	0.5–1.5	Mar–Jun	<6.0	Occasional	Brief	Mar–Jun	2B3	All	3W
Isanti, Depressional (MN0651) Typic Haplaquolls.	Frigid	VP	+1–1.0	Oct–Jun	>=6.0	None			2B2,3	Drained	4W
										Undrained	6W
Jebavy (MI0617) Aeric Haplaquods.	Mesic	P	+–1.0	Oct–Jun	>=6.0	None			2B1,3	Drained	4W
										Undrained	5W
Jebavy, Sandy Surface (MI0633) Aeric Haplaquods.	Mesic	P	+1–1.0	Oct–Jun	>=6.0	None			2B1,3	Drained	5W
										Undrained	5W
Joseph, Occasionally Flooded (WA1926) Aquic Xerofluvents [2].	Mesic	MW	3.0–5.0	Dec–Jun	>=6.0	Frequent	Long	Dec–Jun	4	Freq	6W
Kanona, Poorly Drained (NY0058) Aeric Haplaquepts [1].	Mesic	P	0–0.5	Dec–Jun	<6.0	None			2B3	Undrained	3W
										Drained	3W
Kezan, Overwash (NE0383) Mollic Fluvaquents.	Mesic	P	1.0–3.0	Nov–Jun	<6.0	Common	Brief	Mar–Jul	2B3	Occas	4W
										Channeled, Freq.	5W
Kratka, Stratified Substratum (MN0640) Typic Haplaquolls.	Frigid	P	1.0–5.0	Apr–Jul	<6.0	None			2B3	All	3W
Kratka, Stratified Substratum, Depressional (MN0641) Typic Haplaquolls.	Frigid	VP	+1–1.0	Apr–Jul	<6.0	None			2B3,3	Drained	4W
										Undrained	6W
Lamoose, Calcareous (MT1325) Typic Haplaquolls.	Frigid	P	0.5–2.0	Apr–Jul	<6.0	None-Rare			2B3	0-2%	5W

SOILS ON THE JANUARY 1992 HYDRIC LIST, BUT NOT ON THE OCTOBER 1991 HYDRIC LIST [THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN]—Continued

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Lamson, MAAT<50, Mucky Surface (NY0079) Aeric Haplaquepts.	Mesic	P,VP	+1-0.5	Dec-May	<6.0	None			2B3,3	All	5W
Langless (ID1756) Typic Calciaquolls.	Mesic	P	1.0-1.5	Oct-Jun	<6.0	Frequent	V Long	Oct-Jun	2B3,4	0-2%	5W
Leafriver, High PPT (MN0652) Histic Humaquepts.	Frigid	VP	+1-1.0	Nov-Jul	<6.0	None			2B3,3	Undrained Drained	6W 4W
Leaksville (NC0118) Typic Albaqualfs.	Thermic	P	0-1.0	Dec-Mar	<6.0	None			2B3	All	3W
Leon, Depressional (FL0501) Aeric Haplaquods.	Thermic	VP	+2-0	Jan-Sep	<6.0	None			2B3,3	All	7W
Leon, Hydric (FL0093) Aeric Haplaquods.	Thermic	P	0-0.5	Feb-Sep	<6.0	None			2B3	All	4W
Leon, Hydric (FL0564) Aeric Haplaquods.	Thermic	P	0-0.5	Jun-Feb	<6.0	None			2B3	All	4W
Limerick, Sandy Substratum (VT0122) Typic Fluvaquents.	Mesic	F	0-1.5	Nov.-May	<6.0	Frequent	Brief	Nov-May	2B3	Drained Undrained	3W 4W
Madalin, Gravelly Substratum (NY0518) Mollic Ochraqualfs.	Mesic	P,VP	+.5-0	Nov-Jun	<6.0	None			2B3,3	SICL, SIL, SIC MK	4W 5W
Malin, Rarely Flooded (OR1495) Fluvaquentic Haplaquolls.	Mesic	P	+1-4.0	Mar-Jun	<6.0	Rare			2B3,3	All	4W
Marcuse (CA0360) Vertic Haplaquepts.	Thermic	VP,P	1.0-3.0	Dec-Mar	<6.0	None-Rare			2B3	MOD Alkali STR Alkali	4W 6W
Marcuse, Sodic Overwash (CA1495) Vertic Haplaquepts.	Thermic	P	1.0-3.0	Dec-Mar	<6.0	None-Rare			2B3	All	4W
Mariel (OR1515) Sapric Borohemists.	Frigid	VP	+2.-0.5	Jan-Dec	<6.0				1,3	All	5W
Markey, Commonly Flooded (MI0635) Terric Borosaprists.	Frigid	VP	+1-1.0	Nov-June	<6.0	Common	Brief	Mar-Nov	1	All	6W
Markey, Frequently Flooded (MI0619) Terric Borosaprists.	Frigid	VP	0-2.0	Nov-Jun	<6.0	Common	Long	Mar-Jun		All	
Markey, MAAT<44 (MI0629) Terric Borosaprists.	Frigid	VP	+1-1.0	Nov-Jun	<6.0	None			1	Undrained Drained	5W 4W
Massena, Poorly Drained (NY0020) Aeric Haplaquepts [1].	Mesic	P	0-1.0	Nov-May	<6.0	None			2B3	0-8% Drained 8-15% 0-8% Undrained.	3W 3E 4W
Mazie (ID1350) Typic Umbraqualfs.	Frigid	VP	0-1.5	Feb-Jun	<6.0	Frequent	Long	Feb-May	2B3,4	All	5W
Meadowbrook, Limestone Substratum, Flooded (FL0567) Grossarenic Ochraqualfs [1].	Thermic	VP	0-0.5	Jun-Dec	>=6.0	Common	Long	Jul-Nov	2B1,4	All	5W
Misteguay (MI0611) Aeric Haplaquepts.	Mesic	P	0-1.0	Oct-May	<6.0	Rare-Common	Brief-V Long.	Oct-Jun	2B3,4	Rare, Drained Freq, Drained Occas, Drained Undrained	3W 3W 3W 5W
Monarda, Rubbly (ME0136) Aeric Haplaquepts.	Frigid	P	0-1.5	Oct-Jun	<6.0	None			2B3	All	7S
Naconiche (TX1236) Cumulic Humaquepts.	Thermic	VP	0-1.0	Jan-Dec	<6.0	Frequent	Long-V Long.	Jan-Dec	2B3,4	All	7W
Newlang (WI0472) Humaqueptic Psammaquents	Mesic	P,VP	+1-1.0	Nov-Jun	<6.0	Occasional	Brief	Apr-Jun	2B3,3	Drained Undrained	4W 6W

SOILS ON THE JANUARY 1992 HYDRIC LIST, BUT NOT ON THE OCTOBER 1991 HYDRIC LIST [THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN]—Continued

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Niblack (AK0368) Lithic Cryosaprists.	Cryic	VP	0-1.0	Jan-Dec	>=6.0	None			1	0-45%	7W
Niklavar (AK0357) Typic Cryaquents.	Cryic	VP	1.0-2.0	Apr-Oct	<6.0	Occasional	Brief-Long	Apr-Oct	2B3	0-3%	4W
Normal (IL0447) Argiaquic Agrialbolls.	Mesic		1.0-3.0	Mar-Jun	<6.0	None			2B3	0-2% 2-4%	2W 2E
Oaky (FL0108) Mollic Albaqualfs.	Thermic	P	0.5-1.5	Mar-Sep	<6.0	None			2B3	None	4W
Okaw, Nonflooded (IL0445) Typic Albaqualfs.	Mesic	P,VP	+.5-1.0	Mar-Jun	<6.0	None			2B3,3	0-2%	3W
Overcup (AR0131) Vertic Albaqualfs.	Thermic	P	0-1.0	Dec-Apr	<6.0	None			2B3	0-1% 1-30% 0-3%	3W 3E 3W
Ozamis, Saline (OR1384) Fluvaquentic Haplaquolls [1].	Mesic	P	1.0-4.0	Mar-Jun	<6.0	Rare			2B3	All	5W
Pamlico, Loamy Substratum, Ponded (NC02700 Terric medisaprists.	Thermic	VP	+2.-0	Jan-Dec	<6.0	Rare			1,3	All	7W
Perrine, Drained (FL0572) Typic Fluvaquents.	Hyper Thermic.	P	0-1.0	Jun-Nov	<6.0	None			2B3	All	3W
Pit, Overwash (CA2440) Chromic Pelloxererts.	Mesic	P	+.5-3.0	Dec-May	<6.0	Rare			2B3,3	All	5W
Pit, Partially Drained (CA2441) Chromic Pelloxererts.	Mesic	P	0.5-4.0	Dec-May	<6.0	Rare			2B3	All	4W
Pit, Rarely Flooded (CA2348) Chromic Pelloxererts.	Mesic	P	+.5-3.0	Dec-May	<6.0	Rare			2B3,3	All	5W
Ponycreek (WI0434) Humaqueptic Psammaquents.	Frigid	P,VP	+1-1.0	Nov-Jun	<6.0	None			2B3,3	Undrained Drained	6W 4W
Pople (FL0241) Arenic Ochraqualfs.	Hyper Thermic.	P	0-1.0	Jun-Sep	<6.0	None			2B1	All	3W
Pottsburg, Hydric (FL0098) Grossarenic Haplaquods [1].	Thermic	P	0-0.5	Feb-Ser	>=6.0	None-Occasional.	V Brief	Feb-Sep	2B1	All	4W
Racing (OR1512) Typic Cryaquods.	Cryic	P	+1.-1.0	Jan-Dec	<6.0	Occasional	Brief	Nov-Apr	2B3,3	All	6W
Rawhide (FL0110) Typic Argiaquolls.	Thermic	VP	+2-0	Jun-Apr	<6.0	None-Common	Long	Jun-Apr	2B3,3,4	All	7W
Rawhide, Limestone Substratum (FL0113) Typic Argiaquolls.	Thermic	VP	+2-0	Jun-Apr	<6.0	None-Common	Long	Jun-Apr	2B3,3,4	All	7W
Raynham, Calcareous Substratum (VT0121) Aeric Haplaquepts.	Mesic	P,SP	0-2.0	Nov-May	<6.0	None-Rare			2B3	Drained Undrained	3W 4W
Reese, None-Rarely Flooded (NV2566) Aeric Halaquepts [1].	Mesic	P	1.0-3.0	Mar-Jul	<6.0	None-Rare			2B3	All	6S
Reese, Ponded (NV2567) Aeric Halaquepts [1].	Mesic	P	+1-2.0	Nov-Aug	<6.0	Rare			2B3,3	All	6W
Samsula, Flooded (FL0112) Terric Medisaprists.	Hyperthermic.	VP	0-0.5	Mar-Sep	>=6.0	Frequent	Brief-Long		1	All	7W
Satilla (GA0067) Thapto-Histic Fluvaquents.	Thermic	VP	0-1.5	Nov-May	<6.0	None-Common	Long	Dec-Apr	2B3,4	None, Rare Freq	4W 7W
Settlement, Stratified Substratum (NV5407) Aeric Halaquepts.	Mesic	P	1.0-2.5	Feb-Jun	<6.0	Frequent	Long	Mar-Jun	2B3,4	All	7W

SOILS ON THE JANUARY 1992 HYDRIC LIST, BUT NOT ON THE OCTOBER 1991 HYDRIC LIST [THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN]—Continued

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Shigh (OR1484) Aeric Alabaquults.	Isomesic	P	0.5–1.0	Nov–Apr	<6.0	None			2B3	All	6E
Springerton (IL0428) Typic Haplaquolls.	Mesic	P	+.5–2.0	Feb–Jun	<6.0	None-Rare			2B3,3	All	2W
Tennille (FL0084) Lithic Psammaquents.	Thermic	P	0.5–1.5	Mar–Sep	>=6.0	None			2B2	All	4W
Tennille, Hydric (FL0088) Lithic Psammaquents.	Thermic	P	0–0.5	Jun–Mar	<=6.0	None-Common	Brief	Jan–Mar	2B2	None, Rare Common	5W 6W
Tughill, Bouldery (NY0431) Histic Humaquepts.	Frigid	VP	+1–0.5	Nov–Jun	<6.0	None			2B3,3	All	7S
Wareham (MA0052) Humaqueptic Psammaquents [3].	Mesic	SP,P	0.5–1.5	Sep–Jun	>=6.0	None			2B2	All	3W
Warman (MN0639) Typic Haplaquolls.	Frigid	P	1.0–2.0	Apr–Jun	<6.0	None			2B3	All	3W
Waucedah, Clayey Substratum (MI0485) Histic Humaquepts.	Frigid	P, VP	+2–1.0	Jan–Dec	<6.0	Frequent	Brief–V Long.	Mar–May.	2B3,3,4	All	5W
Wekoda, Flooded (CA2456) Aquic Chromoxererts [1,2].	Thermic	P	1.5–3.0	Dec–Apr	<6.0	Frequent	Long	Dec–Apr	4	Freq	4W
Welch, Ponded (NV2572) Cumulic Haplaquolls [1].	Frigid	VP	+1–1.5	Nov–Jun	<6.0	None			2B3,3	All	5W
Wickiup (OR0200) Aquic Cryorthents.	Cryic	P	0–2.5	Mar–Oct	>=6.0	None			2B2	All	6W
Wizard (OR1331) Aquic Vitrixerands.	Frigid	SP	0–2.0	Apr–Jun	<6.0	None			2A	All	6E
Zipp, Loamy Substratum, Flooded (IN0550) Typic Haplaquepts.	Mesic	VP	+.5–1.0	Dec–May	<6.0	Frequent	Brief	Dec–May.	2B3,3	All	3W

[1] Some soil interpretation records representing phases of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] Some drainage classes for this soil are not hydric.

[FR Doc. 92–19235 Filed 8–18–92; 8:45 am]
BILLING CODE 3410–19–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Current Industrial Reports (Wave II Mandatory).
Form Number(s): Various.
Agency Approval Number: 0607–0395.
Type of Request: Revision of a currently approved collection.
Burden: 22,175 hours.
Number of Respondents: 20,781.
Avg Hours Per Response: 37 minutes.
Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions. Due to the large number of surveys conducted in the CIR program, we have divided them into 3 waves, each cleared for three years. Each wave contains two separate clearance packages—one for mandatory reports and one for voluntary. The waves are staggered so that only one of the three waves is submitted each year.
Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.
Frequency: Monthly, Quarterly, and Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 6, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–19197 Filed 8–14–92; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Industrial Reports (Wave II Voluntary).

Form Number(s): Various.

Agency Approval Number: 0607–0206.

Type of Request: Revision of a currently approved collection.

Burden: 4,272 hours.

Number of Respondents: 2,338.

Avg Hours Per Response: 13 minutes.

Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions. Due to the large number of surveys conducted in the CIR program, we have divided them into 3 waves, each cleared for three years. Each wave contains two separate clearance packages—one for mandatory reports and one for voluntary. The waves are staggered so that only one of the three waves is submitted each year.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.

Frequency: Monthly, Quarterly, and Annually.

Respondent's Obligation: Voluntary—Monthly, Quarterly, and Annually, Mandatory—Annual counterpart forms.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 6, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–19198 Filed 8–14–92; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–570–815]

Antidumping Duty Order: Sulfanilic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Brian Smith, 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) 377–1756 and (202) 377–1766, respectively.

ORDER:

Scope of Order

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the HTC subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials.

Sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 25, 1992, the Department of Commerce (the Department) made its final determination that sulfanilic acid from the People's Republic of China (PRC) is being sold at less than fair value 57 FR 29705 (July 6, 1992). In its final determination, the Department also found that critical circumstances did not exist with respect to exports from the PRC by China National Chemicals Import & Export Corporation, Hebei Branch. On August 10, 1992, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of sulfanilic acid from the PRC, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries or warehouse withdrawals, for consumption of sulfanilic acid from the PRC made on or after August 10, 1992, the date on which the ITC issued its final determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before August 10, 1992, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of sulfanilic acid from the PRC. These antidumping duties will be assessed on all unliquidated

entries of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC issued its final affirmative determination of threat of material injury. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Manufacturer/producer/exporter	Margin percent
China National Chemicals Import & Export Corporation, Hebei Branch (Sinochem Hebei)	19.14
All others	85.20

This notice constitutes the antidumping duty order with respect to sulfanilic acid from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-19663 Filed 8-18-92; 8:45 am]

BILLING CODE 3510-DS-M

Columbia University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-156R. *Applicant:* Columbia University, New York, NY 10027. *Instrument:* (2) Micromanipulators, Models WR-90-R and WR-90-L. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* See notice at 56 FR 56633, November 6, 1991. *Reasons:* The foreign instrument provides a positioning range of 10 mm with a fine precision of 2μm. *Advice Submitted by:* National Institutes of Health, June 2, 1992.

Docket Number: 91-167R. *Applicant:* The University of Texas Medical Branch, Galveston, TX 77550. *Instrument:* 3-Dimensional Micromanipulators, Models WR-91-R and WR-91-L. *Manufacturer:* Narishige, Japan. *Intended Use:* See notice at 56 FR 64244, December 9, 1991. *Reasons:* The foreign instrument provides a positioning range of 10 mm with a fine precision of 2μm. *Advice Submitted by:* National Institutes of Health, June 2, 1992.

Docket Number: 92-059. *Applicant:* U.S. Geological Survey, Reston, VA 22092. *Instrument:* Field Spectrometer w/Global Positioning System, Model PIMA II. *Manufacturer:* Integrated Spectronics Pty., Ltd., Australia. *Intended Use:* See notice at 57 FR 21395, May 20, 1992. *Reasons:* The foreign instrument provides in situ measurements in the 1.3 to 2.5μm region with acquisition time less than 30s, 200 channels and a built-in light source to avoid atmospheric absorption features. *Advice Received From:* National Aeronautics and Space Administration, June 26, 1992.

Docket Number: 92-066. *Applicant:* University of Miami, Miami, FL 33149-1098. *Instrument:* (2) Electronic Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* See notice at 57 FR 23573, June 4, 1992. *Reasons:* The foreign instrument provides in situ, digitized logging of fish dimensions with simultaneous entry of ancillary data which can be downloaded to a PC on return from the field.

Advice Received From: National Marine Fisheries Service, July 2, 1992.

The National Institutes of Health, National Aeronautics and Space Administration and National Marine Fisheries Service advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-19662 Filed 8-18-92; 8:45 am]

BILLING CODE 3510-DS-M

Hofstra University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-186R. *Applicant:* Hofstra University, Hempstead, NY 11550. *Instrument:* Stopped-Flow Kinetics Accessory, Model SFA-12M. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 57 FR 1725, January 15, 1992. *Reasons:* The foreign article rapidly mixes and delivers fluid reactants directly to the observation cell of an existing spectrometer or spectrophotometer. *Advice Submitted By:* National Institutes of Health, July 9, 1992.

Docket Number: 92-013. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Automatic Bubble Reader System, Model BDR-Series II. *Manufacturer:* Bubble Technology, Inc., Canada. *Intended Use:* See notice at 57 FR 7368, March 2, 1992. *Reasons:* The foreign instrument provides a newly developed capability for measuring neutron radiation exposure of personnel wearing bubble-type dosimeters which become clouded by a radiation field. *Advice Received From:* The National Institute of Standards and Technology, July 29, 1992.

Docket Number: 92-043. *Applicant:* Stanford Linear Accelerator Center, Stanford, CA 94309. *Instrument:* Vertex Detector-High Precision Elementary Particle Tracking Detector. *Manufacturer:* Rutherford Appleton Laboratory, United Kingdom. *Intended Use:* See notice at 57 FR 14388, April 20, 1992. *Reasons:* The foreign instrument provides: (1) Two-sided mounting of

CCD arrays on large area, ultra-thin ceramic substrates, (2) stable support structures for precision mounting of the arrays and (3) low noise electronic interconnection and readout. *Advice Submitted By:* National Science Foundation, July 21, 1992.

Docket Number: 92–050. *Applicant:* Stanford University School of Medicine, Stanford, CA 94305–5246. *Instrument:* Flashlamp System, Model JML. *Manufacturer:* Dr. Rapp Optische und Electronische Gerate, Germany. *Intended Use:* See notice at 57 FR 15283, April 27, 1992. *Reasons:* The foreign instrument provides pulse shaping and focusing optics optimized for initiating muscle fiber contraction and pulse power to 240kW. *Advice Submitted By:* National Institutes of Health, July 9, 1992.

The National Institutes of Health, National Institute of Standards and Technology and National Science Foundation advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–19661 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–DS–M

Washington State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–188R. *Applicant:* Washington State University, Pullman, WA 99164–1020. *Instrument:* Rheometer. *Manufacturer:* Physica Messtechnik GmbH U Co., KG, Germany. *Intended Use:* See notice at 57 FR 1725, January 15, 1992. *Advice Submitted By:* National Institute of Standards and Technology, July 17, 1992.

Comments: No comments have been received with respect to this application. *Decision:* Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered August 22, 1991. *Reasons:* The foreign instrument provides independent direct measurement of both shear stress and shear rate and a low-friction motor instead of air bearings. The National Institute of Standards and Technology advises that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–19660 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Reef Fish Advisory Panel (Panel) on September 10–11, 1992, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA, telephone: 504–581–1300. The meeting will begin on September 10 from 8 a.m. until 5 p.m., and will reconvene on September 11 at 8 a.m. The agenda is as follows:

On September 10 the Panel will discuss red snapper allowable biological catch, which includes a review of the stock assessment, the Reef Fish Stock Assessment Panel Report, and the Socioeconomic Assessment Panel Report.

On September 11 the Panel will review scientific information on longline and stressed areas, including consideration of the Council options paper, Florida Department of Natural Resources analyses, and National Marine Fisheries Service analyses; and to review the proposed mutton snapper closure.

For more information contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 14, 1992.

David S. Crestin,

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

[FR Doc. 92–19775 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Standing and Special Reef Fish Scientific and Statistical Committee (Committee) on September 8–9, 1992, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA., telephone: 504–581–1300. The meeting will begin on September 8 from 3 p.m. until 5 p.m., and will reconvene on September 9 at 8 a.m. The agenda is as follows:

On September 8 the Committee will review scientific information on longline and stressed areas, including consideration of the Council options paper, Florida Department of Natural Resources analyses, and National Marine Fisheries Services analyses; and to review the proposed mutton snapper closure.

On September 9 the Committee will discuss red snapper allowable biological catch, which includes a review of the stock assessment, the Reef Fish Stock Assessment Panel report, and the socioeconomic Assessment Panel report.

For more information contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 14, 1992.

David S. Crestin,

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

[FR Doc. 92–19774 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of permit (P129I).

On May 20, 1992, notice was published in the **Federal Register** (57 FR 21397) that an application had been filed by Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296 and Dr. Randall Davis, Texas A&M University, Galveston, TX 77551, to inadvertently harass up to 440 sperm whales (*Physeter macrocephalus*) while tagging up to 10 whales per year with satellite-monitored radio tags and during followup monitoring.

Notice is hereby given that on August 10, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that the Permit: (1) Was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with this permit are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700, Seattle, WA 98115 (206/526–6150).

Dated: August 10, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–19697 Filed 8–18–92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Textile Export Visa Invoice and Amendment of Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

August 13, 1992.

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

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new textile visa invoice and amending visa and exempt certification requirements to require manufacturer's identification.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

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 Coordination Council for North American Affairs (CCNAA) has notified the American Institute in Taiwan (AIT) that beginning on September 1, 1992 a new Textile Export Visa Invoice, replacing the visa document currently in use, will be issued for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992.

The existing export visa arrangement and exempt certification system between the CCNAA and AIT is being amended, for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992, to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be provided on the textile visa document.

The name and address of the company should be placed somewhere on the front of the original export visa document, not within the visa or certification stamp. It should be preceded by the label "manufacturer's identification" or "M.I.D." The name is the full name of the company which performs the substantial part of the manufacturing of the product. The address should include the street name or P.O. Box number (if available), and the city and/or province where the manufacturing occurs. In the case of a shipment covered by a single export visa document containing products which are each manufactured by a number of different companies, the name and address of each company involved should be listed on the export visa document. If additional space is needed for listing the name and address of the firms, the back of the export visa document may be used. Responsible officials will make their best efforts to determine the name and address of a firm or firms which best meet the basic criterion of being an actual manufacturer of the product. This information should appear on the export visa document prior to export from Taiwan. However, for goods exported during the period September 1-September 30, 1992, the importer may type this information on the front of the original visa document. For goods exported on or after October 1, 1992 without the M.I.D. on the export visa document, a new visa containing this information must be obtained.

See 56 FR 26656, published on June 10, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 13, 1992.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 5, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan which were not properly visaed or certified by the Coordination Council for North American Affairs (CCNAA).

Effective on September 1, 1992, the directive dated June 5, 1991 is being amended to provide for the use of a new Textile Export Visa Invoice which will be issued by the Coordination Council for North American Affairs (CCNAA) for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992. The

new invoice provides a section to place the name and address of the manufacturer of the textile product covered by the export visa or certification and replaces the invoice currently being used. A facsimile of the new invoice is enclosed with this letter.

Also effective on September 1, 1992, for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992, you are directed to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be placed on the textile visa document. This information shall appear on the export visa document prior to export from Taiwan. However, for goods exported during the period September 1-September 30, 1992, the importer may type this information on the front of the original visa document.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa which includes the identification of the manufacturer on the visa document shall be denied entry and a new visa containing this information must be obtained.

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,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-F

1. 出口商(名稱及地址) SELLER (NAME & ADDRESS)	2. 廠商編號 EXPORTER NO.	3. 原產國 COUNTRY OF ORIGIN	4. 出口日及裝運方式 SHIPPING DATE & MEANS OF TRANSPORT	5. 進口港 PORT OF ENTRY
		TAIWAN, R.O.C. (583)		
		6. 商業發票號碼及日期 COMMERCIAL INVOICE NO. & DATE		7. 接單日期 DATE ORDER ACCEPTED
		8. 交易條件及總金額 TERMS OF SALE & TOTAL VALUE		
9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)		10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)		

11. 貨品名稱及有關資料 MARKS & NUMBERS OF PACKAGES, DESCRIPTION OF GOODS & RELATED INFORMATION	12. 數量 QUANTITY	13. 單價 UNIT PRICE (FOB U.S. DOLLARS)	14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)
SPECIMEN			

15. 其他費用及備註欄 OTHER COSTS NOT INCLUDED IN FOB TOTAL VALUE & REMARKS	16. 製造商(名稱及地址) MANUFACTURER (NAME & ADDRESS)	工廠登記證號碼 REGISTRATION NO.
17. 本單交易負責人名稱 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER		

18. 本證明書一經塗改即告失效，並送請主管機關依規定處理。
THIS DOCUMENT SHALL BE INVALIDATED IN CASE OF ANY ERASURE, STRIKEOVER, ALTERATION AND INTERPOLATION.

19. 簽證機構印章 COMPETENT AUTHORITIES' STAMP & SIGNATURE	20. 簽證機構 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA
中華民國紡織業外銷拓展會 TW Visa No. : Category : Quantity : Signature : Date : TAIWAN TEXTILE FEDERATION	中華民國紡織業外銷拓展會 TAIWAN TEXTILE FEDERATION TTF BUILDING 22, AI KUO EAST ROAD TAIPEI, TAIWAN REPUBLIC OF CHINA TELEX: 23143 TTFROC TAIPEI CABLE ADDRESS: "TTFROC" TAIPEI TELEPHONE: (02) 341-7251 TELEFAX: (02) 392-3855

1. 出口商(名稱及地址) SELLER (NAME & ADDRESS)	2. 廠商編號 EXPORTER NO.	3. 原產國 COUNTRY OF ORIGIN	4. 出口日及裝運方式 SHIPPING DATE & MEANS OF TRANSPORT	5. 進口港 PORT OF ENTRY
		TAIWAN, R.O.C. (583)		
		6. 商業發票號碼及日期 COMMERCIAL INVOICE NO. & DATE		7. 接單日期 DATE ORDER ACCEPTED
		8. 交易條件及總金額 TERMS OF SALE & TOTAL VALUE		
9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)		10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)		

11. 貨品名稱及有關資料 MARKS & NUMBERS OF PACKAGES, DESCRIPTION OF GOODS & RELATED INFORMATION	12. 數量 QUANTITY	13. 單價 UNIT PRICE (FOB U.S. DOLLARS)	14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)
SPECIMEN			

15. 其他費用及備註欄 OTHER COSTS NOT INCLUDED IN FOB TOTAL VALUE & REMARKS	16. 製造商(名稱及地址) MANUFACTURER (NAME & ADDRESS)	工廠登記證號碼 REGISTRATION NO.
17. 本單交易負責人名稱 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER		

18. 本證明書一經塗改即告失效，並通知主管機關依規定處理。
THIS DOCUMENT SHALL BE INVALIDATED IN CASE OF ANY ERASURE, STRIKEOVER, ALTERATION AND INTERPOLATION.

19. 簽證機構核章 COMPETENT AUTHORITIES' STAMP & SIGNATURE	20 簽證機構 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA
中華民國紡織業外銷拓展會 Certificate Nº 200008 Exempt Item: Quantity: Signature: Date: TAIWAN TEXTILE FEDERATION	中華民國紡織業外銷拓展會 TAIWAN TEXTILE FEDERATION TTF BUILDING 22, AI KUO EAST ROAD TAIPEI, TAIWAN REPUBLIC OF CHINA TELEX: 23143 TTFROC TAIPEI CABLE ADDRESS: "TTFROC" TAIPEI TELEPHONE: (02) 341-7251 TELEFAX: (02) 392-3855

[FR Doc. 92-19714 Filed 8-18-92; 8:45 am]
BILLING CODE 3510-DR-C

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on September 23 and 24, 1992, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date.

For further information contact Linda Snellings at (703) 355–2665.

Dated: August 13, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19666 Filed 8–18–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: The Secretary of Education announces a public meeting on the Centers for Independent Living program authorized by the Rehabilitation Act of 1973, as amended. The purpose of the meeting is to receive public comments on the proposed independent living evaluation standards and compliance indicators published in the Federal Register on Friday, July 10, 1992.

Among the issues to be discussed at the meeting are the following:

(1) To what extent are the proposed evaluation standards and compliance indicators valid, useful, and measurable?

(2) Are there activities, in addition to the proposed six activities, that should be considered in assessing the practice of the independent living philosophy?

(3) Do the proposed severe disability categories adequately reflect the range of disabilities of individuals served by the program?

(4) Could the definitions and measures of actions and outcomes for effecting change in community options for independent living be improved?

(5) How is the achievement of independent living goals currently measured?

(6) How many services should a center for independent living provide in order to comply with the proposed indicator that requires each center to provide a range of services to individuals with severe handicaps?

(7) Are the proposed weights, minimum performance levels, and performance ranges appropriate?

MEETING INFORMATION: The public meeting is scheduled to be held from 5 p.m. to 11 p.m. on August 27, 1992, at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC.

The Secretary encourages interested parties to attend the public meeting and requests that those parties participating provide a written copy of their comments.

The meeting facilities and proceedings will be accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should contact John Nelson, room 3326, Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2741. Telephone (202) 205–9362 voice or TDD.

Dated: August 13, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19690 Filed 8–18–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RS92–27–000]

Alabama Tennessee National Gas Co; Prefiling Conference

August 13, 1992.

Take notice that a prefiling conference will be convened in this proceeding on August 31, 1992, at 1 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, continuing through September 1, 1992. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Alabama-Tennessee to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208–1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19713 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–56–000]

Black Marlin Pipeline Co.; Prefiling Conference

August 13, 1992.

Take notice that a prefiling conference will be convened in this proceeding on October 1, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Black Marlin to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208–1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19712 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–102–000]

Kentucky West Virginia Gas Co.; Informal Settlement Conference

August 13, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on September 3, 1992, at 10 a.m., at the offices of the Federal Energy Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 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 Joan Dreskin at (202) 208–0738 or James A. Pederson at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19718 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–82–000]

Superior Offshore Pipeline Co.; Prefiling Conference

August 13, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 22, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Superior Offshore to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208–1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19717 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–87–000]

Transwestern Pipeline Co.; Notice Clarifying Procedures

August 13, 1992.

On July 29, 1992, Transwestern Pipeline Company (Transwestern) tendered for filing and acceptance tariff sheets to comply with Order No. 636. On August 12, 1992, Transwestern notified the Commission that, in light of Order No. 636–A, it would file a revised compliance filing by August 19, 1992.

Notice is given that any protest to, or comments on, Transwestern's compliance filing must be filed with the Commission within 21 days of the date the revised filing is submitted.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19721 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2523–002]

Wisconsin Electric Power Co.; Petition for Declaratory Order

August 13, 1992.

Public notice is given that on July 7, 1992, the City of Oconto Falls, Wisconsin (petitioner), filed a petition for declaratory order with the Federal Energy Regulatory Commission regarding the Oconto Falls Hydroelectric Project No. 2523. The petition seeks a determination that the licensing proceeding in Project No. 2523 (where neither the original licensee nor a third-party applicant filed the application for new license under part 16 of the Commission's Regulations) is an original license proceeding to which the municipal preference provisions of section 7(a) of the Federal Power Act apply.

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 210, 211, and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.210, 385.211, 385.214 (1992). All such comments, protests, and motions should be filed by September 18, 1992. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Copies of the petition for declaratory order are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19720 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00337; FRL–4080–8]

Notice of Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that EPA's Office of Pollution Prevention and Toxics (OPPT) and the National Toxicology Program (NTP) of the National Institute of Environmental Health Sciences (NIEHS) are co-sponsoring a scientific workshop entitled "Feasibility of Using Reduced Protocols for Carcinogenicity Testing of Chemicals." The purpose of this workshop is to (1) Evaluate the technical adequacy of the inter-species and intersex correlation analyses of animal carcinogenicity data bases conducted by EPA/OPPT and several other investigators; and (2) define the implications and impact of the use of reduced testing protocols on the processes of hazard identification and risk assessment.

DATES: The workshop will be held on September 22–23, 1992.

ADDRESSES: The workshop will be held at: Embassy Suites, 1900 Diagonal Rd., Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Henry, Office of Pollution Prevention and Toxics (TS–796), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202)–260–1256.

SUPPLEMENTARY INFORMATION: All sessions are open to the public. Since space is limited, pre-registration is strongly suggested. Seating at each day's session will be on a first come basis.

Dated: August 11, 1992.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–19751 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66163; FRL 4079–8]

Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 17, 1992, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 210, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 73 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100 LA-89-0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 MD-89-0001	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 MO-89-0001	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 MS-89-0001	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 PA-90-0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 SC-89-0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 VA-89-0003	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000239-02492	Ortho Home Pest Insect Killer	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d*-trans-2,2-dimethyl- *N*-Octyl bicycloheptene dicarboximide *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000264 OR-79-0003	Amchem Amiben	Ammonium 3-amino-2,5-dichlorobenzoate
000270-00174	Nature's Own Herbal Flea Repellent Collar	Oil of citronella Oil of eucalyptus Cedarwood oil Oil of Pennyroyal
000270-00184	Nature's Own Herbal Flea Repellent Powder II	Oil of citronella Essential oils Oil of eucalyptus Cedarwood oil Oil of Pennyroyal
000270-00185	Nature's Own Herbal Flea Repellent Powder	Oil of citronella Essential oils Oil of eucalyptus Cedarwood oil Oil of Pennyroyal
000270-00220	Farnam Cat-Away Indoor Cat Repellent	Allyl isothiocyanate *p*-Propenylanisole Oil of citronella Essential oils Oil of lemongrass Menthol Thymol
000270-00221	Farnam Dog-Away Indoor Dog Repellent	Allyl isothiocyanate *p*-Propenylanisole Oil of citronella Essential oils Oil of lemongrass Menthol Thymol
000270-00222	Farnam Dog-Away Outdoor Dog Repellent	Allyl isothiocyanate Oil of citronella Essential oils Oil of lemongrass Menthol Thymol
000270-00223	Whitmire's No Chew	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate Essential oils Thymol
000476 MO-84-0006	Ordram 10 G	*S*-Ethyl hexahydro-1*H*-azepine-1-carbothioate
000538-00027	Pro-Turf Brand Broad Spectrum Fungicide	Phenylmercuric acetate Tetramethyl thiuramdisulfide
000538-00036	Proturf 24-5-3 Fertilizer Plus Fungicide	Phenylmercuric acetate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Tetramethyl thiuramdisulfide
000618-00028	Agri-Strep (Streptomycin Sulfate Agricultural) Type-D	Streptomycin sulfate
000618-00072	Agri-Strep 500 (Agricultural Streptomycin, Merck) Bactericide	Streptomycin sulfate
000769-00563	Purge	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000869-00159	Green Light Many Purpose Dust	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000869-00177	Green Light Diazinon 2 Granules	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000869-00182	Green Light Fire Ant Control	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
001021 MN-83-0010	Permacide Permethrin Concentrate 80%	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
001022-00465	Permatox 101	Pentachlorophenol, sodium salt Phenylmercuric acetate
003125-00050	Dyrene 50% Wettable Powder	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00064	Dylox 5% Dust	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00080	Dyrene 50% Wettable Powder Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00107	Dyrene 3% Granular Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00125	Dyrene 5% Granular Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00127	Dyrene Lawn Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00175	Dyrene 80% Dry Concentrate	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00199	Dyrene Technical	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00216	Dyrene Lawn and Garden Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00349	Dyrene 4 Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00407	Best 4 Servis Brand Navunex-8 Dust	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00408	Best 4 Servis Brand Navunex 400 Liquid Spray	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00409	Navuney Liquid Spray	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00410	Dyrene 50% Wettable Powder In Water Soluble Packets	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 CA-77-0066	Dyrene Foliar Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 IA-91-0002	Dyrene 50% Wettable Powder Foliage Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 OH-90-0005	Dyrene 50% Wettable Powder Foliage Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 OH-91-0003	Dyrene 50% Wp In Water Soluble Packets	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
004581-00079	Endothal Turf Herbicide	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, disodium salt
004581 NH-83-0001	Endothal Turf Herbicide	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, disodium salt
004581 WA-79-0036	Endothal Turf Herbicide	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, disodium salt
004816 AZ-88-0021	Permanone 40% EC	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
004816 AZ-88-0022	Permanone Pyrenone Liquid Dust	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
005887-00070	Black Leaf Tomato Fruit Set Spray	beta-Naphthoxyacetic acid
006720-00133	SMCP Chloropicrin Fumigant	Chloropicrin
006720-00230	SMCP Termifume	Methyl bromide Chloropicrin
007276-00001	New RMC Bait Kills Rats/Mice with Prolin	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
007276-00014	RMC Rodent Bait (tid-Bits Form)	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
007276-00016	RMC Rodent Bait Meat (bits Form)	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
007276-00017	RMC Meat Bait	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
011411-00013	Leslie's Algae Out	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
011411-00014	Leslie's Algae Control II	Poly(oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride) 2-Chloro-4,6-bis(ethylamino)-*s*-triazine
019713-00310	Southland Pearson's Tomato Fixer	beta-Naphthoxyacetic acid
033458-00002	CHC Granular Chlorine for Swimming Pools	Calcium hypochlorite
034704-00309	Bovinox Pour on Cattle Insecticide	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
034704-00582	Roberts Pour on Cattle Insecticide	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
034704-00631	Bovinox 80% Soluble Powder	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
036638-00019	Tra-Kill	Menthol
039398-00015	Sumithion 8E	*O,O*-Dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate
045002-00009	Mansul	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Sulfur
045002-00019	Oxy Cop 8 L S	Copper ammonium carbonate Sulfur
045639 CA-80-0185	Botran 75W Fungicide	2,6-Dichloro-4-nitroaniline
045639 NV-89-0002	Botran 75 W	2,6-Dichloro-4-nitroaniline
047231-00001	B-50 National Microbicide	Potassium dimethyldithiocarbamate
055947-00105	Spur 22 EW Insecticide	*N*-(2-Chloro-4-trifluoromethyl)phenyl)-DL-valine (±)-cyano(3-phenoxyphenyl)methyl
064746-00003	Funginex Wettable Powder	*N,N*-(1,4-Piperazinediylbis(2,2,2-trichloroethylidine) bis(formamide)

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000239	Chevron Chemical Co., Registration & Regulatory Affairs Dept., 940 Hensley Street, Richmond, CA 94804.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85067.
000476	Stauffer Chemical Co., / ICI Americas Inc., Agricultural Products, Concord Pike & New Murphy Rd, Wilmington, DE 19897.
000538	O.M. Scott & Sons Co., 14310 Scottslawn Rd., Marysville, OH 43041.
000618	Merck & Co Inc., Hillsborough Rd, Three Bridges, NJ 08887.
000769	SURECO, Inc., Box 938, Fort Valley, GA 31030.
000869	Green Light Co., Box 17985, San Antonio, TX 78217.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
001022	Chapman Chemical Co., Box 9158, Memphis, TN 38109.
003125	Miles Inc., 8400 Hawthorn Rd Box 4913, Kansas City, KS 64120.
004581	Agchem Division/Atochem North America, Three Parkway, Room 619, Philadelphia, PA 19102.
004816	Fairfield American Corp., 809 Harrison Street, French Town, NJ 08825.
005887	Wilbur-Ellis Co., Box 9518, Fresno, CA 93792.
006720	Southern Mill Creek Products, 5414 North 56th Street, Tampa, FL 33610.
007276	RMC Prod Co., Box 848, Ft Dodge, IA 50501.
011411	Leslie's Swimming Pool Supplies Inc., Box 2108, Chatsworth, CA 91313.
019713	Drexel Chemical Co., Box 9306, Memphis, TN 38109.
033458	Allied Universal Corp., 8350 N.W. 93 Street, Miami, FL 33166.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
036638	Scentry Inc., 610 Central Ave, Billings, MT 59102.
039398	Sumitomo Chemical America, Inc., Director of Insect Control & Research Inc., 1330 Dillion Heights Ave, Baltimore, MD 21228.
045002	Cuproquim Corp., Agent For: Cuproquim Sa, 9601 Katy Fwy 350, Houston, TX 77024.
045639	Nor-Am Chemical Co., 3509 Silverside Rd., Wilmington, DE 19803.
047231	National-Oilwell, Box 4638, Houston, TX 77210.
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
064746	Biologic Inc., 11 Lake Ave Extension, Danbury, CT 06811.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 17, 1992. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier

cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: August 7, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-19649 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50743; FRL-4067-1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

42545-EUP-3. Issuance. Agrolinz, Inc., 1669 Kirby Parkway, Suite 100, Memphis, Tennessee 38120-1303. This experimental use permit allows the use of 1,800 pounds of the herbicide O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate on 2,000 acres of cabbage to evaluate post-emergence control of annual weeds. The program is authorized only in the States of Colorado, Florida, Illinois, Indiana, Michigan, New York, North Carolina, Ohio, Texas, and Wisconsin. The experimental use permit is effective from April 24, 1992 to April 24, 1994. A temporary tolerance for residues of the active ingredient in or on cabbage has been established. (Cynthia L. Giles-Parker, PM 22, Rm. 229, CM #2, (703-305-5540))

241-EUP-123. Issuance. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400. This experimental use permit allows the use of 280 pounds of the plant growth modifier 1-(3-chlorophthalimido)cyclohexanecarboxamide on various ornamental crops to evaluate growth. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The experimental use permit is effective from April 7, 1992 to May 31, 1993. (Cynthia L. Giles-Parker, PM 22, Rm. 229, CM #2, (703-305-5540))

352-EUP-159. Extension. E.I. duPont deNemours & Company, Inc., Agricultural Products, P.O. Box 80038, Wilmington, DE 19880-0038. This experimental use permit allows the use of 40 ounces of the herbicide N[(4,6-dimethoxypyrimidin-2yl)aminocarbonyl)-3-(ethysulfonyl)-2-pyridinesulfonamide on 80 acres of potatoes to evaluate the control of various weeds. The program is authorized only in the States of Idaho, Maine, Michigan, Oregon, Washington, and Wisconsin. The experimental use permit is effective from April 28, 1992 to December 31, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 241, CM #2, (703-305-6800))

3125-EUP-202. Issuance. Miles, Inc., Agriculture Division, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013. This experimental use permit allows the use of 58.85 pounds of the insecticide *O*-[2-(1,1-dimethylethyl)-5-pyrimidinyl])*O*-ethyl *O*-(1-methylethyl)phosphorothioate and 2.95 pounds of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethylcyclopropanecarboxylate on 403 acres of corn to conduct a terrestrial field study. The program is authorized only in the State of Iowa. The experimental use permit is effective from May 5, 1992 to December 31, 1992. This permit is issued with the limitation that corn grown in the treated fields will not be used for food or feed and will be withheld from entering commercial channels of trade until such time as the appropriate tolerances have been established. (Robert Forrest, PM 14, Rm. 211, CM #2, (703-305-6600))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: June 15, 1992.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-19654 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-60041; FRL-4160-3]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Hysan Corporation	00033400504	Silica Gel	Hysan Hy-Dri Insecticide Spray	7/15/92
Whitmire Research Laboratories, Inc.	00049900223	Silica Gel	Whitmire PT 230 Tri-Die	7/15/92
Sureco, Inc.	00076900569	Silica Gel	Stephenson Chemicals D.P.S., Roach Powder	7/15/92
Tomic Insecticide Company, Inc.	00144000001	Silica Gel	Tomic Micro-Cide Dust	7/15/92
	00144000005	Silica Gel	Hi-Py Super Roach Dust	7/15/92
Happy Jack Inc.	00278100043	Silica Gel	Carpet Flea Powder	7/15/92
D-Con Company Inc.	00328200018	Silica Gel	D-Con Warpath Roach Killer	7/15/92
ABC Compounding Company, Inc.	00386200117	Silica Gel	Tornado Residual Dust	7/15/92
Pet Chemicals	00475800026	Silica Gel	Holiday Aerogel Powder Dries Up Roaches	7/15/92
	00475800032	Silica Gel	Holiday Flea Stop for Dogs	7/15/92
	00475800034	Silica Gel	Holiday Tick Stop	7/15/92

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Protexall Products Inc.	00497200069	Silica Gel	Protexall's Roach Zapper II	7/15/92
	00497200082	Silica Gel	Protexall Roach Powder	7/15/92
Vasco Chemical Company Inc.	01056200001	Silica Gel	Vasco Formula 100-G	7/15/92
Sungro Chemicals Inc.	01147400064	Silica Gel	Sun-Dust Roach Away	7/15/92
Speer Products Inc.	01171500193	Silica Gel	Speer Flea and Tick Powder for Carpets	7/15/92
Smithkline Beecham Animal Health	03742500013	Silica Gel	Adams Flea and Tick Dust II	7/15/92
Coulston International Corporation	05040400002	Silica Gel	Cic Residual Insecticide Powder No. 1	7/15/92
RSR Laboratories, Inc.	05179300021	Silica Gel	Elite Extra Strength Flea & Tick Powder II	7/15/92
	05179300033	Silica Gel	Elite Aerosol Seven Month Insect Spray	7/15/92
	05179300043	Silica Gel	6 Month Insect Powder	7/15/92
	05179300049	Silica Gel	Elite Roach & Ant Powder II	7/15/92
	05179300060	Silica Gel	Elite Roach & Ant Powder I	7/15/92
	05179300118	Silica Gel	Elite Flea & Tick Powder II	7/15/92
Wallace C. Tharp	00633000001	Silicon Dioxide	Perma-Guard Household Insecticide D-20.	7/15/92
	00633000003	Silicon Dioxide	Perma-Guard Grain or Seed Storage Insecticide	7/15/92
	00633000009	Silicon Dioxide	Perma Guard Garden & Plant Insecticide D-21	7/15/92
	00633000012	Silicon Dioxide	Perma-Guard Kleen Bin Insecticide D-20	7/15/92
	00633000017	Silicon Dioxide	Perma-Guard Pet Insecticide D-32	7/15/92
	00633000031	Silicon Dioxide	Perma Guard-20 Professional Insecticide	7/15/92
	00633000032	Silicon Dioxide	Perma-Guard Pet and Animal Insecticide D-20	7/15/92
Grefco Inc.	05480600001	Silicon Dioxide	Dicalite Diacide	7/15/92
Dyn-O-Mite International Inc.	05830000002	Silicon Dioxide	Dyanomite and/or Dynomite 2001 Plus	7/15/92
Chemfree Environment Inc.	05991300001	Silicon Dioxide	Insecticide Crawling Insect Killer	7/15/92
Tru Gen	06387200001	Silicon Dioxide	Tru-Gen White Gold	7/15/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Silica Gel	Hysan Corporation	90-Day Response	5/12/92
	Whitmire Research Laboratories, Inc.	90-Day Response	5/11/92
	Sureco, Inc.	90-Day Response	5/11/92
	Tomic Insecticide Company, Inc.	90-Day Response	5/11/92
	Happy Jack Inc.	90-Day Response	5/11/92
	D-Con Company Inc.	90-Day Response	5/13/92
	ABC Compounding Company, Inc.	90-Day Response	5/11/92
	Pet Chemicals	90-Day Response	5/11/92
	Protexall Products Inc.	90-Day Response	5/12/92
	Vasco Chemical Company Inc.	90-Day Response	5/14/92
	Sungro Chemicals Inc.	90-Day Response	5/11/92
	Speer Products Inc.	90-Day Response	5/11/92
	Smithkline Beecham Animal Health	90-Day Response	5/11/92
	Coulston International Corporation	90-Day Response	5/11/92
	RSR Laboratories, Inc.	90-Day Response	5/12/92
Silicon Dioxide	Grerefco Inc.	90-Day Response	5/11/92
	Dyn-O-Mite International Inc.	90-Day Response	5/12/92
	Chemfree Environment Inc.	90-Day Response	5/11/92
	Tru Gen	90-Day Response	5/11/92
	Wallace C. Tharp	90-Day Response	5/12/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Silica Gel

On February 7, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing silica gel used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Silica Gel Phase 5 Reregistration Eligibility Document Data Call-In Notice dated February 7, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. Because the Agency has not received a response from you as a silica gel registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. Silicon Dioxide

On February 7, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing silicon dioxide used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Silicon Dioxide Phase 5 Reregistration Eligibility Document Data Call- In Notice dated February 7, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. Because the Agency has not received a response from you as a silicon dioxide registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: August 13, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-19752 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50748; FRL-4074-7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

264-EUP-90. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 600 pounds of the herbicides octanoic acid ester and heptanoic acid ester of bromoxynil on 2,400 acres of field corn and small grains to evaluate the control of broadleaf weeds. The program is authorized only in the States of Arizona, Colorado, Idaho, Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, and Wyoming. The experimental use permit is effective from June 1, 1992 to June 1, 1993. A permanent tolerance for residues of the active ingredients in or on field corn and small grains has been established (40 CFR 180.324). (Robert Taylor, PM 25, rm. 245 CM #2, (703-305-5705))

2724-EUP-52. Issuance. Zoecon Corporation, 1200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 5.61 pounds of the insecticide propetamphos in three apartment buildings to evaluate the control of cockroaches. The program is authorized only in the States of California and Texas. The experimental use permit is effective from July 6, 1992 to July 6, 1993. (Robert Forest, PM 14, rm. 219, CM #2, (703-305-6600))

2724-EUP-53. Issuance. Zoecon Corporation, 1200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 5.53 pounds of the insecticide propetamphos in three apartment buildings to evaluate the control of cockroaches. The program is authorized only in the States of California and Texas. The experimental use permit is effective from July 6, 1992 to July 6, 1993. This permit and the one above will use the same active ingredient but different formulations. (Robert Forest, PM 14, Rm. 219, CM #2, (703-305-6600))

612-EUP-1. Amendment. Unocal Corporation, 3960 Industrial Blvd., Suite 600-B, West Sacramento, CA 95691. In the **Federal Register** of May 28, 1992 (57 FR 22475), EPA issued an EUP pertaining to the renewal of 612-EUP-1 to Unocal Corporation. At the request of the company, the program has been amended to add prunes to the program. All other aspects of the program remain the same. (Cynthia Giles-Parker, PM 22, rm. 229, CM #2, (703-305-5540))

400-EUP-68. Issuance. Uniroyal Chemical Company, 74 Amity Rd., Bethany, CN 06524-3402. This experimental use permit allows the use of 200 pounds of the plant growth regulator maleic hydrazide on 80 acres of rice to evaluate the control of red rice seed setting in white rice. The program is authorized only in the State of Louisiana. The experimental use permit is effective from May 21, 1992 to August 31, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Cynthia Giles-Parker, PM 22, rm. 229, CM #2, (703-305-5540))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection

purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: July 30, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92–19655 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–44590; FRL–4160–6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on vinyl fluoride (CAS No. 75–02–5), submitted pursuant to a final test rule. Test Data were also submitted on 4-vinyl-1-cyclohexene (CAS No. 100–40–3) submitted pursuant to a testing consent order. All testing was submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for vinyl fluoride were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a test rule 40 CFR 799.1700. They were received by EPA on July 22, 1992. The submission describes an oncogenicity long-term inhalation study in rats and mice. Health effects testing is required by this test rule. Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for 4-vinyl-1-cyclohexene were submitted by the Chemical Manufacturers Association butadiene panel on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on July 15, 1992. The submission describes the aqueous volatilization of 4-vinyl-1-cyclohexene. Chemical fate testing is required by this consent order. This chemical may be used as an intermediate in the manufacture of 4-vinylcyclohexene mono- and diepoxides, which are used to make epoxy resins, polyesters, coatings, and plastics; and may also be used in the manufacture of flame retardants, insecticides, plasticizers, and antioxidants.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44590). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 12, 1992.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–19753 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–83002M; FRL–4082–3]

Receipt of Requests for Exclusion and Waiver from Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of requests for exclusion and waiver from testing.

SUMMARY: EPA requires that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, provisions have been made for exclusion and waiver from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received requests for an exclusion and a waiver from these requirements from Chugai Boyeki (America) Corporation and Great Lakes Chemical Corporation, respectively, and will accept comments on these requests. EPA will publish another **Federal Register** notice announcing its decisions on these requests.

DATES: Submit written comments on or before [insert date 15 days after date of publication in the **Federal Register**].

ADDRESSES: Submit written comments in triplicate, identified with the docket control number OPPTS–83002M, to: TSCA Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 544–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR part 766 EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32(a)(1)(i) and (a)(1)(ii), a company may be granted an exclusion from the testing requirements of part 766 if the process and reaction conditions are such that HDDs/HDFs would not be produced, or appropriate testing of the chemical substance has already been done, respectively.

Under 40 CFR 766.32(a)(2)(i), a waiver may be granted if a responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, and only for research and development purposes. Under 40 CFR 766.32(a)(2)(ii), a waiver may be granted if in the judgement of EPA, the cost of testing would drive the chemical substance off the market or prevent resumption of manufacture or import of the chemical substance; or if it is not currently manufactured, and the chemical substance will be produced so that no unreasonable risk will occur due to its manufacture, import, processing, distribution, use, or disposal. Under 40 CFR 766.32 (a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for either an exclusion or a waiver must be made before September 4, 1987, for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987; or 60 days before resumption of manufacture or

importation of a chemical substance not being manufactured, imported, or processed as of June 5, 1987.

Chugai Boyeki (America) Corporation requests an exclusion under 40 CFR 766.32(a)(1)(i) and (a)(1)(ii) for 2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione (CAS No. 118–75–2, chloranil). Some of their supporting data was submitted as confidential business information (CBI).

Great Lakes Chemical Corporation requests a waiver under 40 CFR 766.32(a)(2). Their supporting data were submitted as CBI.

CBI, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC from 8 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: August 5, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division.

[FR Doc. 92–19750 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

Dated: August 11, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None.
Title: ARMIS Joint Cost Report.
Report Number: FCC Report 43–03.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Annually.
Estimated Annual Burden: 150 responses, 115 hours average burden per response; 17,250 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43–03, the Joint Cost Report, without any change in its substance or method of collection. The Joint Cost Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060–0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Joint Cost Report to facilitate recordkeeping.

OMB Number: None.
Title: ARMIS Quarterly Report.
Report Number: FCC Report 43–01.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Quarterly.
Estimated Annual Burden: 600 responses; 220 hours average burden per response, 132,000 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43–01, the Quarterly Report, without any change in its substance or method of collection. The Quarterly Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060–0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Quarterly Report to facilitate recordkeeping.

OMB Number: None.
Title: ARMIS Access Report.
Report Number: FCC Report 43–04.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Aannually.
Estimated Annual Burden: 150 responses; 1,150 average burden per response, 172,500 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43–04, the Access Report, without any change in its substance or method of collection. The Access Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060–0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Access Report to facilitate recordkeeping.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92–19786 Filed 8–18–92; 8:45 am]

BILLING CODE 6712–01–M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Public Law 95–454), Chairman Alfred C. Sikes appointed the following executives to the Executive Resources and Performance Review Board:

Andrew S. Fishel
Ralph A. Haller
Cheryl A. Tritt
Robert L. Pettit
Roy J. Stewart
Robert M. Pepper

Federal Communication Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92–19789 Filed 8–18–92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Application for Consent to Exercise Trust Powers.

Form Number: FDIC 6200/09.

OMB Number: 3064–0025.

Expiration Date of OMB Clearance: September 30, 1994.

Respondents: Insured nonmember banks.

Frequency of Response: On occasion.

Number of Respondents: 50.

Annual Hours per Respondent: 15.

Total Annual Hours: 750.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0025, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before October 19, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval for a revision to application form FDIC 6200/09. The proposed revision eliminates some of the information requested in the current collection, consolidates other information requests into fewer questions, and requests some new information. The purpose of these changes is to simplify the task of completing the form and provide clearer guidance as to what information is needed to process the application.

Dated: August 13, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–19682 Filed 8–18–92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Meeting; FEMA Security Practices Board of Review

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting, portions of which may be closed:

NAME: FEMA Security Practices Board of Review.

DATES OF MEETING: Tuesday and Wednesday, August 25–26, 1992.

PLACE: Federal Emergency Management Agency, Director's Conference Room (EICC), Mezzanine, 500 C Street SW., Washington, DC 20472.

TIMES: 9 a.m. to 12 p.m. on both days.

PROPOSED AGENDA: Tuesday, August 25: review the transcript and tasks from the last meeting; discuss contract investigative/adjudicative procedures; review and discuss issue papers; review issues to be resolved by the Board in its final report; review and discuss an outline of the final report; make preparations for the next meeting, including assignment of tasks. Wednesday, August 26: compile final report.

FOR FURTHER INFORMATION CONTACT: Dirk J. Vande Beek, Office of the Director, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3923.

SUPPLEMENTARY INFORMATION: The Review Board must complete its review and report by September 11, 1992. In view of this time limit and owing to the complex, sensitive, and urgent nature of FEMA security matters, less than 15 days' notice of the meeting is given, under 41 CFR 101–6.1015(b)–(2).

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Director, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3923 on or before Friday, August 21, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and 5 U.S.C. 552b(c), because discussions may (1) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense, (2) relate solely to the internal personnel rules and practices of an agency, and (3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 13, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92–19711 Filed 8–18–92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

City of Long Beach et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments in each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title

46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010808–002.

Title: Long Beach/Maersk Terminal Agreement.

Parties: City of Long Beach ("City"), Maersk, Inc. ("Maersk").

Synopsis: The amendment reflects an adjustment in the rent Maersk will pay to the City for the use of three cranes.

Agreement No.: 224–200165–008.

Title: Maryland Port Administration and Ceres Corporation, Marine Terminal Agreement.

Parties: The Maryland Port Administration, Ceres Corporation.

Synopsis: The Agreement extends the term of the Agreement for sixty days, beginning August 8, 1992.

Dated: August 13, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking

Secretary.

[FR Doc. 92–19674 Filed 8–18–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Diamond Cruise, Inc., 2875 N.E. 191st Street, #304, North Miami Beach, Florida 33180.

Vessel: RADISSON DIAMOND

Dated: August 13, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–19676 Filed 8–18–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Holland America Line—Westours Inc., Wind Surf Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119.

Vessel: STATENDAM

Dated: August 13, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–19675 Filed 8–18–92; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Submitted to OMB

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to renew expiring information collection 3090–0010, New Item Application (GSA Form 1171). This Information Collection is used to determine whether or not a new product should be introduced into GSA's supply system.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: *Respondents:* 720; *annual responses:* 720; *hours per response:* .5; *total burden hours:* 360.

FOR FURTHER INFORMATION CONTACT: John T. Hughes, Information Collection Management Branch (202–501–2691).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F Street NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: August 12, 1992.

Mary Cunningham,

Acting Director, Information Management Division.

[FR Doc. 92–19743 Filed 8–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Family Assistance.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for clearance of a currently approved information collection for the Office of Family Assistance of the Administration for Children and Families. This information collection, the JOBS Program Participant Data Collection (Form No. FSA 108) was approved under OMB control number 0970–0112.

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, Reports Clearance Officer, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: JOBS Participant Data Collection.

OMB No.: 0970–0112.

Description: This collection of information is authorized by section 203(b) of the Family Support Act of 1988 which requires ACF to establish uniform reporting requirements under which States must submit information on sampled JOBS program participants. Code of Federal Regulations 45 Public Welfare, § 250.82 requires the State to submit electronically, a sample of un-aggregated case records of JOBS participants on a monthly basis. Information received from the States will be used to create the federal JOBS program database. This information provides detailed service-related data which enables ACF to: Closely monitor State program operations; establish program policy and direction; and prepare responses to the Congress, the Department, GAO, other federal departments, and public and private agencies.

Annual Number of Respondents: 51.
Annual Frequency: 12.
Average Burden Hours Per Response: 2.
Total Burden Hours: 1,224.

Dated: August 5, 1992.

Naomi B. Marr,

Director, Office of Information and Systems Management.

[FR Doc. 92–19679 Filed 8–18–92; 8:45 am]

BILLING CODE 4130–01–M

Administration for Children and Families

U.S. Advisory Board on Child Abuse and Neglect; Meeting

AGENCY: U.S. Advisory Board on Child Abuse and Neglect, Administration for Children and Families, ACF, Department of Health and Human Services.

ACTION: Notice of an Executive Committee meeting of the U.S. Advisory Board on Child Abuse and Neglect, and Board hearing on International Perspectives on a New National Strategy for Child Protection.

SUMMARY: The Executive Committee of the U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in Chicago, Illinois on August 29, 1992. This meeting from 7 p.m. to 11 p.m. is closed to the public due to the need for confidentiality in connection with a discussion about issues relating to future plans of the Board. The Board will also conduct a hearing on International Perspectives on a New National Strategy for Child Protection from 4 p.m. to 7 p.m. on August 29, 1992.

ADDRESSES: This meeting will be held at: Hyatt Regency Hotel 151 East Wacker Drive, Chicago, Illinois 60601.

FOR FURTHER INFORMATION CONTACT: Joan M. Williams, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, room 300E, Humphrey Building, Washington, DC 20201, (202) 690–8178.

SUPPLEMENTARY INFORMATION: During the Executive Committee meeting the Executive Committee of the Board will discuss: The form, content, nature and scope of the 1993 and 1994 annual reports of the Board; progress towards the accomplishment of the FY 1992—FY 1993 Board Program Plan; the special 1993 Board report on child protective services reform; and Board governance and administrative issues.

The U.S. Advisory Board on Child Abuse and Neglect will also conduct a hearing on International Perspectives on a New National Strategy for Child Protection. Coincident with the International Congress on Child Abuse and Neglect, the Board has invited several international experts to share experiences from their nations relevant to the proposed strategy. Separate panels of these experts will present on policy, programs, and community development efforts.

Dated: August 6, 1992.

Byron D. Metrikin-Gold,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 92–19787 Filed 8–18–92; 8:45 am]

BILLING CODE 4130–01–M

Centers for Disease Control

[Announcement Number 307]

Availability of Funds for Fiscal Year 1993; Breast and Cervical Cancer Education for Primary Care Providers; Amendment

A notice announcing the availability of Fiscal year (FY) 1993 funds for cooperative agreements for Breast and Cervical Cancer Education for Primary Care Providers was published in the **Federal Register** on June 25, 1992, [57 FR 28517]. The notice is amended as follows:

On page 28518, first column, under the heading **"AVAILABILITY OF FUNDS,"** the first paragraph should read: "It is anticipated that approximately $400,000 will be available in FY 1993 to fund approximately 2 awards. It is expected that the average award will be $200,000 ranging from $175,000 to $225,000. It is expected the awards will begin on or about January 15, 1993, and are usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of an acceptable application, satisfactory performance, and the availability of funds."

On page 28519, first column, under the heading **"APPLICATION SUBMISSION AND DEADLINE,"** the paragraph should read: "The original and two copies of the application PHS Form 5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before October 16, 1992."

All other information and requirements of the June 25, 1992, **Federal Register** notice remain the same.

Dated: August 11, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–19698 Filed 8–18–92; 8:45 am]

BILLING CODE 4160–18–M

[Program Announcement Number 270]

State Demonstration Projects; Comprehensive School Health Programs To Prevent Important Health Problems and Improve Educational Outcomes

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds to establish and/or strengthen comprehensive school health programs to prevent important health-risk behaviors. CDC will award competitive cooperative agreements in three categories:

Part I. Building State Education Agency and State Health Agency infrastructure for Comprehensive School Health Programs.

Part II. Strengthening Comprehensive School Health Education to Prevent Important Health-Risk Behaviors and Problems.

Part III. Establishing National Training and Demonstration Centers for Comprehensive School Health Programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This program announcement is related to several priority areas contained under Health Promotion and Disease Prevention with a particular focus on the Educational and Community-Based Program priority area. The PHS also is committed to helping attain the National Education Goals related to the health and educational outcomes of American students. In addition, the PHS is committed to improve the health of adolescents. This announcement is for the purpose of pursing all three of these commitments. (For ordering a copy of Healthy People 2000, the National Education Goals, and Adolescent Health, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)), 311 (b) and (c) (42 U.S.C. 243(b) and (c)), and 317(k) (42 U.S.C.

247b(k)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the state education agencies of the 5 states with total mortality rates greater than 1000 deaths per 100,000 population as reported for 1989 by CDC's National Center for Health Statistics. These states are the District of Columbia, West Virginia, Florida, Pennsylvania, and Arkansas. For the purpose of this agreement, the term "state" includes the District of Columbia.

Availability of Funds

Approximately $2,300,000 is available in FY 1992 to fund competitive cooperative agreements in the following categories:

Part I: Building State Education Agency (SEA) and State Health Agency Infrastructure for Comprehensive School Health Programs.

Approximately $1 million is available to fund 3–5 awards which will range from $175,000—$300,000 each.

Part II: Strengthening Comprehensive School Health Education to Prevent Important Health-Risk Behaviors and Problems.

Approximately $1 million is available to fund 3–5 awards to strengthen activities in each of the categories A., B., C., D., and E. listed below. It is expected that awards will range from $175,000–$300,000.

A. Tobacco use
B. Dietary patterns
C. Sedentary lifestyles
D. HIV
E. STDs
F. Unintended pregnancy
G. Injuries
H. Alcohol and other drugs
I. Other

CDC anticipates that activities in categories F. through I. above will become integral parts of the comprehensive school health program during subsequent years of the five year project period.

Part III: Establishing National Training and Demonstration Centers for Comprehensive School Health Programs.

Approximately $300,000 is available to provide funding for one award.

Eligible applicants that apply under this Program Announcement must apply for parts I and II. Part III is optional. Funding for part III will be awarded only to an applicant that has received an award for parts I and II.

Awards are expected to begin on or about September 28, 1992, and are usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards, within an approved project period, will be made on the basis of satisfactory progress and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance. Federal funds awarded under this Program Announcement may not be used to supplant state funds.

Purpose

The purpose of this program is to strengthen the capacity of state education agencies to plan, implement, and evaluate effective comprehensive school health programs to prevent important health-risk behaviors among youth including: Tobacco use; dietary patterns that contribute to disease; sedentary lifestyle; sexual behaviors that result in HIV infection; other STDs and unintended pregnancy; alcohol and other drug use; behaviors that result in unintentional and intentional injuries, and other behaviors or conditions that are leading causes of death and disability.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

Part I: Building State Education Agency and State Health Agency Infrastructure for Comprehensive School Health Programs

• Provide coordination among state education agency and state health agency programs to establish and/or strengthen comprehensive school health programs.

• Plan, organize, and/or develop statewide policies, personnel, and resources to help schools implement comprehensive school health programs designed to prevent important health-risk behaviors and health problems among youth.

Part II: Strengthening Comprehensive School Health Education to Prevent Important Health-Risk Behaviors and Problems

• Plan, implement, and evaluate specific objectives and activities to: 1) strengthen education to prevent specific health-risk behaviors and health problems for which fiscal assistance is provided (See Availability of Funds, Part II, A–I) and 2) help schools implement such education as part of comprehensive school health education.

• Increase the number and percentage of schools that provide age-appropriate comprehensive school health education at each grade level and other interventions or services designed to prevent important health-risk behaviors and problems.

• Increase the number and percentage of students at each grade level that receive comprehensive school health education and other interventions or services designed to prevent important health-risk behaviors and problems.

• Increase the number of agencies assisted by the recipient that provide comprehensive health education designed to prevent important health-risk behaviors and health problems among minority youth, youth in high health-risk situations, and youth with special education needs.

• Provide guidance, technical assistance, and training to help schools implement policies, guidelines, curricula and standards, and professional development and inservice training.

• Establish systematic procedures to monitor current levels of health-related behaviors among high school students.

• Establish systematic procedures to monitor and number and percentage of schools that provide comprehensive school health education at each grade level and the number and percentage of students that receive comprehensive school health education.

• Provide guidance and assistance to help schools involve parents and appropriate community agencies in planning and implementing comprehensive school health education.

• Establish a management system that provides qualified leadership and coordination within the SEA to strengthen comprehensive school health education, and works meaningfully with state health department personnel to implement effective comprehensive school health education.

• Collaborate with institutions of higher education to: strengthen the preservice and inservice training programs for comprehensive school health education, involve academic departments in improving school health education, and support coalitions to improve comprehensive school health education.

Part III: Establishing National Training and Demonstration Centers for Comprehensive School Health Programs

• Provide training workshops and demonstrations for teams of representatives from other state and local education and health agencies, and others interested in improving comprehensive school health programs in building state infrastructure for comprehensive school health programs, and strengthening comprehensive school health education to prevent important health-risk behaviors and problems.

B. CDC's Activities

• Coordinate with SEAs, Local Education Agencies (LEAs), and national education and health organizations in planning and implementing relevant national strategies to strengthen comprehensive school health programs.

• Provide technical assistance and program guidance for comprehensive school health program planning, implementation, evaluation and assessment.

• Organize and convene meetings of national, state, and local education agencies to address issues and activities related to strengthening comprehensive school health programs.

• Provide program management, curriculum development, teacher training, and other services necessary to carry out the purposes of this program, at the request of the applicant, through the assignment of Federal personnel to a project in lieu of a portion of the financial assistance.

Evaluation Criteria

Applications for parts I, II, and III will be individually reviewed and scored. Each part is allocated up to a total of 125 points according to the following criteria:

1. Need

The extent to which the applicant justifies the program's need to help schools establish and strengthen comprehensive school health programs, or to help other SEAs/LEAs improve comprehensive school health programs (5 points).

2. Capacities

The extent to which the applicant demonstrates sufficient capacity to use the resources requested for their intended purposes (5 points).

3. Coordination

The extent to which the applicant demonstrates sufficient ability to collaborate with and involve other state and local agencies and relevant organizations in the proposed program activities (5 points).

4. Leadership

The extent to which the applicant provides evidence that demonstrates commitment to devoting a full-time senior position with responsibility, authority, professional training and experience to plan and implement activities that are consistent with the purposes of the program (25 points).

5. Objectives/Factors/Activities/Evaluation

a. Objectives

The extent to which the applicant has submitted specific, measurable, and feasible objectives for this budget period. The objectives are to be directly related to the recipient activities of the part for which the applicant is applying, as described in Program Requirements (15 points).

b. Factors

The extent to which the applicant:

(1) Identifies potential factors to be influenced in achieving the stated objectives (5 points).

(2) Selects factors, that if successfully influenced, seem likely to significantly contribute to achieving the stated objectives (5 points).

c. Activities

The extent to which the applicant:

(1) Identifies activities that are likely to influence the selected factors and thus significantly contribute to achieving the stated objectives (15 points).

(2) Provides a substantial plan for implementing the activities by describing who will do what, when, and where (15 points).

d. Evaluation

The extent to which the applicant:

(1) Identifies specific data that will be obtained to evaluate progress in meeting objectives and implementing activities during the budget period (10 points).

(2) Describes how that information will be obtained, prepared in a specific report(s) to be submitted to CDC, and used to improve the program, including who will do what, when, and where (10 points).

6. Evidence of Support

The extent to which the applicant provides written evidence of support and agreement by appropriate officials of organizations that are involved in the program, especially the state health department and education agencies that may be targeted for assistance during the budget period (5 points).

7. Transfer of Technology

The extent to which the applicant provides written agreement to submit program descriptions, curricula, and other materials to the CDC Combined Health Information Database (CHID); share materials developed to promote comprehensive school health programs and prevent important health-risk behaviors with other agencies; participate with CDC and other national organizations in an annual conference and in at least two meetings during the budget period; and identify state or local education representatives as candidates for training at CDC-supported National Training/Demonstration Center(s) (5 points).

8. Budget and Accompanying Justification

The extent to which the applicant provides a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. The budget justification narrative should include job descriptions for personnel (Not Weighted).

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E–14, room 300, Atlanta, GA 30305. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process

recommendations it receives after that date.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

HIV/AIDS Requirements

Recipients must comply with the document entitled: "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to: Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, on or before August 26, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial mail carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, (404) 842-6803. Programmatic technical assistance may be obtained from Jack T. Jones, Chief, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K-31, Atlanta, GA 30333, or by calling (404) 488-5356.

Please refer to Announcement Number 270 when requesting information and submitting any application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone: 202-783-3238).

A copy of "The National Education Goals Report" and its Executive Summary (Full Report, Order No. 065-000-00467-4; Executive Summary, Order No. 065-000-0466-6) can be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-1954.

Dated: August 12, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-19699 Filed 8-18-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. September 3 and 4, 1992, 9 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 3, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, September 4, 1992, 9 a.m. to 1 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419-259-6211 or Valerie M. Mealy, Advisors and Consultants Staff, 301-443-4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 24, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 3, 1992, the committee will discuss new drug application 20-007 (S-5), Zofran (ondansetron) injection, Glaxo, Inc., to be indicated for the prevention and treatment of post-operative nausea and vomiting. On September 4, 1992, the committee will hear a presentation regarding FDA

inspection and enforcement of institutional review and informed consent.

Food Advisory Committee

Date, time, and place. September 14 and 15, 1992, 8 a.m., Doubletree Hotel, Federal Hall, 300 Army-Navy Dr., Arlington, VA.

Type of meeting and contact person. Open committee discussion, September 14, 1992, 8 a.m. to 5 p.m.; open committee discussion, September 15, 1992, 8 a.m. to 8:15 a.m.; open public hearing, 8:15 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:15 p.m.; open public hearing, 4:15 p.m. to 4:45 p.m., unless public participation does not last that long; open committee discussion, 4:45 p.m. to 5 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFF–6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5140 or Patricia Thompson, Advisory Committee/Communications Group, 202–205–4564.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 4, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 14, 1992, the committee will be briefed on topics of major importance to the Center for Food Safety and Applied Nutrition (CFSAN): (1) The food labeling initiative, (2) the CFSAN reorganization, (3) the recommendations of the Advisory Committee on FDA, (4) the role of the FDA Science Advisor and Science Policy Council, and (5) the food safety challenges the agency will be facing in the future. On September 15, 1992, a working session will be held to discuss the agency's food research activities, including the scientific and technical expertise needed to support the agency's regulatory mission.

Veterinary Medicine Advisory Committee

Date, time, and place. September 16 and 17, 1992, 8:30 a.m., Goshen Conference rm., Holiday Inn-Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, September 16, 1992, 8:30 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 1 p.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 3:30 p.m.; open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; open committee discussion, September 17, 1992, 8:30 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV–244), 7500 Standish Pl., Rockville, MD 20855, 301–295–8769.

General function of the committee. The committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 7, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) A proposed compliance policy guide on producer use of animal drugs, (2) compounding of animal drugs by veterinarians, (3) drug residue methods for milk, (4) aquaculture enforcement policy, and (5) issues from the Center for Veterinary Medicine poultry workshop.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug

Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 14, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92-19801 Filed 8-14-92; 4:09 p.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act: Proposed Implementing Procedures (516 DM 6, Appendix 8)

AGENCY: Department of the Interior.

ACTION: Notice of a proposed addition to the Department of the Interior's Categorical Exclusions for the Office of Surface Mining Reclamation and Enforcement.

SUMMARY: This notice announces a proposed addition to the categorical exclusions included in the Department Manual 516 DM 6, appendix 8, that lists actions excluded from the National Environmental Policy Act of 1969 (NEPA) procedures for the Office of Surface Mining Reclamation and Enforcement (OSM). The proposed categorical exclusion pertains to certain projects carried out in the Abandoned Mine Lands (AML) program under title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATES: Comments due September 18, 1992.

ADDRESSES: Comments to Jonathan P. Deason, Director, Office of Environmental Affairs, MS 2340–MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan P. Deason, address above, telephone (202) 208–3891; for OSM, David Hamilton (717) 782–4036.

SUPPLEMENTARY INFORMATION: SMCRA authorizes OSM to collect a fee on each ton of coal produced from mining. The fee collected from coal producers is placed in the AML Reclamation Fund (Fund). States and Tribes with approved coal mining regulatory programs and abandoned mine reclamation plans received grants annually from OSM to reclaim specific abandoned mine land projects. Since 1981, OSM has been awarding grants to 23 States and 3 Tribes for the construction and administration of AML reclamation projects. Through Fiscal Year 1991, approximately 1.2 billion dollars have been awarded from the Fund for reclamation of over sixty thousand acres of eligible abandoned mine lands and waters.

States, Tribes, and Federal reclamation activities reclaim and restore land and water resources damaged by coal mining, including abandoned surface coal mines, abandoned coal processing areas, sealing and filling abandoned deep coal mine entries and voids, revegetation of land adversely affected by past coal mining to prevent erosion and sedimentation, and control of water pollution created by coal and sedimentation, and control of water pollution created by coal mine drainage (section 401(c)(1) of SMCRA). These reclamation projects may also be conducted where the damage was a result of non-coal mining if certain conditions are met (section 409(a) of SMCRA). Projects vary considerably in size, from those affecting only a few square feet to those affecting hundreds of acres, and vary in costs from a few thousand dollars to several million.

AML problems are exhibited in several broad categories including highwalls, surface and underground burning of coal and coal refuse, subsidence, mine openings (shafts and portals), sediment clogged streams, landslides, piles and embankments, structures, impoundments, mine discharges, and barren or poorly vegetated lands. AML sites present public health and safety and environmental hazards. In order to facilitate compliance with the requirements of the NEPA in the AML program, OSM prepared OSM–EIS–2 in March of 1980 and OSM–EIS–11 in November of 1983. These environmental impact statements address programmatic aspects of AML and the impacts of reclamation. However, the preparation of site specific environmental assessments has still been required for each project.

NEPA requires that when a major Federal action may have significant impacts on the quality of the human environment, a detailed statement (EIS) be prepared (section 102(2)(C)). When it is known in advance that a certain category of actions will not have a significant effect on the human environment, that category of actions may be excluded from further NEPA requirements (40 CFR 1508.1). The Department previously reviewed the activities authorized under title IV and excluded certain decisions relative to the approval of grants under the AML program.

Introduction to Proposal

Review of 649 environmental assessments related to AML projects located in 27 States across the country and involving 3 Tribal lands from July 1989 to the present has led OSM to conclude that the majority of project types discussed above, have virtually the same reclamation descriptions, reclamation design techniques, environmental impacts, and mitigating measures. These projects are implemented consistent with State and Federal Laws, and generally have only local, negligible to moderate short or long term impacts which are effectively mitigated through common construction practices.

The Department proposes an additional categorical exclusion as subparagraph 8.4.B(33) in appendix 8 in the Department of the Interior's Manual (516 DM 6). The excluded activities would include a majority of typical AML projects, although the excluded projects would be limited in size and scope, as described below. The proposed exclusion is a category of actions that does not individually or cumulatively have a significant effect on the quality of the human environment. If any proposed AML project involves any of the following, an environmental assessment and/or environmental impact statement will be prepared in accordance with OSM's NEPA Handbook.

1. If the project involves any of the Departmental exceptions to the categorical exclusions listed in Department Manual 516 DM 2, Appendix 2.

2. If the project is more than 100 acres or involves hazardous wastes; explosives; hazardous or explosive gases; dangerous impoundments; mine fires and refuse fires; undisturbed, non-commercial borrow and disposal sites; dangerous slides where abatement has the potential for damaging inhabited property; or subsidences involving the placement of material into underground mine voids through drilled holes.

3. If the project impacts resources requiring specialized mitigation or pose unresolved issues concerning topography, land use, soils, vegetation, hydrology, fish and wildlife, historic and cultural resources, recreation, air

quality, noise, or other socioeconomic concerns. Unresolved issues would include general controversy expressed by the public.

Appendix 8 must be interpreted in conjunction with the Department's NEPA procedures (516 DM 1–6) and the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Department's procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 8 for OSM was published on January 23, 1981 (46 FR 7487) and revised on February 28, 1990 (55 FR 7038).

Proposed Categorical Exclusion 33

AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow and disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, Appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

Eligibility for this categorical exclusion would be determined by OSM based on the results of on-site inspection(s), survey(s), and other methods of evaluation and documentation prepared by the States/Tribes or OSM to determine the presence or absence of the criteria. States/Tribes would submit environmental information for a site to OSM. OSM would then determine the applicability of the categorical exclusion. Details of this determination would be added to OSM's NEPA Handbook and the chapter on environmental compliance in the Federal Assistance Manual, which applies to projects funded by grants under title IV. Projects that do not fully meet all of these criteria would not qualify for this categorical exclusion.

Discussion of Criteria

A project involving one of the Departmental exceptions to categorical exclusions will automatically require the preparation of an environmental assessment. Briefly, the list of exceptions contains criteria including adverse effects on public health or safety, parks, recreation or refuge lands, wilderness areas, ecologically sensitive areas, wild and scenic rivers, wetlands, floodplains, properties listed or eligible for listing on the National Register of Historic Places, and species listed or proposed to be listed on the List of Endangered or Threatened Species, or on designated Critical Habitats for these species. Also, included in the Departmental exceptions to categorical exclusions are concerns related to environmental controversy, uncertainty, individually insignificant but cumulatively significant environmental effects, precedent setting decisions about future actions, and compliance with Federal, State, Tribal or local environmental laws, executive orders, and requirements. The complete list of Departmental exceptions should be referred to when applying the categorical exclusion.

OSM's general exceptions from the categorical exclusion include AML projects that incorporate problems or activities which will require the preparation of an environmental assessment. Projects which would be ineligible for the categorical exclusion are those involving the following:

1. AML projects which affect more than 100 acres are ineligible for the categorical exclusion. OSM's sample of environmental assessments included only 24 projects (3.7%) that involved more than 100 acres. These projects were more likely to affect important resources. The Department acknowledges that projects involving large acreage have a higher potential to adversely affect important resources and therefore is limiting the exclusion to projects affecting less than 100 acres.

2. AML projects involving hazardous wastes as defined by the Environmental Protection Agency are ineligible for the categorical exclusion. The potential for significant impacts may be present at sites with materials that may be a danger to the work crew conducting the reclamation or to residents or other citizens. The use of protective clothing, ventilators, or face masks or other special handling techniques are often required for protection from these materials. For example, PCBs, occasionally found at abandoned mine sites in electrical transformers, require not only special handling at the site but also special disposal procedures.

3. AML projects that involve the use of explosives are ineligible for the categorical exclusion. Use of explosives involves a potential for injury to the work crew and/or the general public in the area, and damage to property.

4. AML projects that involve undisturbed non-commercial borrow and disposal sites are ineligible for the categorical exclusion. Because of the required analysis of alternative offsite areas, the transportation of material between the AML project and offsite borrow and disposal areas, and offsite impacts, an environmental assessment shall be required. Projects utilizing rock quarries, landfills, or permitted mine sites and other preexisting sites that are available for other public disposal purposes would be eligible for the categorical exclusion.

5. AML subsidence projects that involve the placement of material into underground mine voids through drilled holes are ineligible for the categorical exclusion. These projects can endanger foundations, sewers, and areas beyond the project boundaries. The sample of environmental assessments included insufficient numbers of large or area-wide subsidence projects (over 1 acre) which are the type usually associated with this reclamation technique. Pothole type subsidence projects which are filled with material such as gravel or other appropriate fill material would be eligible for the categorical exclusion.

6. AML projects that involve dangerous slides where the abatement work can result in damage to inhabited property are ineligible for the categorical exclusion. This type of project includes cases where the toe of the landslide is threatening a home at the base of a slope. The inherent danger of damage to property would require the preparation of an environmental assessment.

7. AML projects that involve mine fires and refuse fires are ineligible for the categorical exclusion. This type of project poses a threat to the health and safety of workers and persons located at nearby residences or businesses. For example, the gases, fumes, and smoke associated with the reclamation of a mine fire may pose a hazard to a nearby resident with existing respiratory problems. Also, OSM's sample of environmental assessments contained few mine fire projects

8. AML projects involving hazardous or explosive gases are ineligible for the categorical exclusion. For instance, a project involving the venting of explosive methane may pose a serious threat to public health and safety. Also, OSM's sample of environmental assessments contained few projects that involved hazardous or explosive gases.

9. AML projects involving the reclamation of dangerous impoundments as defined by OSM Directive AML–1, including both surface and underground dangerous impoundments, are ineligible for the categorical exclusion. This type of project would include draining an underground mine pool. Accessing an underground mine pool or draining a surface impoundment and releasing a large and potentially dangerous volume of water would require an environmental assessment. Few of these types of projects were included in the sample of environmental assessments.

AML projects will not be excluded if the level of impact requires specialized mitigation. Also, AML projects that have unresolved issues with agencies, persons, or groups will not be excluded.

If anticipated project activities may result in impacts that must be mitigated through use of techniques beyond common construction practices an environmental assessment must be prepared. For example, a comparison can be made between the common installation of silt fence and hay bales to control sediment versus a specialized site specific sediment control plan required to protect sensitive offsite areas (such as a high quality trout stream), the common practice of placing brush piles and rock piles to replace wildlife habitat versus developing a specialized plan in response to concerns over adverse impacts on wildlife communities, and the routine placement of barriers that allow continued use of mines by non-endangered bats or other species versus specialized mine closure procedures in response to site specific concerns about bat habitat.

The resources used as criteria for these exceptions are based on those listed in OSM's NEPA Handbook and include—topography, land use, soils, vegetation, hydrology, fish and wildlife, historic and cultural, recreation, air quality, noise, and other values—that may make a project ineligible for this proposed categorical exclusion.

To be considered, any comments on this proposed addition to the list of categorical exclusions in the Department Manual must be received by September 18, 1992 at the location listed under ADDRESSES above. Comments received after that date will be considered only to the extent practicable.

Outline: Chapter 6 (516 DM 6) Managing the NEPA Process, Appendix 8—Office of Surface Mining Reclamation and Enforcement, 8.4 Categorical Exclusions.

Dated: August 12, 1992.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

516 DM 6, Appendix 8

Office of Surface Mining Reclamation and Enforcement

8.4 Categorical Exclusions

* * * * *

B. * * *

(33) AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow and disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, Appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

[FR Doc. 92–19738 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[NV–010–02–4320–01]

Meeting; Elko District Grazing Advisory Board

August 7, 1992.

AGENCY: Bureau of Land Management (BLM) Interior.

ACTION: Notice of meeting of the Elko District Grazing Advisory Board.

SUMMARY: A meeting of the Elko District Grazing Advisory Board will be held on September 17, 1992. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Years 1992 and 1993,

2. Proposed Allotment Management Plans, and

3. Allotment evaluations and proposed grazing agreements and decisions, as well as other matters that may come before the Board

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 11:30 a.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 10, 1992.

Dated: August 5, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92–19678 Filed 8–14–92; 10:56 am]

BILLING CODE 4310–84–M

[MT–060–02–4830–12]

Lewistown District Advisory Council Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council meeting.

SUMMARY: The Lewistown District Advisory Council will meet on September 17, 1992 at 10 a.m. in the BLM District Office, Airport Road, Lewistown, Montana. The agenda will be:

1. Introductions.
2. Election of Officers.
3. Visitor Center of the Upper Missouri.
4. Zortman Mine expansion application.
5. Sweetgrass Hills mining activity.
6. Laxalt grazing system task force.
7. District's law enforcement position.

LOCATION: Lewistown District BLM Office, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457.

SUPPLEMENTAL INFORMATION: The meeting will be open to the public and interested persons may make oral comments at the conclusion of the meeting or may file written comments for the council's consideration. Those wishing to make oral comments must notify the District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457. The Lewistown District Advisory Council is authorized under Section 309 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1739.

Dated: August 10, 1992.

David L. Mari,

District Manager.

[FR Doc. 92–19684 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–DN–M

[ID-943-4214-10; IDI-29461]

Proposed Withdrawal and Opportunity for Public Meeting, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers, Department of the Army, proposes to withdraw .27 acre of National Forest System land for construction of anadromous fish trapping and related facilities on the Crooked River. This notice closes the land for up to two years from surface entry and mining. The land will remain open to mineral leasing and all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a meeting should be received on or before November 17, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, (208) 384–3166.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the Corps of Engineers, Department of the Army, filed an application to withdraw the following-described National Forest System lands from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights:

Boise Meridian

A parcel of land located near the west bank of the Crooked River, being westerly of Forest Road No. 233 (County Road No. 121) and easterly of the range line in the projected NW¼ of the unsurveyed sec. 30, T. 28 N., R. 8. E., more particularly described as follows:

Beginning at a point on the existing U.S. Army, Corps of Engineers, Crooked River Fish Hatchery, project boundary line and the East side of Forest Road No. 233 (County Road No. 121). Local grid coordinates of said point being North 16,690.000 feet and East 14,076.132 feet, being South 11°40'25.4" East a distance of 20.422 feet from Corps of Engineers project boundary monument No. 11–R3–13;

Thence North 90°00" West to a point on the unsurveyed West line of Range 8 East;

Thence in a Southerly direction on the West line of Range 8 East to a point of intersection with local grid coordinate North 16,560 feet;

Thence South 90°00" East to a point on the existing Corps of Engineers project boundary line and the East side of Forest Road No. 233, said point being North 8°07'48.4" West, a distance of 77.782 feet from the Corps of Engineers project boundary monument No. 11–R3–15;

Thence North 8°07'48.4" West, a distance of 29.294 feet on the existing Corps of Engineers project boundary line and the East side of Forest Road No. 233 to a point, said point being Corps of Engineers project boundary monument No. 11–R3–14;

Thence North 11°40'25.4" West, a distance of 103.134 feet on the existing Corps of Engineers project boundary line and the East side of Forest Road No. 233 to the point of beginning.

There is excepted therefrom all that part of the above described parcel lying within the right-of-way of said Forest Road No. 233 (County Road No. 122) subject to an installation of a 6" sewer line crossing with the centerline at local grid coordinate North 16,580 feet. The area described contains 0.27 acre in Idaho County.

Notice is hereby given that opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are existing valid and authorized uses.

Dated: August 10, 1992.

Larry R. Lievsay,

Acting Chief, Realty Operations Section.

[FR Doc. 92–19685 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

[FES 92–19]

Milltown Hill Project, Douglas County, Oregon

AGENCY: Bureau of Reclamation in cooperation with the Bureau of Land Management (Interior) and the Corps of Engineers (COE).

ACTION: Notice of Availability: final EIS (FEIS) (INT–FES 92–19).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation), in cooperation with the Bureau of Land Management and the Corps of Engineers, has prepared the final environmental impact statement (FEIS) for the Milltown Hill Project, Douglas County, Oregon.

Under provisions of the Small Reclamation Projects Act (Pub. L. 84–984), as amended), Douglas County has applied for a Federal loan and grants to develop a dam and reservoir at the Milltown Hill site on Elk Creek which would provide for irrigation, municipal and industrial water supply, improved anadromous fish habitat, flood control, and outdoor recreation opportunities.

DATES: A 30-day review period commences with the publication of this notice. Written comments on the FEIS may be submitted to the Regional Director, Bureau of Reclamation, Pacific Northwest Region, at the address provided below on or before September 18, 1992.

ADDRESSES: Copies of the FEIS may be obtained on request from the following: Regional Director, Bureau of Reclamation, Attention: PN–150, P.O. Box 043, 550 West Fort Street, Boise, ID 83724; telephone: (208) 334–9442.

Copies of the FEIS are available for inspection at the following locations:

Douglas County, Department of Water Resources Survey, Justice Building, room 103, Roseburg, OR 97470.

Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, room 167, Denver, CO 80225.

Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., room 7456, Washington, DC 20240; telephone: (202) 208–4662.

Libraries

Yoncalla Public Library, 281 Front, Yoncalla, Oregon; Umpqua Community College Library, 1140 Umpqua College Road, Roseburg, Oregon; Oakland

Public Library, 637 Locust, Oakland, Oregon; Multnomah County Library, 801 SW 10th, Portland, Oregon; Drain Public Library, 205 West A Avenue, Drain, Oregon; Douglas County Library, Douglas County Courthouse, 1036 SE Douglas, Roseburg, Oregon; Sutherlin Public Library, 210 East Central, Sutherlin, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Christensen, Chief, Environmental and Biological Compliance Branch, Environmental Management Division, Pacific Northwest Region, Boise, Idaho; telephone: (208) 334–9442.

SUPPLEMENTARY INFORMATION: The FEIS presents the preferred alternative and the no action alternative. The preferred plan consists of a 186-foot-high dam and 24,143 acre-foot reservoir on Elk Creek, which would provide storage and conveyance of water to the communities of Rice Hill, Yoncalla, and Drain, allowing for municipal expansion and industrial diversification; increased water to provide a supplemental or full irrigation supply for up to 4,661 acres of arable lands; provide regulated flows of water for improved anadromous fish habitat; improved water quality in Elk Creek and Yoncalla Creek; and new water-related recreational facilities at the proposed reservoir. The project would also provide limited flood control in and near the city of Drain and would provide drainage facilities on agricultural lands as needed.

No significant changes have been made to the preferred development plan as presented in the DEIS (DES 91–33). The FEIS incorporates updates in impact and economic analyses and presents the results of agency and public review of the DEIS during the 60-day review period. Based on that review, it has been determined that no significant changes are required in the proposed project and that the analyses presented in the DEIS remain valid as updated in the FEIS.

Environmental effects due to implementation of the preferred plan would include a loss of wetland and riparian habitats which would be fully mitigated. The project would provide an opportunity to secure 767 additional acres of habitat for the Columbian white-tailed deer, an endangered species, as a project mitigation measure. Construction of the proposed dam and reservoir would require relocation of local residences, roadways, and utility lines.

Section 404 Permit Application and Public Notice

The Corps of Engineers has received an application for a Department of Army Permit under Section 404 of the Clean Water Act from Douglas County. A Public Notice of the application, including evaluation factors which will be used in the permitting process, will be issued by the COE.

Dated: August 4, 1992.

Donald R. Glaser,

Director, Denver Operations.

[FR Doc. 92–19771 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub.L. 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 14, 1992.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Acadia National Park Headquarters, McFarland Hill, Rt. 233, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 8, 1992;
2. Report of the Conservation Easement Subcommittee;
3. Report of the Acquisition Subcommittee;
4. Report of the General Management Planning Subcommittee;
5. Superintendent's report;
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: August 11, 1992.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 92–19695 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday September 11, 1992.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 10 a.m. at park headquarters, Marconi Station, South Wellfleet, Massachusetts for a field trip to Hatches Harbor.

The Commission members will then return to headquarters to convene the regular business meeting at 1 p.m. which will be held for the following reasons:

1. Adoption of Agenda;
2. Approval of Minutes of Previous Meeting;
3. Reports of Officers;
4. Superintendent's Report;
5. Reports of Subcommittees;
6. Highland Light Update;
7. Fresh Water Resources Discussion;
8. New Business;
9. Agenda for Next Meeting;
10. Date for Next Meeting;
11. Communications/public comment;
12. Adjournment.

The field trip is open to the members of the public but they must provide their own transportation.

The business meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Further information concerning the above may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: August 11, 1992.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 92–19696 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–70–M

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Saturday, September 19, 1992, at the Omni Richmond Hotel, 100 South 12th Street, Richmond, VA 23219 (telephone 804–344–7000). The meeting will begin at 9 a.m. and conclude before 3:30 p.m.

This meeting constitutes the ninth meeting of the Commission. The primary focus of the meeting will be on the subject of evaluating and preserving Civil War sites and preparing the Commission's draft report. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in Virginia and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–3936). Draft summary minutes of the meeting will available for public inspection about 8 weeks after the meeting, in Suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: August 13, 1992.

de Teel Patterson Tiller,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92–19665 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–70–M

Acadia National Park, Bar Harbor, ME; Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, sec. 10) that the Maine Acadian Culture Preservation Commission will hold a meeting on Thursday, September 24, 1992.

The Commission was established pursuant to Public Law 101–543. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the development and implementation of an interpretive program of Acadian culture in the State of Maine and the selection of sites for interpretation and preservation by means of cooperative agreements.

The meeting will convene at the Van Buren Secondary School, Main Street, U.S. Rt. 1 in Van Buren, Maine, at 7 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 25, 1992;
2. Report of the following subcommittees: A. Bylaws, B. Public Involvement Strategies, C. Research Topics;
3. Report of the National Park Service planning team;
4. Public comments;
5. Proposed agenda, place and date of next Commission meeting;
6. Locations and dates of Commission meetings for FY 1993.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: August 11, 1992.

Steven H. Lewis,

Acting Regional Director

[FR Doc. 92–19694 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–331]

Certain Microcomputer Memory Controllers, Components Thereof, and Products Containing Same; Commission Decision To Review an Initial Determination; Suspension of Investigation Pending Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) on July 9, 1992, suspending the above-captioned investigation. The Commission has determined to suspend the investigation for 30 days while it considers the issue on review.

ADDRESSES: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 12, 1991, Chips and Technologies, Inc. ("Chips") of San Jose, California filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain microcomputer memory controllers covered by claims of four U.S. patents owned by Chips. The Commission instituted an investigation of Chips' complaint on October 17, 1991. 56 FR 52058. Respondents OPTi Computer, Inc. (OPTi) of Santa Clara, California, and Elite Microelectronics, Inc. (Elite) of San Jose, California remain in the investigation.

On June 23, 1992, Chips moved to suspend the investigation in favor of concurrent litigation in the U.S. District Court for the Northern District of California between Chips and OPTi, *Chips and Technologies, Inc.*, versus *OPTi Computer, Inc.*, Civil Action No. C–91–20349–SW (PVT). The Commission's Office of Unfair Import Investigations (OUII) supported Chips' motion. OPTi and Elite opposed the motion. On July 9, 1991, the ALJ granted Chips' motion and issued an ID (Order No. 25) suspending the investigation.

Authority: This action taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.55 of the Commission's Interim Rules of Practice and Procedures (19 CFR 210.55).

Issued: August 10, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–19745 Filed 8–18–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same, Commission Determination Not To Review an Initial Determination Granting in Part a Motion for Summary Determination of Noninfringement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 24) issued by the presiding administrative law judge (ALJ) granting in part a motion for summary determination of non-infringement of the patents in issue in the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 19, 1992, respondent OPTi Computer, Inc. filed a motion for summary determination of non-infringement of the asserted claims of the four patents in issue in this investigation. The patents in issue are U.S. Letters Patent Nos. 4,899,272, 5,040,153, 4,924,375, and 5,051,899 (the '272, '153, '375, and '899 patents respectively). Complainant Chips and Technologies, Inc. and the Commission investigative attorneys did not oppose the motion for summary determination of non-infringement as to the '272 and '153 patents. On July 9, 1992, the presiding ALJ issued an ID granting the motion for summary determination of non-infringement as to the '272 and '153 patents. No petitions for review or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 210.53 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.53).

Issued: August 12, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19742 Filed 8-18-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-538 (Final)]

Sulfanilic Acid From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China (China) of sulfanilic acid [3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines, pursuant to 19 U.S.C. 1673d(b))(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

Background

The Commission instituted this investigation effective March 18, 1992, following a preliminary determination by the Department of Commerce that imports of sulfanilic acid from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673d(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 15, 1992 (57 FR 13118). The hearing was held in Washington, DC, on June 30, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 10, 1992. The views of the Commission are contained in USITC Publication 2542 (August 1992), entitled "Sulfanilic Acid from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-538 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: August 11, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19744 Filed 8-18-92; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford dissenting and Commissioner Brunsdale not participating.

[3] The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and the sodium salt of sulfanilic acid (sodium sulfanilate). Sulfanilic acid and sodium sulfanilate are provided for in subheadings 2921.42.24 and 2921.42.75 of the Harmonized Tariff Schedule of the United States.

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on August 10, 1992, a proposed Consent Decree in *United States* v. *Alcan Aluminum Co., et al.*, Civil Action No. 88-4970, was lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree resolves a complaint filed by the United States against four defendants under section 107(a) of CERCLA, 42 U.S.C 9602(a), for recovery of costs associated with the cleanup of the McAdoo Associates Site in Schuylkill County, Pennsylvania. Defendants are generators and a transporter which did not take part in a 1988 "mixed-funding" settlement for the Site, in which 65 parties agreed to perform the remedy in exchange, generally, for reimbursement of 25% of their costs from the Superfund.

During 1991, defendants placed into a court-supervised, interest-bearing escrow account the sum of $2 million, which includes $1 million covering the past costs and enforcement costs associated with the Site, and $1 million covering the Superfund's 25% share of the costs of the remedy and EPA's oversight costs. The $2 million sum, plus all accrued interest, will be turned over to the United States upon entry of the Decree.

Simultaneously with the lodging of the proposed Consent Decree, the defendants filed an amended third-party complaint against additional generators and part-owners of the Site. The Consent Decree also resolves that third-party action.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Alcan Aluminum Co., et al.*, D.J. No. 90–11–3–142A.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, suite 1300, Philadelphia, Pennsylvania 19106 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.75 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–19686 Filed 8–18–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; The Frame Relay Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") on July 9, 1992, and July 31, 1992, filed additional written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership.

The additional written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On April 10, 1992, FRF failed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537). The additional members of FRF are: Ameritech, Hoffman Estates, IL; Alcatel, Reston, VA; Coral Network Corporation, Marlborough, MA; DSC Communications, Plano, TX; Gandalf Data Ltd., Cherry Hill, NJ; Norwegian Telecom, Oslo, 1 NORWAY; RAD Data Communications, Tel Aviv 69710, ISRAEL; Teleglobe, Montreal, PQ H4T 1N1, CANADA; Transpac, Pleasanton, CA; and Wandel & Goltermann, Research Triangle Park, NC.

The July 31, 1992, notification reflects the deletion of Retix.

No changes have been made in the planning activities of FRF. Membership in FRF remains open, and the members intend to file additional written notifications disclosing all changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–19689 Filed 8–18–92; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Semiconductor Research Corporation ("SRC"), on July 13, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC as affiliate members: CVC Products, Rochester, NY; DTX Corporation, Lancaster, PA; Excimer Laser Systems, Inc., Wayland, MA; Ibis Technology Corporation, Danvers, MA; Integrated Electronics Innovations; Inc., Charlotte, NC; Phenix Semicron Corporation, Hurdle Mills, NC; Realtime Performance, Inc., Sunnyvale, CA; Spire Corporation, Bedford, MA; UTI Instruments Company, San Jose, CA; and Verity Instruments, Inc., Carrollton, TX.

The following companies have been deleted from SRC membership: Advanced Technology Applications; Intersonics, Inc.; Jamar Technology Co.; Peak Systems, Inc.; QuanScan, Inc.; Sandia National Laboratories; Sienna Technologies Inc.; and Solid State Equipment Corporation. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (52 FR 4281). The most recent notifications of SRC membership changes published in the **Federal Register** with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989 (54 FR 49123–24). Subsequent notifications filed on February 20, 1990, May 16, 1990, and July 18, 1990, were published on April 5, 1990 (55 FR 12750), June 13, 1990 (55 FR 23989), and August 15, 1990 (55 FR 33389–390), respectively, disclosing only membership changes. Notifications filed on September 24 and October 17, 1990, February 19, 1991, July 22, 1992, disclosing further membership changes, were published on November 27, 1990 (55 FR 49349), March 15, 1991 (56 FR 11275), September 12, 1991 (56 FR 46444), December 18, 1992 (56 FR 65745), and May 5, 1992 (57 FR 19310–311), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–19688 Filed 8–18–92; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research Act of 1984, "Clean Heavy-Duty Diesel Engine Development"

Notice is hereby given that, on July 1, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes which affect its cooperative research project entitled "Clean Heavy-Duty Diesel Engine Development." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that the following changes have taken place: (1) The participants agreed to extend the original 12-month period of performance and to revise the project completion date to March 31, 1993; and (2) the disclosure of the participation of Mack Trucks, Inc., Hagerstown, MD (effective June 6, 1991) and Renault Vehicules Industrials, Saint Priest, Cedex, FRANCE (effective June 7, 1991), as original joint participants whose earlier disclosure was inadvertently omitted in

prior notifications, through no fault of either company.

Except for the changes noted herein, no other changes have been made in the membership or the planned research activities.

On November 4, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 9, 1991, at 56 FR 64275–64276. On January 9, 1992, SwRI filed an additional written notification. The Department of Justice published a notice in the **Federal Register** in response to this additional notification on February 21, 1992, at 57 FR 6248. Additionally, a correction notice to the December 9, 1991, notice was published on February 24, 1992, at 57 FR 6334.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92–19687 Filed 8–18–92; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meetings

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATES AND TIME: Monday, September 14, 1992 10 a.m.–4 p.m.

PLACE: Pan American Health Organization, 525 23rd Street, NW., Washington, DC.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Roy Widdus, Ph.D., Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The agenda for the Commission meeting will include discussions of the Commission's activities in FY 1993.

Dated: August 13, 1992.

Roy Widdus,

Executive Director.

[FR Doc. 92–19680 Filed 8–18–92; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mechanical & Structural Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: August 25, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surface Engineering & Tribology Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 17, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Jerry Sackman or Huseyin Sehitoglu, Program Directors, Mechanics and Materials Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 24, 1992; 8:30 a.m. to 5 p.m.

Place: Room 540–B, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. John Scalzi, Program Director, Large Structural & Building Systems Program, room 1108, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 28, 1992; 8:30 a.m. to 5 p.m.

Place: Room 543, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Ken Chong, Program Director, Structural Systems & Construction Processes Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 28, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Mehmet Tumay, Program Director, Geomechanical, Geotechnical & Geo-Environmental Systems Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: After proposals received, was decided additional panel was needed. August 25 only date available for panelists/program director.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–19716 Filed 8–18–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

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 or NRC staff) 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 July 27, 1992 through August 7, 1992. The last biweekly notice was published on August 5, 1992 (57 FR 34578).

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 Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 18, 1992 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room 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 amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 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, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: April 27, 1992

Description of amendment requests: The proposed amendments to the Technical Specifications reduces the Essential Chilled Water System out-of-service time from 7 days to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not affect the probability or consequences of an accident previously evaluated because no change is made in the operation of the ECW system. The reduction in the allowable out-of-service time for an ECW loop increases the availability of the ECW system. The 72-hour out-of-service time is consistent with the allowable out-of-service time for the limiting areas served, the ESF pump rooms.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because neither the design nor the operation of the ECW system is changed. The proposed amendment makes the Technical Specification consistent with the allowable out-of-service time for the limiting areas served, the ESF pump rooms.

Standard 3 -- Involve a significant reduction in a margin of safety.

The proposed Technical Specification change does not reduce the margin of safety. The assumptions used in the safety analyses are not changed because the ECW system design and operations are not changed.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq. Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 19, 1992

Description of amendment request: The proposed amendment would relocate the component lists from Sections 3.6.4 and 3.8.4.1. of the Technical Specifications (TS) pursuant to guidelines set forth in NRC Generic Letter 91-08, "Removal of Component Lists from Technical Specifications." The subject lists will be incorporated into Perry Nuclear Power Plant's (PNPP) Operations Manual and will be subject to the change control provisions for procedures as described in the Administrative Control Section of the TS. Also included are corresponding changes to the Bases section of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would result in the revision or deletion of specified tables from the TS, as well as modification of TS and Bases wording as recommended by Generic Letter 91-08. The component lists affected are (1) Containment Isolation Valves (Table 3.6.4-1) and (2) Containment Penetration Conductor Overcurrent Protective Devices (Table 3.8.4.1-1). In addition, Tables 3.3.2-1 and 3.3.2-3, along with the wording of a TS Definition, and several LCOs, Surveillance Requirements, and Bases are modified to reflect administrative changes resulting from removal of specific references to the deleted component tables.

Removal of the subject component lists from the TS will not alter the existing TS requirements nor change the components to which they apply. Surveillance and operability requirement are incorporated into the TS to ensure that these components are available to perform their design functions. The restrictions and actions imposed by these requirements are not being relaxed or revised by the proposed changes in any way. The requirements for primary containment integrity and Type B and C testing will remain the same. The only changes made to the language of the TS are those recommended by GL 91-08 to ensure that the scope of each specification is clear and any plant specific features are retained. Accident analyses which rely on these components are not affected. There will be no modifications to plant equipment nor any physical changes to the licensed facility as a result of the proposed changes. Plant procedures/instructions will be revised only as necessary to reflect relocation of the table information. Any changes to the subject component information moved to the Plant Data Book will be accomplished in accordance with the administrative controls required by TS subsections 6.8 and 6.5.3 for plant procedures. The editorial changes to the TS will not affect the possibility or consequences of an accident in any way. Therefore, the proposed changes do not involve a change in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The removal of component lists will not alter existing TS requirements or those components to which they apply. The relocation of information from TS tables into the Plant Data Book serves only to consolidate information on affected components outside of the TS for control under appropriate administrative requirements. This is done in accordance with the guidance of GL 91-08. The proposed revisions to the TS do not involve a change in the manner in which these components will be operated, maintained, or monitored. No components or systems are physically added, removed, or modified as a result of the proposed changes. Therefore, no physical changes are being made to the facility as a result of the removal of the component lists. Since the requirements of the components will remain the same, this proposed amendment will not affect the outcome of previously evaluated accidents. Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The removal of the component lists from TS will not alter the existing TS requirements nor result in any changes to the components to which they apply. the proposed changes are consistent with the guidance set forth in GL 91-08. The margin of safety associated with these component lists is unaffected by this proposed change since the operability

and surveillance requirements applicable to these components are not being revised except administratively as recommended by the Generic Letter. The component lists will be incorporated into PNPP's Plant Data Book and will be subject to the change control provisions for plant procedures in the Administrative Controls Section of the TS. Any changes made to the subject component lists will be reviewed in accordance with the controls of TS subsections 6.5.3 and 6.8, which allow no decrease in the margin of safety without prior NRC approval. Since the same components are subject to the same requirements, the margin of safety is not affected. The editorial changes made to refine the TS will not affect the margin of safety. Consequently, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requestinvolves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 20, 1992

Description of amendment request: The proposed amendment would revise the Perry Nuclear Power Plant (PNPP) Technical Specifications (TS) 3.3.1, "Reactor Protection System Instrumentation" and 6.9.1.9, "Core Operation Limits Report (COLR)" to transfer the specific value of the simulated thermal power time constant from the TS to the COLR. The changes are proposed in accordance with the guidance provided in NRC Generic Letter 88-16, dated October 4, 1988.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

There will be no change in the operation of the facility as a result of this amendment. No safety-related equipment or function will be altered. The proposed amendment merely transfers the specific value of the cycle-specific simulated thermal power time constant from the Technical Specifications and references its inclusion in the Core Operating Limits Report section of the Plant Data Book. The simulated thermal power time constant specified in the COLR will continue to be used for calibration of the APRM Flow Biased Simulated Thermal Power-High trip function within the Technical Specifications. NRC approved analytical methodology will continue to be used as a basis for the generation of the simulated thermal power time constant that will now be contained in the COLR.

The transfer of the specific value of the fuel and cycle-specific simulated thermal power time constant from the PNPP Technical Specifications has no influence or impact on the probability of any transient or accident occurrence. This value, although not in technical specifications, will still be utilized in operating the Perry Nuclear Power Plant. The proposed Technical Specification still requires exactly the same actions to be taken if this value is not met as are required by the current Technical Specification.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

As stated above, no safety-related equipment, safety functions, or plant operations will be altered as a result of this amendment. The requested change does not create any new accident mode. The proposed change is in accordance with the guidance provided in Generic Letter 88-16 for requesting removal of the values of cycle-specific parameters from Technical Specifications. The establishment of the simulated thermal power time constant is in accordance with an NRC approved methodology and the incorporation of this value into the Core Operating Limits Report section of the Plant Data Book in accordance with the PNPP administrative control procedures ensure that proper steps have been taken to establish and maintain the value of this parameter. Furthermore, the submittal of Core Operating Limits Report revisions to the Commission as required by Technical Specification 6.9.1.9 will allow the Staff to continue to trend and review the values.

As stated earlier, the removal of the cycle-specific values has no influence on, nor does it contribute in any way to, the probability or consequences of an accident. The cycle-specific simulated thermal power time constant will continue to be calculated using NRC approved methods. The Technical Specification requirements regarding the simulated thermal power time constant are unchanged.

3. The proposed change does not involve a significant reduction in the margin of safety.

The essential issue, relative to plant safety, is conformance with the appropriate value of the simulated thermal power time constant. Whether the value is located within the Technical Specifications or the COLR is immaterial. The thermal power time constant value is fuel design dependent and is determined in accordance with NRC approved methods. The proposed amendment does not alter the requirement that the plat be operated in accordance with the value established for the simulated thermal power time constant, nor alter the required remedial action that must be taken if this value is not met. The removal of this value from the PNPP Technical Specifications is coincident with its incorporation into the Core Operating Limits Report section of the Plant Data Book, which is submitted to the Commission. The PNPP administrative procedures control revisions of this value. Therefore, the proposed change is administrative in nature and does not impact the operation of the facility in a manner that involves a reduction in the margin of safety.

The margin of safety is not affected by the transfer of the simulated thermal power time constant from the Technical Specifications to the COLR. The margin of safety presently provided by the current Technical Specifications remains unchanged. The proposed amendment still requires operation with the value obtained from NRC approved GE reload design methodologies (currently those described within GESTAR-II) and the actions to be taken if the value is not met remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requestinvolves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 29, 1991, September 30, 1991 and October 2, 1991

Description of amendment request: The proposed amendment dated August 29, 1991, deletes the existing Technical Specification (TS) Section 3.11/4.11, "High Energy Piping Integrity (Outside Containment)." Modifications have been completed which would acceptably mitigate the effects of postulated high energy line breaks outside containment. Thus, the licensee states that TS 3.11/4.11 is no longer needed.

The proposed amendment dated September 30, 1991, deletes the existing TS 3.12/4.12, "Fire Protection Systems," and changes the license conditions regarding fire protection.

The proposed amendment dated October 2, 1991, includes a deletion of the Fire Brigade manning requirements for TS Section 6.1.c. These changes are in accordance with Generic Letters 86-10 and 88-12.

These three submittals were submitted as part of the Quad Cities Technical Specification Upgrade Program. This program was undertaken in response to lessons learned from the Dresden Diagnostic Evaluation Team inspection and the frequent need for TS interpretations. The licensee has verbally informed the staff that most of the Technical Specification Upgrade Program is being revised and will be resubmitted. The only exceptions are the August 29, 1991, and September 30, 1991, submittals and the portion of the October 2, 1991, submittal that deletes the Fire Brigade manning requirements. Thus, these three submittals are the only ones being considered at this time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison has evaluated this proposed amendment [August 29, 1991] and determined that it involves no significant hazards consideration. In accordance with the criteria of 10 CFR 50.92(c) a proposed amendment to an operating license 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, because:

Present Section 3.11/4.11, High Energy Piping Integrity (Outside Containment), was a temporary addition to the Quad Cities Technical Specifications and was intended to be deleted when modifications were made to the affected high energy piping systems. Since required modifications were completed in 1979, the proposed deletion of Section 3.11/4.11 is an administrative removal of requirements that are no longer applicable. Due to the administrative nature of the proposed change, it cannot 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 because:

The proposed change deletes temporary requirements that are no longer applicable and are not being used at Quad Cities Nuclear Station. The modifications to the piping systems to address high energy line breaks outside containment were reviewed and approved by the NRC prior to installation and were designed to meet or exceed applicable design codes and standards. Since this change deletes temporary provisions that are no longer applicable, it cannot create the possibility of a new or different kind of accident from any previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The deletion of the temporary provisions of Section 3.11/4.11 upon completion of acceptable modifications, follows NRC guidance in the NRC letter dated March 8, 1976, that authorized issuance of Amendments 24 and 23 to Quad Cities Units 1 and 2, respectively. The piping modifications were approved by the NRC prior to installation and the installation was made in accordance with approved design change documentation. Since the proposed change deletes temporary provisions that are no longer applicable, it cannot involve a significant reduction in any margin of safety.

Commonwealth Edison has also evaluated this proposed amendment [September 30, 1991, and the portion of the October 2, 1991 submittal that removes the Fire Brigade manning requirements] and determined that [they] involve no significant hazards consideration. In accordance with the criteria of 10 CFR 50.92(c) a proposed amendment to an operating license 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, because:

The proposed change to remove the Fire Protection Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change does not involve a physical modification to the plant, a change to any safety system or a change to any setpoint. The administrative concept of concurrently removing the fire protection requirements from the Technical Specifications and incorporating these elements into the UFSAR does not affect the safety analysis presented in the Quad Cities UFSAR. The change will not affect the functioning of the fire protection program, which will be maintained pursuant to the operating license. No changes will be made to the program that conflict with the requirements of the operating license.

2) Create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed changes to the Facility Operating License and the Technical Specifications represent an administrative shifting of responsibility for the Fire Protection Program Requirements from the Technical Specifications to the UFSAR. The proposed changes do not affect the accident analysis or the operation or function of any safety-related equipment since the Fire Protection Program requirements will continue to be maintained. No new modes of operation are introduced by these proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The deletion of the Fire Protection Technical Specifications and incorporation of these provisions into the UFSAR does not change the level of fire protection in the plant. Additionally, controls added by the standard license condition and the 10 CFR 50.59 criteria will ensure future changes to the Fire Protection Program are properly evaluated. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: April 20, 1992

Description of amendment request: The proposed amendment deletes from the Technical Specifications the isolation functions and surveillance requirements for the Control Room Ventilation System chlorine and sulfur dioxide analyzers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

In accordance with the criteria of 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations 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 because:

The proposed changes involve deletion of the control room air intake chlorine and sulfur dioxide analyzers isolation trip functions. This change does not involve any accident precursors and, therefore, cannot increase the probability of an accident previously evaluated. In order to determine if the chlorine and sulfur dioxide isolation functions are needed, a habitability study of the control room following postulated accidents involving chlorine and sulfur dioxide shipments in the vicinity of Quad Cities Station was performed. The results of this control room habitability study indicate that by combining conservative calculation with reasonable qualitative arguments, the

probability of causing uninhabitable control room conditions by accidents involving railroad shipment of chlorine and sulfur dioxide falls within the acceptable limits as defined by Reg. Guide 1.70 and the SRP. Therefore, these potential events should not be considered design basis events, and the chlorine and sulfur dioxide detectors isolation functions could be deleted at the Quad Cities Station without significantly increasing the consequences of an accident previously evaluated.

The correction of the typo "streamline" is an administrative change to the Unit Two Technical Specifications which by its nature cannot involve a significant hazards consideration.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The deletion of the isolation functions of the chlorine and sulfur dioxide analyzers has been evaluated and found to meet the criteria of applicable Regulatory Guides and the SRP. The realistic probability of occurrence of an event involving chlorine or sulfur dioxide that would cause the control room to become uninhabitable has been determined to be low enough such that these events no longer need to be classified as design basis events.

The detector isolation functions that are being deleted are only required to provide a trip function in the event of a very low probability chlorine or sulfur dioxide spill. Therefore, the deletion of these detectors from the plant cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety because:

The installation of the chlorine, ammonia, and sulfur dioxide detectors was based on a survey [sic] performed in 1981 which determined that concentrations of these substances would exceed toxicity levels in the control room in less than 2 minutes after detection. This 1981 survey did not consider whether uninhabitable conditions could be caused in the control room during an actual offsite accident which releases chlorine or sulfur dioxide. This study also did not consider the probability of occurrence of an[d] event where chlorine or sulfur dioxide would be released in sufficient quantities to make the control room uninhabitable.

The recent completed study makes the determination using accepted probability analysis methods, that these events are of sufficiently low probability of occurrence that they should not be classified as design basis events. The study also demonstrates that the 1981 study was overly conservative and as such, should not be used to establish a basis for a determination of a reduction in a margin of safety. If the methodology used in the latest study had been used in the 1981 study, then these chlorine and sulfur dioxide detectors would have probably never been installed in the plant. Since these detectors are not needed in the plant to mitigate a potential chlorine or sulfur dioxide release that would make the control room uninhabitable, then the deletion of these detectors' isolation functions does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket No. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: July 6, 1992

Description of amendment request: The proposed amendment reflects a proposed modification to the High Pressure Coolant Injection (HPCI) turbine steam exhaust line. The proposed amendment adds the requirements for the new containment isolation valves which are part of the modification. A similar amendment for Quad Cities 2 was issued February 21, 1992, and noticed in the Federal Register on March 18, 1992 (57 FR 9455).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is provided below:

In accordance with the criteria of 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations 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 because:

Table 3.2-1

The addition of the HPCI steam line low pressure isolation setpoint to Technical Specification Table 3.2-1 is a correction of an omission to the original Technical Specification. The HPCI system primary containment isolation feature is part of the original design basis for the system; however, the isolation setpoint has not been included in the Technical Specification. The proposed change corrects this omission by adding the low pressure isolation setpoint and limiting conditions for operations to Technical Specification Table 3.2-1. The calculation which supports the proposed setpoint assures that HPCI is not prematurely isolated. The isolation setpoint does not affect any accident initiators; therefore, it does not represent any increase to the probability of the accident.

The addition of the HPCI steam line low pressure isolation setpoint to Technical Specification Table 3.2-1 will ensure that steam and radioactive gases will not escape from the HPCI turbine shaft seals into the reactor building after steam pressure has decreased below turbine operating pressure. CECo has performed a calculation to confirm the value of the proposed low pressure isolation setpoint (100 psig). The calculation ensures that the isolation does not occur prior to the low pressure assumed in the fuel accident analysis of 150 psig. The lower bounding limit for isolation is based on engineering judgment and is conservative when compared to the anticipated stall pressures for the HPCI turbine. The HPCI low pressure isolation setpoint, therefore, does not increase the consequences of the accident but rather provides further assurances that the isolation function is initiated at an appropriate pressure.

Table 3.7-1

The elimination of the existing vacuum breaker line and the addition of a new vacuum breaker line does not affect any accident initiator and as such does not affect the probability of the accident. Currently, the vacuum breaker relief line, which is located inside the torus, creates a potential flow path from the containment air space through the existing vacuum breakers to the HPCI exhaust line. Containment atmosphere leakage is prevented by the existing turbine exhaust check valves which are periodically tested in accordance with 10 CFR 50, Appendix J.

The proposed modification changes the primary containment boundary. The modification does not affect any accident initiators and therefore does not affect the probability of an accident. The design features of the new vacuum breaker assures that the consequences of an accident are not increased. The new design isolates the torus air space from the HPCI steam exhaust line through the use of motor-operated valves. The new vacuum breaker valves are designed to accommodate 10 CFR 50, Appendix J leak rate testing and will be added to the Station's 10 CFR 50, Appendix J Test Program. As such, the valve leakage will be included in the limits for containment leakage, as defined in the Technical Specifications, to ensure that the resulting doses will not exceed 10 CFR, Part 100 limits.

The consequences of the accident are also unaffected by the closure time of the new motor-operated valves. The valve closure time is based on the ability of the valve to close and does not significantly affect the dose rates. The specified closure time is typical of current motor-operated isolation valves in the HPCI system and is less than the time where significant fuel failure occurs during a design basis loss-of-coolant accident.

Finally, the isolation logic assures that the HPCI system is isolated during conditions in which the HPCI reactor inventory or pressure control function cannot be maintained and there is indication of a large break in the drywell. This isolation logic assures that the consequences of the accident are not significantly increased by providing the

necessary isolation of containment during accident conditions.

2. Create the possibility of a new or different kind of accident from any previously evaluated because:

Table 3.2-1

As indicated previously, the HPCI low reactor pressure isolation function was included as part of the original system design; however, a limiting condition for operation and instrumentation setpoint was not included in Technical Specification Table 3.2-1. As such, the proposed amendment does not introduce the use of new equipment which has a different failure mechanism or whose failure is considerably more probable that the existing equipment. The proposed change to Table 3.2-1, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

Table 3.7-1

The proposed modification to the HPCI system improves the reliability of the isolation system. The proposed design utilizes smaller isolation valves (when compared to the turbine exhaust check valve) and a more effective isolation boundary design (motor-operated gate valve versus check valve). The HPCI isolation sensors and control logic are optimally arranged to provide a high degree of reliability. Independence is provide to each isolation valve so that no single failure will prevent the isolation function. Periodic testing of instruments and valves ensures that the isolation function of the valves is maintained within design parameters. Manual operation of the valves (both local and remote) is a backup in the unlikely event of a failure to automatically isolate.

The control logic for the new isolation valves provides reliable operation for HPCI performance. The new valves will be normally open during operation. Therefore, the valves are not required to stroke from their normal position in the case of a HPCI initiation. The valves will automatically isolate on indications of a large break inside containment (drywell pressure greater than 2.5 psig) and when HPCI is no longer capable of providing pressure control and/or reactor water inventory.

A gross failure of the vacuum breaker function and/or new containment isolation valves in the closed position has been evaluated for the potential hazard of collapsing the turbine exhaust line and containment penetration due to a vacuum. Using conservative parameters for the HPCI exhaust piping (length-to-diameter = 50 and diameter-to-thickness = 40) and the methods of ASME Section III NB-3133.3 (cylindrical shells made of low yield carbon steel), the capability of the exhaust piping exceeds a maximum external pressure of 300 psia. Since the maximum theoretical external pressure is less than 15 psia, the collapse of any HPCI turbine exhaust component is not a concern.

Finally, the proposed design for the new vacuum breaker is consistent with the design of newer BWR plants for external vacuum breaker lines (e.g., LaSalle RCIC).

3. Involve a significant reduction in the margin of safety because:

Table 3.2-1

As previously indicated, the original design for the system included the HPCI low reactor pressure isolation function. The existing setpoint for the HPCI isolation is 90 psig which is based on previous operability requirements for HPCI. The new calculated setpoint (100 psig) does not involve a significant reduction in the margin of safety since the calculation inputs: (1) assure that the HPCI function will remain Operable during periods when the HPCI system is required to support the assumptions in the accident analysis; and, (2) assure that the isolation of the HPCI system will occur prior to reaching the stall pressure for the turbine. The lower bound for the calculation is conservative when compared to the anticipated stall steam pressures typical of turbines similar to the Quad Cities design. The margin of safety remains essentially unchanged in that the isolation setpoint has not significantly changed from the current value used to isolate the turbine prior to steam pressure reaching a level where the turbine can no longer operate.

Table 3.7-1

The proposed design for the new vacuum breaker does not involve a significant reduction in the margin of safety. Technical Specifications specify the acceptance criteria for containment integrity determination and also require that the containment undergo testing as specified in 10 CFR 50, Appendix J. Due to the modification of the containment boundary with the new vacuum breaker line, the motor-operated valves will be tested in accordance with 10 CFR 50, Appendix J to ensure TS leakage limits are maintained. The testing will ensure that any potential leakage will result in dose limits well below 10 CFR 50, Part 100 limits. In addition, the existing containment boundary for the HPCI steam exhaust system utilizes the suppression pool inventory (as an effective water seal) and two large check valves. One of the check valves is testable and will continue to be tested according to Section XI of the ASME Code per 10 CFR 50.55(g), to ensure that the HPCI turbine exhaust line does not experience water leaks.

The closure time for the HPCI vacuum breaker isolation valves does not significantly decrease the margin of safety. The closure times are based on reasonable closure time for the motor-operated valves. The specified closure time is typical of current motor-operated isolation valves in the HPCI system and is less than the time where significant fuel failure occurs during a design basis loss-of-coolant accident.

Finally, the isolation logic is designed to assure that HPCI remains in a "standby" operational mode and isolates during conditions which are indicative of a large break in the drywell concurrent with an insufficient steam pressure to support the HPCI system function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 12, 1992

Description of amendment request: The proposed change deletes the qualifying phrase "after the reactor has been made critical" from Technical Specification (TS) 3.7.2. The existing Electrical Systems specification, 3.7.1, is applicable when the primary coolant system is above 325F. The existing associated action statement, 3.7.2, applies only when the reactor is critical. Therefore, strict interpretation of these two specifications would allow required electrical components to be inoperable, for the specified time periods, with the reactor at power, but not when the reactor was shutdown at Hot Shutdown or Hot Standby. This limitation precludes the test loading of the diesel generators when the plant is subcritical above 325F and could require a Limiting Condition for Operation (LCO) 3.0.3 entry, while in Hot Shutdown for a condition which would be allowable while at full power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specifications has no effect when the plant is cooled below 325F or when the reactor is critical. It would allow plant operation, on those occasions when the plant is above 325F with the reactor subcritical, for specifically limited Allowed Outage Times, with less operable electrical equipment operable than is currently required. However, the change would eliminate a requirement to make a plant cooldown from Hot Shutdown due to an equipment inoperability for which Power Operation would be allowed to continue, and would also allow performing required testing of the Diesel Generators during Hot Shutdown.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not 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.

The proposed change to the Technical Specifications would not alter any plant systems, equipment, or operating practices. The change allows conditions which are currently allowed with the reactor critical at any licensed power level, with the reactor subcritical.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

Operation of the facility in accordance with the proposed change to the Technical Specifications would not alter the capacity or settings of any plant equipment. It would not cause or allow the plant to be operated in any conditions which are less conservative than those allowed by existing Technical Specifications.

Therefore, the proposed change to the Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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: L. B. Marsh

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 4, 1992

Description of amendment request: The proposed amendments would implement changes to the Vogtle Technical Specifications (TS) identified by the NRC's Generic Letter (GL) 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP)." Specifically, the changes would: (1) incorporate programmatic controls in the Administrative Controls section of the TS that satisfy the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR Part 50; (2) relocate the existing procedural details in current TS involving radioactive effluent monitoring instrumentation, the control of liquid and gaseous effluents, equipment requirements for liquid and gaseous effluents, radiological environmental monitoring, and radiological reporting details from the TSs to the ODCM as appropriate; (3) relocate the definition of solidification and existing procedural details in the current TS on solid radioactive wastes to the PCP as appropriate; (4) simplify the associated reporting requirements; (5) simplify the administrative controls for changes to the ODCM and PCP; (6) add record retention requirements for changes to the ODCM and PCP; and (7) update the definitions of the ODCM and PCP consistent with these changes.

The proposes changes would correct a typographical error in TS Table 4.11-1 regarding the radioactive liquid waste sampling and analysis program. The composite lower limit of detection for continuous releases related to Sr-89 and Sr-90 is incorrectly listed in TS Table 4.11-1, Item 2.a, as 1×10^{-8} microcurie/ml and would be changed to 5×10^{-8}. This correction would be made as the table is relocated to the ODCM.

TS Figure 5.1-2, "Effluent Release Points," would be changed to delete the "Radwaste Solidification Building Vent" (which does not exist) and replace it with the "Dry Active Waste Processing Building Vent." This correction to Figure 5.1-2 would be consistent with actual plant design as accepted by the NRC in February 1989 (see Vogtle Supplemental Safety Evaluation Report No. 8, pp 11-4, 11-5, and 11-6).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The proposed changes to the RETS are administrative in nature and alter only the format and location of programmatic controls and procedural details relative to radioactive effluents, solid radioactive waste, radiological environmental monitoring, and associated reporting requirements. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions or assumptions in any of the accident analyses. Since the accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes.

The proposed change to Table 4.11-1 corrects a typographical error in order to provide consistency regarding the composite lower limit of detection for continuous releases related to Sr-89 and Sr-90. The effectiveness of the radioactive liquid waste sampling and analysis program is not reduced by this proposed change.

The proposed change to Figure 5.1-2 revises the location of effluent release points by correctly designating the dry active waste processing building vent instead of the radwaste solidification building vent. The accident analyses remain bounding and the radiological consequences previously evaluated are not adversely affected by the proposed change.

Therefore, it can be concluded that these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons:

The proposed changes to the RETS do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any effluents released offsite.

The proposed change to Table 4.11-1 is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment.

The proposed change to Figure 5.1-2 correctly identifies the effluent release points from the site. No new failure modes or limiting single failures are introduced as a result of this proposed change.

Therefore, it can be concluded that these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety for the following reasons:

The proposed changes to the RETS do not involve any actual change in the methodology used in the control of radioactive effluents, solid radioactive wastes, or radiological environmental monitoring. These changes provide for the relocation of procedural details outside of the TS but add appropriate administrative controls to provide continued assurance of compliance with applicable regulatory requirements. The proposed changes also comply with the guidance contained in Generic Letter 89-01.

The proposed change to Table 4.11-1 is an administrative change that has no safety impact and is consistent with the applicable requirements contained in the Standard Technical Specifications.

The proposed change to Figure 5.1-2 correctly identifies the effluent release points from the site. The programmatic controls which are being proposed as part of the RETS changes and the procedural details that are being relocated to the ODCM and the PCP will provide assurance that there will be no adverse impact on the safe operation of the plant as a result of this change.

Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The Commission's staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30303-1810

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 17, 1992, as supplemented July 30, 1992

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) for Hatch Units 1 and 2 as follows:

Proposed Change 1:

During the Fall 1992 refueling outage for Plant Hatch Unit 2, the licensee plans to perform preventative maintenance and modifications to emergency diesel generator (DG) 1B for the purpose of increasing its reliability and, in the future, upgrading its rated capacity. DG 1B serves as the "swing" diesel in that it is capable of supplying emergency power to either Unit 1 or 2. During the planned work, Hatch Unit 1 is expected to be in power operation. Pursuant to Unit 1 TSs 3.5.G and 3.9.B.2, one DG may be inoperable for up to 7 days whenever the reactor is in the Start and Hot Standby or Run Mode and the reactor water temperature is greater than 212 degrees F. The planned work on DG 1B is expected to take approximately 12 days to complete. Therefore, in order to account for possible ontingencies, the licensee is requesting the allowable outage time of 7 days be extended to 14 days for performance of this maintenance and modification work. This extension will be used only once and only for this purpose.

Proposed Change 2:

This proposed change will correct two errors in Hatch Unit 1 DG TSs. The original markup of Unit 1 TSs 4.9.B.1 and 4.9.B.2 required performance of "Surveillance Requirement 4.9.A.2.a.1." That change was typed and submitted as "Surveillance Requirement 4.9.A.2.a" which included all parts of that TS. This proposed change will correct these errors and make both TSs read "Surveillance Requirement 4.9.A.2.a.1."

This proposed change supersedes the same proposed change (i.e., proposed Change 3) of the license's submittal dated July 17, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, are presented below:

Proposed Change 1:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The IPE [Individual Plant Examination] analysis performed for Plant Hatch, shows an extremely small probability of occurrence for any accident involving an LOSP [loss-of-offsite-power] during the proposed seven day extended AOT [allowed outage time] for the 1B DG [emergency diesel generator]. In addition, the reliability of the Hatch DGs has been shown to be very high. The combination of these two factors results in the conclusion that increasing the AOT by seven days for the 1B DG as a one time change will not cause a significant increase in the consequences of an accident previously evaluated. The operability of the 1B DG has no impact on the probability of occurrence of any type of accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Extending the AOT for the 1B DG does not create any new modes of operation. Operation of Unit 1 with one inoperable DG has already been considered as evidenced by the existence of the 7 day AOT contained in the Unit 1 TS. This change will extend this AOT to 14 days for one time only. Because of the extremely small probability of occurrence for any accident involving an LOSP during the proposed seven day extended AOT and the high reliability of the Hatch DGs, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The purpose of the DGs is to provide AC power to emergency equipment in the event of a loss of offsite power (LOSP). Analyses were performed for loss of coolant accidents (LOCAs) with various size line breaks in conjunction with various postulated single active failures (including loss of a diesel generator) and an LOSP. The limiting accident was found to be a recirculation suction line break with the failure of a diesel battery. Loss of a diesel battery results in loss of the associated DG as well as loss of control power to the associated 4160V emergency bus. Any event involving the inoperability of DG 1B as the single active failure is bounded by this limiting accident...

The combination of low accident probabilities, low LOSP frequencies and high DG reliabilities results in an extremely low probability of a severe accident due to DG [1B] failure. Therefore, the proposed one time change does not involve a significant reduction in the margin of safety.

Proposed Change 2:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the DGs is to provide AC power to equipment necessary for mitigation of accidents involving a loss of offsite power (LOSP). The purpose of Specification 4.9.B.1 and 4.9.B.2 is to ensure availability of sufficient AC power sources when one of the normal or emergency AC power sources is determined to be inoperable. This is done by demonstrating operability of the remaining normal and emergency AC power sources at an increased frequency. Performance of SR [Surveillance Requirement] 4.9.A.2.a.1 adequately demonstrates DG operability. Therefore, this change will not significantly impact the capability of the DGs to perform their required function of mitigating accidents involving an LOSP. The DGs have no impact on the probability of occurrence of any accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since this change only affects surveillance requirements, it will not change the mode of operation of the DGs, and will not introduce any new DG failure modes. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not result in a significant reduction in the margin of safety.

Performance of SR 4.9.A.2.a.1 adequately demonstrates DG operability. Therefore, this proposed change will not impact the ability of the DGs to provide AC power during accidents involving an LOSP. The DGs will still function to ensure that occurrence of the worst credible single failure in conjunction with a design basis LOCA/LOSP would result in acceptable consequences. Therefore, this change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library,

301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One,Unit No. 2, Pope County, Arkansas

Date of amendment request: July 22, 1992

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to increase the allowable pressurizer pressure range from between 2225 and 2275 psia to between 2025 and 2275 psia. A lower low pressurizer pressure setpoint for reactor trip, safety injection, and containment cooling is also proposed, along with associated Bases changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Previously analyzed accidents and anticipated operational occurrences that are affected by this change have been reviewed. This change has no impact on probability of occurrence of these accidents. Pressurizer pressure and low pressurizer pressure setpoints are only used as input parameters to the accident analyses which do not affect probability. No physical changes to the plant are being proposed; therefore there is no impact on the probability of accidents.

One item, "Inadvertent Operation of ECCS [emergency core cooling system] During Power Operation" is considered to be potentially impacted since operation at RCS [reactor coolant system] pressures below 2150 psia may result in undesirable ECCS (SIAS) [safety injection actuation signal] actuation post-trip (not actually at power). This susceptibility is not considered a significant increase in probability since the reduction in pressure does not impact the probability of ECCS initiation signal generation, rather, if a plant trip occurred for any reason and the plant was operating at reduced pressures, the statistical combination of uncertainties shows that the SIAS initiation setpoint may be reached. Since administrative controls will ensure that operation below 2150 psia is limited to very short durations (i.e. less than 24 hours steady state operation) any postulated increase in probability of an inadvertent operation of ECCS is not considered significant.

Previously evaluated accidents and anticipated operational occurrences which were determined to be adversely impacted by the reduced pressurizer pressure have been evaluated with no significant increase in the consequences. As indicated in the discussion, the SAFDLs [specified acceptable fuel design limits] and acceptance criteria were verified to be maintained. Additionally, no fuel cladding damage is predicted for any event and no changes to the radiological doses were calculated. Therefore, no increases in the consequences of any accident are predicted.

Changing the low pressurizer pressure setpoint and allowable values is based on the refinement of the instrument error calculations. No change to the analyzed events is proposed due to the new setpoint and allowable values. These new limits still ensure the analysis assumptions are valid; hence, there is no increase in the consequences of the accidents previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not involve any physical modifications (i.e. new systems, new components, etc.) to the plant. The normal operating value at which RCS pressure is held remains within the ranges typical of pressurized water reactors and more specifically, CE [Combustion Engineering] designed nuclear steam supply systems. The results of the accident re-analyses suggest no different phenomena or plant behavior than previously considered. The change to the bases for Technical Specification 2.1.1 are for clarification and result in consistency with other CE plants' approved Technical Specifications and bases. The low pressure setpoint change does not create any new or different system actuations or interactions than evaluated previously. The slightly increased potential for SIAS initiation post-trip does not suggest new or different type accidents since inadvertent SIAS (at power) is already assessed in SAR [Safety Analysis Report] Chapter 15 and is bounding for any post-trip SIAS. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

Any accident or anticipated operational occurrence which was determined to be adversely impacted by the reduced pressurizer pressure was evaluated to ensure acceptable results are maintained. The refined instrument error calculations supporting the lower low pressurizer pressure setpoint and allowable values were verified to ensure the present accident analysis assumption are [sic] still maintained. Based on these evaluations, the proposed changes do not involve any significant reduction in a margin of safety. Rather, an overall increase in the margin of safety is anticipated, as discussed above, by increasing the safety valve reliability and decreasing the exposure to risks of plant shutdown and cooldown for valve replacement or repair.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 22, 1992

Description of amendment request: The proposed amendment would revise the surveillance requirements for steam generator (SG) tubing, Technical Specification (TS) 4.4.5, and associated Bases, to allow the use of Combustion Engineering Nuclear Services (CENS) leak-tight sleeves for tube repair in the SGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of An Accident Previously Evaluated.

The intent of this proposed change is to allow Entergy Operations to use CENS sleeves to repair the ANO-2 [Arkansas Nuclear One, Unit No. 2] SG tubes showing degradation in regions of the tube sheet and the eggcrate support crevice areas that can be sleeved. To support this, changes are being proposed to TS 4.4.5 to reference the CENS report CEN-601-P, "ANO-2 Steam Generator Tube Repair Using Leak Tight Sleeves", Revision 01-P, dated July, 1992.

Report CEN-601-P, "ANO-2 Steam Generator Tube Repair Using Leak Tight Sleeves", Revision 01-P, dated July, 1992, demonstrates that repair of degraded tubes using the CENS sleeves will result in tube bundle integrity consistent with the original design basis.

Per Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present eddy current techniques. Plugging limit criterion [sic] are established in the Technical Specifications for the tubes and sleeves.

The sleeve design, materials, and joints were designed to the applicable ASME Boiler and Pressure Vessel Codes. An extensive analysis and test program was undertaken to prove the adequacy of the CENS welded sleeve. This program determined the effect of normal operating and postulated accident conditions on the sleeve tube assembly, as well as the adequacy of the assembly to perform its intended function. Design criteria were established prior to performing the

analysis and test program which, if met, would prove that the sleeves are an acceptable repair technique. Based upon the results of the analytical and test programs described in detail in CEN-601-P, these sleeves fulfill their intended function as a leak tight structural member and meet or exceed all the established design and operating criteria. Therefore, the probability of an accident is not increased.

The consequences of accidents previously analyzed are not increased as a result of sleeving activities. In the case of a tube rupture, the sleeve may actually result in a slightly reduced leak/flow rate through the broken tube due to the smaller effective flow area. The minor reduction in flow area associated with a tube sleeve has no significant effect on SG performance with respect to heat transfer or system flow resistance and pressure drop. In any case, all analytical impacts are clearly bounded by evaluations which demonstrate the acceptability of tube plugging which totally removes the tube from service. Therefore, in comparison to plugging, tube sleeving is considered a significant improvement with respect to SG performance. The cumulative impact of multiple sleeved tubes has been evaluated to ensure the effects remain within the analytical design bases (both normal and accident).

Corrosion testing has been performed to assess the corrosion resistance of the sleeve and weld, and to assess the effects of sleeve installation on the parent tube. This testing has shown that the sleeve and weld are more resistant to corrosion than the parent tube. In addition, the post-weld heat treatment of the welded region reduces residual stresses and enhances the corrosion resistance of the tube for both primary and secondary side corrosion. Additionally, inservice experience with welded sleeves and the CE rolled plug joint, which is essentially the same as the sleeve rolled joint, has shown no adverse corrosion associated with either the parent tube, sleeve, or sleeve/tube joint.

Therefore, based on extensive analysis and test programs performed and the ability to monitor and remove degraded sleeves from services, this change does not significantly increase the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

The installation of the sleeves will be performed in a manner consistent with the applicable standards, will preserve the existing design bases, and will not adversely impact the qualification of any plant systems. This will preclude adverse control/protection systems interactions. The design, installation and inspection of these sleeves will be done in accordance with ASME Code criteria. By adherence to industry standards, the pressure boundary integrity will be preserved.

Therefore, the use of CENS sleeves does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The applicable margins of safety for heat transfer and flow rate through the steam generator are defined in the ANO-2 TS.

The installation of a sleeve in a steam generator tube increases the flow resistance through the tube. The increased resistance will result in slightly reduced flow through the sleeved tube. To determine the effect of installing one or more of the different sleeve types in the steam generator tubes, an analysis was performed and is summarized in CEN-601-P. A conservative sleeve length was used in evaluating the effects of the sleeves on the heat transfer and hydraulic capabilities of the steam generators. Using the head and flow characteristics of each of the four primary pumps in conjunction with the primary system hydraulic resistances, the flow rate was calculated as a function of the number of sleeved tubes. The TS minimum allowable flow rate was used to determine the maximum number of tubes per steam generator which can be sleeved.

The effect of the change in flow rate on heat transfer between the primary and secondary side of the steam generator was determined to be negligible. The overall resistance to heat transfer between primary and secondary sides consists of the primary side film resistance, the resistance to heat transfer through the tube wall, and the secondary side film resistance. Since the primary side film resistance is only a portion of the total resistance and the change in flow rate is so small, the effect of the calculated maximum change in flow rate on heat transfer is negligible.

The loss in heat transfer area associated with sleeving was also determined to be small. When the sleeve is installed in the steam generator tube, there is an annulus between the sleeve and the tube except in the sleeve tube weld regions. Hence, there is effectively little primary to secondary heat transfer in the region where the sleeve is installed. Keeping the sleeve short minimizes the heat loss. Longer sleeves are used in the tubesheet portion of the tube. However, since negligible heat is transferred in the tubesheet region anyway, the loss in heat transfer area associated with sleeving is also negligible.

SG tube integrity is maintained under the same limits for sleeved tubes as for unsleeved tubes; i.e., ASME [American Society of Mechanical Engineers] Section III and Regulatory Guide 1.121. The degradation limit at which a tube is considered inoperable remains unchanged. A degradation limit at which a sleeve is considered inoperable has been developed. The TSs continue to require monitoring and restriction of primary to secondary system leakage through the SGs, such that there remains reasonable assurance that a significant increase in leakage, due to failure of a sleeved (or unsleeved) tube, will be detected.

The TSs continue to contain reporting requirements for tubes which have had their degradation spanned (regardless whether the tube is plugged or sleeved).

Therefore, this change does not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: May 2, 1989

Description of amendment request: Proposed changes to the River Bend Station Technical Specifications are being requested to revise the required actions to be taken in the event a diesel generator (DG) becomes inoperable by:

1. adding a provision to allow verification that the cause of a DG being inoperable does not impact the operability of the operable DGs. This will be allowed in lieu of starting and loading the operable DGs in those cases when the cause of the DG inoperability can be verified independently without starting and loading the DG,

2. deleting the word "preventive" to allow performing preplanned corrective maintenance without requiring the operable DGs to be started and loaded,

3. deleting requirements to start and load DGs when one or both offsite circuits becomes inoperable, and

4. adding a provision to Action e to allow declaring the affected equipment inoperable in lieu of always requiring a plant shutdown when a required component becomes or is already inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Testing Requirements with an Inoperable Diesel Generator

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current River Bend Station Technical Specifications require all operable DGs to be started and loaded to offsite power to demonstrate their operability in the event any DG becomes inoperable due to any cause other than preplanned preventive maintenance or testing. The intent of

this testing is, in part, to determine if a common mode failure exists and, in part, to provide added assurance that the remaining operable DGs are capable of supplying emergency power. The proposed change will allow verification that the cause of the DG being inoperable does not impact the operability of the operable DGs without subjecting the operable DGs to increased testing when an independent test can be performed. While deleting the requirement to test the operable DGs may result in an increased probability of failure due to an undetected condition, performing unnecessary tests increases engine wear and decreases overall plant safety by decreasing DG reliability. The combined effects will not result in a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change will eliminate testing of operable DGs when it can be verified that the cause of an inoperable DG will not impact the operable DGs. By its nature, reduction of DG testing will not create the possibility of a new or different kind of accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed change does not alter on-site emergency power requirements and it does not represent a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

2. Deleting the word "Preventive" from "Preplanned Preventive Maintenance"

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current Technical Specifications require all operable DGs to be started and loaded to offsite power to demonstrate their operability in the event any DG becomes inoperable due to any cause other than preplanned preventive maintenance testing. The intent of this exclusion is to require additional testing only in those cases where a potential for a common mode failure exists or the reliability of the onsite AC sources is reduced. The proposed change will permit preplanned "corrective" maintenance without the need for testing the remaining DGs. Since the condition requiring corrective maintenance does not prevent the DG from performing its intended safety function, a failure, common mode or otherwise, has not occurred. The proposed change does not involve a significant increase in the probability that the remaining DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change involves a reduction in diesel generator testing requirements. By its nature, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed change does not alter on-site emergency power requirements and it does not represent a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

3. Testing Requirements with an Inoperable Offsite Circuit

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current Technical Specifications require operable DGs to be started and loaded to offsite power to demonstrate their operability in the event an offsite AC source(s) becomes inoperable. The intent of this additional testing is to provide added assurance that the operable DGs are capable of supplying emergency power when the offsite AC sources are abnormally degraded. The normal Technical Specification surveillance testing schedule provides adequate assurance that the DGs will be capable of performing their intended safety functions. The inoperabilty of an offsite AC source does not affect the reliability of the DGs. Requiring the DGs to be started and loaded to offsite power sources that may be degraded increases the risk of losing all AC power to their safety busses. While deleting the requirement to test the operable DGs may result in an increased probability of failure due to an undetected condition, it reduces the risk of losing a DG and leaving its safety bus without AC power when the offsite sources are abnormally degraded. The combined effects will not result in a significant increase in the probability that the DGs will be unable to perform their intended safety function. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change involves a reduction in diesel generator testing requirements. By its nature, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed change does not alter on-site emergency power requirements and it does not represent a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

4. Confirmatory Actions to be Taken with an Inoperable Diesel Generator

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current Technical Specifications require that, within two hours of a DG becoming inoperable, all required systems, subsystems, trains, components and devices that depend on the remaining operable DG as a source of emergency power be verified as operable. If this condition cannot be met, the plant is required to be shutdown. The intent of this requirement provides assurance that a loss of offsite power, during the period that a DG is inoperable, will not result in a complete loss of safety function of critical systems. The proposed change will 1) remove the requirement to verify operability of equipment which are served by only one DG, and 2) permit use of the Action Statement of the affected equipment if it allows for continued plant operation for more than two hours when both redundant pieces of equipment are out of service. The proposed revision will provide the same degree of safety for those significant critical systems while allowing the operational flexibility intended for less

critical emergency powered systems/components. In addition, it will reduce unnecessary plant shutdowns and potential challenges to safety systems. The proposed change continues to limit plant operation to those periods of time allowed by the current Action Statements for the affected equipment and continues to maintain the same level of safety for those significant critical systems. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change allows for reliance on the Action Statements of the affected equipment when both pieces of equipment are out of service as opposed to the Action Statement with one DG out of service. By its nature, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed revision will provide the same degree of safety for those significant critical systems while allowing the operational flexibility intended for less critical emergency powered systems/components. In addition, it will reduce unnecessary plant shutdowns and thus reduce potential challenges to safety related equipment. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: July 26, 1991 as supplemented June 7, 1991, and February 4 and April 1, 1992.

Description of amendment request: The proposed amendment would change the TS to permit expansion of the spent fuel pool (SFP) storage capacity from 2050 assemblies to 3613 assemblies. The expansion will be accomplished by replacing the existing spent fuel pool storage racks with higher density storage racks and by placing racks in areas of the pool where racks are not currently located.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The analyses performed by Holtec have demonstrated the acceptability of the proposed reracking from a variety of perspectives. For example, the analyses demonstrate that K_{eff} will remain within acceptable limits even if an abnormal event, such as a fuel assembly misloading or assembly drop, should occur. It has also been demonstrated that the spent fuel pool cooling system is adequate to maintain acceptable cooling of the stored assemblies, and that adequate time would exist to take appropriate corrective action should all cooling be inadvertently lost. The racks are designed to seismic Class I requirements. An assembly dropped on the racks would not distort the racks such that they would not perform their function. The radiological consequences of a fuel handling accident remain within previously established limits.

During the reracking effort, all movement of fuel assemblies and racks will be performed in accordance with our commitments to NUREG 0612, entitled "Control of Heavy Loads At Nuclear Power Plants." Thus, the probability of an accident involving assembly damage will not significantly be increased.

Based on these considerations, it is concluded that the probability or consequences of a previously evaluated accident is not significantly increased.

(2) Create the Possibility of a New or Different Kind of Accident From Any Previously Analyzed.

No unproven technology is involved either in the installation process or in the analytical techniques necessary to justify the planned fuel storage expansion. In fact, the basic reracking technology has been developed and demonstrated in over 80 applications for fuel pool capacity increases which have already received NRC approval.

The change to a mixed zone storage in the spent fuel pool requires the performance of additional evaluations to ensure that the criticality criteria is maintained. These include the evaluation for the limiting criticality condition, i.e., misplacement of an unirradiated (fresh) fuel assembly into a burned fuel storage cell. The evaluation for this case shows that when the boron concentration is at least 550 ppm, the criticality criterion is satisfied. We have proposed a T/S change to require 2,400 ppm boron, at all times, in the spent fuel pool. Therefore, protection against inadvertent mispositioning will be ensured.

During installation all movement of spent fuel pool assemblies and racks will be in accordance with our commitments to NUREG 0612, to prevent any damage to fuel assemblies stored in the spent fuel pool.

Based on the foregoing discussion, it is concluded that the reracking does not create the possibility of a new or different accident from any previously evaluated.

(3) Involve a Significant Reduction in a Margin of Safety.

The Holtec report demonstrates the acceptablilty of the reracking from a variety of perspectives, including criticality, thermal-hydraulic, radiological, seismic and structural considerations. The results of these analyses provide the basis for our conclusion that the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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: L. B. Marsh

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 5, 1992

Description of amendment request: The amendments would revise Section 4.11.D of the Peach Bottom Atomic Power Station (PBAPS) Technical Specifications (TS) regarding the visual inspection of snubbers. The proposed changes would revise the method of determining visual inspection intervals for snubbers in accordance with the guidance provided in NRC Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementing the recommendations in GL 90-09 will not introduce any new failure mode and will not alter any assumptions previously made in evaluating the consequences of an accident since the same confidence level exists for ensuring snubber operability. The proposed changes do not affect limiting safety system settings or operating parameters, and do not modify or add any accident initiating events or parameters. Therefore, the proposed changes do not cause an increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the PBAPS, Units 2 and 3 TS for implementing the recommendations of GL 90-09 do not involve any physical alterations to plant equipment, changes to setpoints or operating parameters, nor does it involve a potential accident initiating event. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes maintain the same confidence level as that currently provided by the TS for determining snubber operability. Accordingly, the existing margin of safety will be maintained. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 8, 1992

Description of amendment request: This amendment request would change Technical Specifications 6.3.1 and 6.4.1 to delete existing licensed operator qualification and training requirements that are superseded based on 1) INPO accreditation of PSE&G's licensed operator training programs, which are based on a system's approach to training, and 2) promulgation of the revised 10 CFR Part 55.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR [Part] 55 rule. Although licensed operator qualifications and training can have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as licensed operator training programs are accredited and based on a systems approach to training. PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation of the licensed operator training programs and require continued compliance with the requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications and training programs remain unchanged. Therefore, the proposed TS changes do not increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR [Part] 55 rule. The changes do not affect plant design, hardware, system operation, or procedures. Additionally, in promulgating the revised rule, the NRC concluded that the impact of the revised rule on the possibility of creating a new or different kind of accident is acceptable as long as licensed operator training programs are accredited and based on a systems approach to training. As noted previously, PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation and require continued compliance with the requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications and training programs remain unchanged. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR [Part] 55 rule. Licensed operator qualifications and training can have an indirect impact on a margin of safety; however, the NRC, in promulgating the revised rule, determined that the impact on margin of safety was acceptable when licensees maintain licensed operator training programs that are accredited and based on a systems approach to training. As noted previously, PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The NRC has concluded, as stated in NUREG-1262, that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining INPO accredited, systems based licensed operator training programs is equivalent to maintaining NRC approved licensed operator training programs which conform with applicable NRC regulatory guides or NRC endorsed ANSI/ANS standards. The TS requirements for the qualifications and training programs for all other unit staff remain unchanged. The licensed operator qualifications and training programs will continue to be required to comply with the requirements of 10 CFR [Part] 55. The margin of safety is maintained by virtue of maintaining INPO accredited licensed operator training programs and through continued compliance with the requirements of 10 CFR [Part] 55. Therefore, the proposed TS changes do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 26, 1992

Description of amendment request: Public Service Electric and Gas Company (PSE&G) is proposing to change the Salem 1 and 2 Technical Specifications to reflect: an increase in

the SHUTDOWN MARGIN requirements; a reduction in the containment pressure, high-high setpoint and allowable value; and changes to the containment spray system, containment fan cooler and service water Engineered Safety Features (ESF) RESPONSE TIMES. These changes were necessitated by the discovery of the auxiliary feedwater system flow greater than assumed in the Main Steam Line Break (MSLB) analyses, and the containment fan cooler unit and containment spray system response times greater than originally assumed for the Loss of Coolant Accident or MSLB analyses. Specifically, the SHUTDOWN MARGIN limit will be changed from greater than or equal to 1.6% delta k/k to greater than or equal to 1.85% delta k/k, to be effective during Unit 1, Cycle 11 and Unit 2, Cycle 7. The containment pressure high-high setpoint will be changed from less than or equal to 23.5 psig to less than or equal to 15.0 psig, and the Allowable Value changed from less than or equal to 24.0 psig to less than or equal to 16.0 psig. The ESF RESPONSE TIME for the service water system (containment pressure, high signal with loss of offsite power), will be changed from less than or equal to 48.0 seconds to less than or equal to 45.0 seconds. The ESF RESPONSE TIME for the containment spray system (containment pressure, high-high signal), will be changed from less than or equal to 45.0 seconds to less than or equal to 33 seconds. The containment fan cooler ESF RESPONSE TIME will be changed from the containment high-high signal to the containment high signal with the response time changed for less than or equal to 40.0 seconds to less than or equal to 45.0 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

These proposed changes:

1) Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect Salem Generating Station (SGS) Loss of Coolant Accident (LOCA) and Main Steam Line Break (MSLB) safety analyses assumptions. These changes have been evaluated to demonstrate that the analysis results remain within acceptable limits as defined by the SGS licensing basis. In particular:

a. The calculated peak containment pressure would remain below the SGS design limit of 47 psig.

b. The calculated containment temperature response would not adversely impact the qualification of equipment subject to the SGS Environmental Qualification program.

c. Core response to a postulated MSLB, assessed in terms of Departure From Nucleate Boiling Ratio, would remain within acceptable limits.

d. Calculated offsite radiological doses would remain well within the limits of 10 CFR 100.

2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve a setpoint change, response time changes and more restrictive SHUTDOWN MARGIN limits. They do not involve any new system configurations with the potential for changing the initiation of an accident, nor do they introduce any previously unconsidered equipment failure modes.

3) Do not involve a significant reduction in a margin of safety.

The SGS licensing basis safety analysis limits define an acceptable margin of safety for plant operation. The analyses affected by the proposed changes (LOCA and MSLB) have been reevaluated to demonstrate the safety analysis limits are not exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: April 21, 1992

Description of amendment request: The proposed amendment would revise condition 2.C(3) of Facility Operating License No. DPR-18 issued December 10, 1984. The proposed amendment would remove from Appendix A of that license, fire protection Technical Specifications 1.11, 3.14, 4.15 and 6.2.2(f), Tables 3.14-1 and 3.14-2, and the corresponding section Bases for 3.14 and 4.15. The proposed amendment would change and add to Appendix A of that license, administrative controls by Technical Specifications 6.5.1.6(l) and 6.5.1.7a. NRC Generic Letters 86-10, dated April 24, 1986, and 88-12, dated August 2, 1988, provided guidance to licensees to request removal of the fire protection Technical Specifications. The licensee's proposed amendment is in response to these Generic Letters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This evaluation covers the deletions of Technical Specifications 3.14, 4.15, 6.2.2(f), the section Bases for 3.14 and 4.15, the corresponding Definition Section 1.11, Table 3.14-1 Fire Detection Instruments, Table 3.14-2 Fire Service Water Hose Reel Location, and relocation of these requirements to the Updated Final Safety Analysis Report (UFSAR) and plant procedures. The Limiting Conditions for Operation (LCO) for the fire protection system will be incorporated into plant procedures. In addition, a proposed new UFSAR Table 9.5-4, Spray/Sprinkler System Operability, will be added to provide clarity on these systems. The addition of Technical Specification 6.5.1.6(1) and revisions to License Conditions 2.C.(3) have also been proposed. The following discussion addresses these changes and their significant hazard evaluation.

1. Technical Specification 3.14, 4.15, 6.5.1.6(1), 6.5.1.7a. and b., 1.11, Table 3.14-1, Table 3.14-2, and new UFSAR Table 9.5-4.

a. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The accident analysis assumes that a design basis accident does not occur simultaneously with a fire. The fire hazard analysis does not solely rely on automatic fire suppression systems and/or fire detection systems as fire-rated assemblies; manual fire suppression and redundant safe shutdown trains are also available.

Because no requirements are being changed, there will be no increase in the probability or radiological consequences of an accident previously evaluated.

b. These changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not alter the intent of the requirements; but rather, relocates them from the Technical Specifications to the UFSAR and plant procedures. No modifications are being made to any plant system, structure or component which may be relied upon for safe shutdown. Operational, maintenance, and procedural requirements are not decreased.

c. These changes do not involve a significant reduction in the margin of safety. No change is being proposed for the requirements themselves. Plant procedures continue to provide specific instructions necessary for implementation of the requirements consistent with that currently in place.

2. Technical Specification 6.2.2(f), Site Fire Brigade Requirements, has been deleted from Technical Specifications and transferred to plant procedures and the UFSAR. New Technical Specification 6.5.1.6(1) Plant Operations Review Committee (PORC) Responsibilities, has been proposed as an addition.

a. These changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated. No changes to the requirements have been made. These changes simply remove the site fire brigade requirements from the Technical Specifications and places them into plant procedures and the UFSAR without altering them. Review of the Fire Protection Program and its revisions will be the responsibility of PORC. PORC shall be responsible for reviewing changes to fire protection requirements and submitting recommended program changes to the Nuclear Safety Audit and Review Board (NSARB). This will ensure that implementing procedures contain the proper level of administrative control over the Fire Protection Program and that subsequent changes are appropriately evaluated under 10 CFR 50.59.

b. These changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not alter the requirements. Plant procedures will continue to provide the specific instructions for implementing the administrative requirements. The number and qualifications of the Fire Brigade members has not changed.

c. These changes do not involve a significant reduction in the margin of safety. No change is being proposed for the requirements. Plant procedures will continue to provide the specific instructions necessary for implementation of the requirements consistent with that currently in place.

3. License conditions 2.C.(3) (a), (b) and (c) Fire Protection, will be revised in accordance with the guidance provided in Section F of Generic Letter 86-10 Implementation of Fire Protection Requirements, and as clarified in Generic Letter 88-12 Removal of Fire Protection Requirements from Technical Specifications.

Specifically, 2.C.(3)(a) will be updated to include Safety Evaluation Reports dated February 27, 1985, and March 21, 1985. Sections 2.C.(3)(b) and (c) will be removed and a new section 2.C.(3)(b) has been proposed which allows changes to be made to the approved Fire Protection Program only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

a. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change in license conditions from those previously incorporated into the license to the one presented in Generic Letter 86-10 and 88-12 does not result in any change in technical requirements of the change process.

b. This change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed standard license conditions do not involve any significant change in requirements and conform to the guidance in Generic Letters 86-10 and 88-12. Any change being made will still require an evaluation pursuant to 10 CFR 50.59 to determine the existence of any unreviewed safety question.

c. This change does not involve a significant reduction in the margin of safety. A standard license condition is implemented. This requires that no change can be made to the fire protection program that will adversely affect the ability to achieve and maintain safe shutdown in the event of a fire without prior Commission approval. Therefore, the license condition does not involve any significant change in requirements and follows the guidance in Generic Letters 86-10 and 88-12.

Fire Protection Program reporting requirements will still be made relative to the criteria of 10 CFR 50.72, 10 CFR 50.73 and 10 CFR 21 on an individual basis, therefore, the proposed change will not result in a reduction of regulatory requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Acting Project Director: Victor Nerses

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: January 9, 1990, as supplemented October 8, 1991, and superseded August 4, 1992

Description of amendment request: The proposed changes would modify Sections 3.0 and 4.0 of the Technical Specifications by incorporating conclusions reached in NRC Generic Letter 87-09. The changes would restrict operating modes while in a limiting condition for operation, allow a 24-hour period to complete a missed surveillance prior to entering the applicable Action Statement, and require that surveillance requirements be completed before entering the applicable operating condition based on the types of exceptions contained in NUREG-0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors," issued Fall 1981. Furthermore, words defined in the Technical Specifications are being capitalized throughout consistent with NUREG-0452. The proposed amendments were previously noticed in the **Federal Register** on December 26, 1991 (56 FR 66931). However, due to the fact that the August 4, 1992, submittal supersedes the previous submittals in their entirety, the staff has determined that the proposed action should be renoticed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the modified [T]echnical [S]pecifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.0.3 has been added as a clarification to specifically limit entry into an operational condition when the conditions for the Limiting Condition for Operation are not met and the associated Action Statement requires a shutdown if they are not completed within a specified time interval. For a Limiting Condition for Operation that has Action Statement requirements permitting continued operation for an unlimited period of time or an exception to Technical Specification 3.0.3, entry into an operational mode or other specified condition of operation should be permitted in accordance with those Action Statement requirements. This clarification is consistent with existing NRC regulatory requirements for a Limiting Condition for Operation.

Surveillances provide positive verification of operability. A 24-hour time limit has been included in Technical Specification 4.0.3 allowing a delay of the required actions to permit the performance of a missed surveillance. This change is justified in that it is overly conservative to assume that systems or components are immediately inoperable when a surveillance requirement has not been performed. The NRC concluded in Generic Letter 87-09 that a 24-hour time limit balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with Action Statement requirements before the surveillance can be completed. The NRC concluded that the potential for a plant upset and challenge to safety systems is increased if surveillances are performed during actions to initiate a shutdown to comply with Action Statement requirements.

Technical Specification 4.0.4 has been modified to note that its provisions shall not prevent passage through or to operational conditions as required to comply with Action Statement requirements. This is consistent with the intent of the existing Technical Specifications and only represents a clarification.

No previously analyzed accident scenario is changed by this Technical Specification change request. Initiating conditions and assumptions remain as previously analyzed.

Therefore, we conclude that this change does not increase the probabilities or consequences of an accident.

(2) Operation of the facility in accordance with the modified [T]echnical [S]pecifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations.

The changes being proposed to achieve consistency with Generic Letter 87-09 are clarifications of existing Technical Specifications with the exception of the 24-hour time limit to perform a missed surveillance. As noted in the generic letter, that change addresses a balance between positive verification of operability and the potential risk of known transients or plant upsets which may occur during activities to initiate a shutdown. This change does not alter any accident scenarios. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

(3) Operation of the facility in accordance with the modified [T]echnical [S]pecifications would not involve a significant reduction in a margin of safety.

For the changes intended to achieve consistency with the recommendation of Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specification (STS) on the Applicability of Limiting Conditions or Operation and Surveillance Requirements," the NRC [s]taff has previously evaluated these changes in the generic letter and determined that the modifications will result in improved [T]echnical [S]pecifications. No other changes are proposed.

Therefore, use of the proposed Technical Specification[s] would not involve a significant reduction in the margin of safety.

In addition, we believe this change request is of the type described in the [FEDERAL REGISTER] [n]otice of March 6, 1986 (51 FR 7744) as an example of amendments that are considered not likely to involve significant hazards considerations. In particular, example (ii) applies to this change request by describing a change that constitutes additional limitations, restrictions, or controls not presently included in the [T]echnical [S]pecifications. Example (vii) also applies to this change by describing a change to conform a license to changes in the regulations (Generic Letter 87-09), where the license change results in very minor changes to facility operations clearly in keeping with the regulations. Example (i) applies to the deletion of expired footnotes, a purely administrative change to [T]echnical [S]pecifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 16, 1992

Description of amendment request: The proposed change would revise the wording in the NA-1&2 Technical Specifications (TS) for the Reactor Coolant System (RCS) volume in the design features section. The RCS volume in TS 5.4.2 would change from "... 9957 [plus or minus] 10 cubic feet at a nominal T_{avg} of 525°F" to " ... approximately 10,000 cubic feet at nominal operating conditions." The reference to the RCS volume of 9957 cubic feet in the Bases for Technical Specification 3/4.1.1.3 on boron dilution would be deleted.

NUREG-0452, "Standard Technical Specifications for Westinghouse PWRs," Revision 4 (STS), provides guidance to licensees when preparing TS. One design feature specified in the STS is the RCS volume. A calculated RCS volume was obtained from the reactor vendor and included in the NA-1&2 TS consistent with STS guidance. However, that calculated volume is not used in the accident analyses. Rather, the transient system models used to perform accident analyses divide the RCS into component mass-energy cells for which volumes are specified. The definition and volume of these mass-energy cells vary depending on the model used and the accident being analyzed. Thus, the methodology does not require that a single total RCS volume be specified as an accident analysis basis and revising the current description would have no significant effect on safety. TS 3/4.1.1.3 requires the flow rate of reactor coolant through the RCS to be greater than or equal to 3000 gpm when a reduction in RCS boron concentration is being made. The Bases for TS 3/4.1.1.3 state that the minimum flow rate of at least 3000 gpm provides adequate mixing, prevents stratification and ensures that reactivity change will be gradual during boron concentration reductions in the RCS. It then states that a flow rate of at least 3000 gpm will circulate an equivalent RCS volume of 9957 cubic feet in approximately 30 minutes. It is proposed that the phrase "will circulate an equivalent Reactor Coolant System volume of 9957 cubic feet" be changed to "will circulate the Reactor Coolant System volume." Revising the phrase does not alter the meaning of the Bases and eliminates a potential conflict with the revised design feature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Revising the description of the RCS volume in the design features of the [TS] has no impact on the probability of any accident previously evaluated because total RCS volume is not used in any accident analysis.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to plant design or methods of operation. The proposed changes do not involve operation of any plant equipment in a manner different from that in which it was designed to be operated. Since a new failure mode is not created, a new or different type of accident is not made possible.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any changes to safety limits or limiting safety system settings. Neither setpoints nor operating parameters are affected by the proposed changes. Therefore, no significant reductions in a margin of safety occur as a result of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 8, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4, "Steam and Power Conversion System," TS 4.8, "Auxiliary Feedwater System," and the respective bases. The changes incorporate a NRC staff recommendation regarding the required minimum condensate storage tank inventory, additional restrictions on the operation of the auxiliary feedwater

system, and revisions to the surveillance requirements for the turbine driven auxiliary feedwater pump. In addition, administrative changes have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The accidents of interest include loss of main feedwater, flooding, loss of offsite power, and a small break loss of coolant accident. The probabilities of occurrence of these accidents are independent of the proposed changes. In addition, the consequences of these accidents are not significantly increased by any of these changes. The condensate storage tank minimum level is being increased and the auxiliary feedwater pump allowed outage time is being decreased, both conservative changes. In addition, the potential for unnecessary plant transients is being reduced. Finally, auxiliary feedwater system redundancy and separation are maintained while operability of the turbine driven auxiliary feedwater pump is demonstrated, consistent with staff guidance.

The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated, because the changes would not alter the plant configuration, the operational parameters, or plant performance.

The proposed changes would not involve a significant reduction in a margin of safety. The proposed changes in minimum condensate storage tank level and auxiliary feedwater pump allowed outage time are both conservative, enhancing the margin of safety. The potential for unnecessary plant transients is also reduced. In addition, limiting conditions for operation consistent with staff guidance are maintained to ensure the margin of safety is not significantly reduced.

The proposed administrative changes also would not involve a significant increase in the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different kind of accident from any accident previously evaluated, and would not involve a significant reduction in a margin of safety. These changes do not alter the intent or the interpretation of the Technical Specifications.

Based on this review, it appears that the three standards of 50.92(c) are statisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 7, 1991, as supplemented by letters dated November 20, 1991, and April 13, 1992.

Brief description of amendments: These amendments respond to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f)."

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment Nos.: 63, 49, and 36

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43802) The additional information contained in the supplemental letters was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

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 6, 1987, as supplemented by letters dated February 8, 1991, January 13 and February 6, 1992

Brief description of amendments: The amendments revised Technical Specification (TS) Tables 3.3-6 and 4.3-3 to designate the radiation monitors assigned to each train of control room ventilation (VC) system. Also, Action Statement 27 was revised to allow the option of running an operational VC train when less than the minimum number of monitors in the opposite VC train are inoperable. Additionally, Cycle 1 specific reliefs that are no longer applicable were removed from several pages of the TSs.

Date of isssuance: August 5, 1992

Effective date: August 5, 1992

Amendment Nos.: 48, 48, 37, and 37

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11775) and March 18, 1992 (57 FR 9439) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No

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.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 9, 1991; May 7, 1992, as supplemented July 1, 1992

Brief description of amendments: The amendments consist of administrative changes which revise the types of procedures that require review by the Onsite Review and Investigative Function (OnSR&IF), specifies the level of review and approval for procedures governed by the proposed Technical Review and Control process, clarifies the authority assigned to the OnSR&IF, and changes a title related to the Assistant Vice President Quality Programs and Assessment for Dresden Station.

Date of issuance: July 24, 1992

Effective date: July 24, 1992

Amendment Nos.: 116, 113, 135, and 131

Facility Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18171) and June 10, 1992 (57 FR 24668). The submittal dated July 1, 1992, provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450 and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: April 24 and May 13, 1992

Brief description of amendment: The amendment clarifies the reporting requirements of Section 2.G of Facility Operating License No. DPR-19 related to Technical Specification reporting requirements.

Date of issuance: July 24, 1992

Effective date: July 24, 1992

Amendment No.: 117

Facility Operating License No. DPR-19. The amendment revised the license.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24667). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 25, 1992

Brief description of amendment: The amendment provides a temporary relaxation of Technical Specification 3.6.1.1, "Containment Integrity," to allow the cleaning of the containment air recirculation (CAR) fan and fan motor heat exchangers while at power.

Date of issuance: August 7, 1992

Effective date: August 7, 1992

Amendment No.: 154

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1992 (57 FR 29905) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 7, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 20, 1986, as modified on April 30, 1987 and September 27, 1991.

Brief description of amendment: This amendment corrects an erroneous statement with regards to the amount of cooling water flow to the Containment Air Coolers (CACs). The amendment changes TS Section 5.2.3.a to indicate that three CACs [required to be operable per TS Section 3.4.1.a] with a total cooling water flow of 5580 gpm at an inlet temperature of 85°F will remove 230 million BTU per hour. The Federal Register Notice dated June 10, 1992 (57 FR 24669) incorrectly stated that the September 27, 1991, request superseded in its entirety the request dated October 20, 1986, as modified April 30, 1987. In fact the September 27, 1991, request modified and clarified the earlier request.

Date of issuance: July 28, 1992

Effective date: July 28, 1992

Amendment No.: 151

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24669). See also March 21, 1990 (55 FR 10530). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 30, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.4.3.2-1 and 3.4.3.2-2 to remove two valves from the listing of Rector Coolant System Pressure Isolation Valves. These valves will remain in TS Table 3.6.3-1, "Primary Containment Isolation Valves."

Date of issuance: July 31, 1992

Effective date: July 31, 1992

Amendment No.: 85

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22261) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: April 21, 1992

Brief description of amendment: This amendment revises Technical Specifications Section 3.5.1, "Safety Injection Tanks," by reducing the minimum nitrogen cover-pressure from 570 psig to 500 psig.

Date of issuance: July 30, 1992

Effective date: July 30, 1992

Amendment No.: 58

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 5, 1992 (57 FR 19317) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1992. No

significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 17, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) 4.2.E.5 which changes the frequency of surveillance of solution Boron-10 enrichment from each refueling outage to once every 24 months. TS Bases 4.2 is revised to reflect the above changes to the surveillance interval for the solution Boron-10 enrichment.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment No.: 159

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13131) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: March 13, 1992

Brief description of amendment: The amendment revised the Technical Specifications by removing the Reactor Protection System (RPS) Electrical Protection Assembly (EPA) time delay requirements.

Date of issuance: August 4, 1992

Effective date: August 4, 1992

Amendment No.: 185

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18174) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: October 22, 1991, as supplemented November 19, 1991.

Brief description of amendment: The amendment revises Technical Specification Table 3.6.2g to establish specific setpoints for the Recirculation Flow Unit Comparator and Recirculation Flow Unit Upscale Control Rod Block functions and to revise the operational condition (Reactor Mode Switch Position) applicability to be consistent with the NRC's Standard Technical Specifications for General Electric Boiling Water Reactors (NUREG-0123). The amendment also revises Technical Specification Table 4.6.2g to make the Instrument Channel Calibration surveillance frequency for the Recirculation Flow Unit Comparator, Flow Unit Inoperative, and Flow Unit Upscale Control Rod Withdrawal Block consistent with NUREG-0123.

Date of issuance: July 23, 1992

Effective date: July 23, 1992

Amendment No.: 130

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64656) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 23, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: May 27, 1992, as supplemented June 22, 1992.

Brief description of amendment: The amendment revises Technical Specification (TS) Figure 2.1.1, TS 3.1.7, and associated Bases to replace cycle-specific limits with requirements that the reactor be operated within the requirements of limits specified in the Core Operating Limits Report (COLR). TS 6.9.1.f is being revised to require that the cycle-specific parameters removed from TS Figure 2.1.1, TS 3.1.7, and associated Bases be included in the COLR. The amendment is in accordance with the guidance provided in NRC Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits From Technical Specifications," and also corrects two typographical errors on pages 64a and 64c of TS 3.1.7.

Date of issuance: July 27, 1992

Effective date: July 27, 1992

Amendment No.: 131

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28202) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 11, 1991, as supplemented June 25, 1992

Brief description of amendment: The amendment revised Technical Specification (TS) 2.7, "Electrical Systems," to correct inconsistencies and to provide further guidance on equipment necessary for the 161kV power supply. Additionally, administrative changes are incorporated for TS 2.7 and Table 2-10.

Date of issuance: August 3, 1992

Effective date: August 3, 1992

Amendment No.: 147

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64658) The additional information contained in the supplemental letter dated June 25, 1992, clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 4, 1992 (Reference LAR 92-02)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 to remove cycle specific information that is no longer necessary.

Date of issuance: August 6, 1992

Effective date: August 6, 1992

Amendment Nos.: 72 and 71

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13136) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 19, 1992

Brief description of amendments: The amendment changes Sections 6.3.1 and 6.4.1 of the Technical Specifications to clarify the current requirements for licensed operator qualifications and training.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment Nos. 55 and 20

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28204) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 6, 1992

Brief description of amendments: The amendments modify the Technical Specification Section 3/4.3.1 Reactor Trip System Instrumentation, Limiting Conditions for Operation, Action Requirements, and Surveillance Requirements, including associated tables. These changes contain administrative changes, provide consistency between Salem, Units 1 and 2, and ensure technical accuracy.

Date of issuance: July 29, 1992

Effective date: As of the date of issuance and to be implemented within 120 days of the date of issuance.

Amendment Nos. 134 and 113

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24678) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 27, 1991 (TS 91-16)

Brief description of amendment: The amendments revise the actions required when certain 6.9kv Shutdown Board Engineered Safety Feature Actuation System and Emergency Diesel Generator loss-of-power instrumentation is inoperable.

Date of issuance: July 24, 1992

Effective date: July 24, 1992

Amendment No.: 160 for Unit 1; 150 for Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** January 22, 1992 (57 FR 2601) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1992. No significant hazards consideration comments received:

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 16, 1991, supplemented February 3, 1992.

Brief description of amendment: The amendment revised Technical Specification 3/4.4.5, "Steam Generators," and its bases to allow use of a Babcock & Wilcox steam generator tube sleeving process to effect repairs of defective steam generator tubes.

Date of issuance: July 28, 1992

Effective date: 90 days after issuance

Amendment No. 171

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 4, 1992 (57 FR 7816) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1992 and an Environmental Assessment dated June 4, 1992 (57 FR 24832, June 11, 1992). No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 14, 1992

Brief description of amendment: The changes to Technical Specifications 3/4.2.1, 4.2.2.2 through 4.2.2.4, 6.9.1.9, Table 2.2-1 and associated Bases allow the implementation of Relaxed Axial Offset Control (RAOC) for Cycle 6.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment No.: 72

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28207) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 1, 1992

Brief description of amendments: The amendments revise the NA-1&2 TS to permit mode changes while in Action Statement 3.7.4.1.a by stating that TS 3.0.4 is not applicable once service water flows to the component cooling heat exchangers are throttled.

Date of issuance: August 4, 1992

Effective date: August 4, 1992

Amendment Nos.: 163, 143

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28207) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos.1 and 2, Town of Two Creeks, Manitowo County, Wisconsin

Date of application for amendments: March 1, 1991 and supplemented December 6, 1991

Brief description of amendments: The amendments revised TS 15.4.8, Auxiliary Feedwater System, by changing sections 15.4.8.1.a and 15.4.8.1.b to require each auxiliary feedwater (AFW) pump to be started quarterly, and by providing the basis for TS 15.4.8 for this change. In addition Ts 15.3.4, Steam Power Conversion System was revised by changing section 15.3.4.C.2 to clarify the AFW pump out-of-service limitations.

Date of issuance: July 31, 1992

Effective date: July 31, 1992

Amendment Nos.: 133 and 137

Facility Operating License Nos. DPR-24 and DPR-27. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30264) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 27, 1992

Brief description of amendment: Modifies the facility Operating License to a Possession Only License. This action will permit the licensee to maintain and use the facility but not operate it.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment No.: 142

Facility Operating License No. DPR-3: Amendment revised the license but not the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992, (57 FR 13140). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 12th day of August 1992.

For The Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 92-19629 Filed 8-18-92; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. 50-528, 529, and 50-530; (License Nos. NPF-41, NPF-51, and NPF-74)]

Arizona Public Service Co.; Palo Verde Nuclear Generating Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated July 20, 1992, David A. Colapinto, Counsel for the National Whistleblower Center, has requested on behalf of Linda E. Mitchell and Sarah C. Thomas (Petitioners) that the Commission take action with regard to Palo Verde Nuclear Generating Station. In the July 20 letter, Petitioners request that the NRC take "prompt and effective enforcement action against Palo Verdo in the next 30 days" to stop harassment and intimidation of licensee employees who raise safety concerns. Specifically, Petitioners request that the NRC assess severe civil penalties against the licensee and initiate show cause proceedings to revoke, modify, and/or suspend Palo Verde's operating license.

As a basis for this request, Petitioners allege that they have been subjected to continuing and ongoing harassment, intimidation, discrimination and a "hostile work environment" by Palo Verde management, as confirmed by two decisions by Department of Labor (DOL) Administrative Law Judges (ALJs). In this regard, Petitioners assert that if the NRC decides of defer enforcement action pending the Secretary of Labor's final review of these decisions, the results would be contrary to Congress' intent and send the wrong message to Palo Verde's management, and have a "chilling effect" on other employees raising safety concerns.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement. By letter dated August 11, 1992, Petitioners' request that the NRC take action "in the next 30 days" has been denied. As provided by § 2.206, appropriate action will be taken on Petitioners' additional requests within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 11th day of August, 1992.

For the Nuclear Regulatory Commission.

Chris A. VanDenburgh,

Deputy Director, Office of Enforcement.

[FR Doc. 92-19736 Filed 8-18-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-135-DCOM; ASLBP No. 92-667-03-DCOM]

Babcock and Wilcox (Fuel Fabrication Facility—Decommissioning Plan); Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials License Amendment proceeding.

In the Matter of Babcock and Wilcox, Apollo, Pennsylvania 15613, Materials License No. SNM-145.

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of

the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to requests for a hearing submitted by Cynthia Virostek on behalf of Save Apollo's Future Environment (SAFE) and individual petitioners. The petitioners request a hearing on a notice published by the Office of Nuclear Material Safety and Safeguards, dated June 18, 1992, entitled "Environmental Assessment, Finding of no Significant Impact, and Opportunity for Hearing Related to Amendment of Materials License No. SNM–145" (57 FR 28539, June 25, 1992).

The presiding officer in this proceeding is Administrative Judge G. Paul Bollwerk, III.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Richard F. Cole to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bollwerk and Judge Cole in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge G. Paul Bollwerk, III, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 11th day of August 1992.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92–19692 Filed 8–18–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–08681–MLA; ASLBP No. 92–666–01–MLA]

Umetco Minerals Corp.; (Source Materials License No. SUA–1358); Order and Memorandum (amendment)

August 12, 1992.

The Order issued on August 5, 1992 should have provided for an appeal of the denial of the State of Utah's (State) request for a stay of the Nuclear Regulatory Commission's grant of a license amendment to the Umetco Minerals Corporation. I now amend that Order to provide an opportunity to the State for an appeal of my decision on the stay request. An appeal may be filed within ten (10) days of the service of this Amendment, or such other times as the Commission may direct.

Bethesda, Maryland.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 92–19737 Filed 8–18–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report, Number 7.

SUMMARY: Subsections 25(g)(1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, codified at 41 U.S.C. 421(g), require the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared the seventh Procurement Regulatory Activity Report. This report is designed to satisfy all aspects of subsections 25(g)(1) and (2) of the OFPP Act, and includes information on: The status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.†

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, room 2200, 725 17th Street NW., Washington, DC 20503, or phone (202) 395–7332.

Dated: August 3, 1992.

Allan V. Burman,

Administrator.

[FR Doc. 92–19772 Filed 8–18–92; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: The President's Council of Advisors on Science and Technology will meet on September 10–11, 1992. The meeting will begin with an open session at approximately 9:00 a.m. on Thursday, September 10, 1992, in the Conference Room, Points of Light Foundation, 736 Jackson Place NW., Washington, DC, with one substantive agenda item to be discussed. This open session will end at approximately 10:30 a.m. On Thursday morning, at approximately 11 a.m., the Council will go into closed session with four substantive agenda items to be discussed. This closed session will end at approximately 4 p.m. On Friday, September 11, 1992, the Council will reconvene in open session at approximately 9 a.m. with one substantive agenda item to be discussed. This open session will end at approximately 12 noon on Friday.

TYPE OF MEETING: Open and Closed.

AGENDA: On Thursday, September 10, there will be a presentation on international science and technology agreements administered by the Department of Energy.

During the closed session on Thursday, September 10, the Council will discuss various aspects of the proposed FY 1994 budget for Research and Development, including possible areas for budget cross-cuts, and reports on Megaprojects in the Sciences, Bioscience & Biotechnology, and Mathematics and Science Education. These portions of the meeting will be closed to the public, pursuant to title 5, U.S. Code, section 552b(c)(4), (6) & (9)(B).

On Friday, September 11, the Council will reconvene in open session and will discuss the status of the Council project on U.S. research intensive colleges and universities.

For information regarding time, place and agenda, and for those wishing to attend the open portion of the meeting, please contact Ms. Ann Barnett, (202) 395–4692, prior to 3 p.m. on September 9, 1992. Other questions may be directed to Dr. Alicia K. Dustira, (202) 395–4692.

Dated: August 14, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92–19769 Filed 8–18–92; 8:45 am]

BILLING CODE 3170–01–M

RESOLUTION TRUST CORPORATION

Final Statement of Policy on Lower Income Occupancy Requirements for Bulk Sales in the Multifamily Affordable Housing Disposition

AGENCY: Resolution Trust Corporation.

ACTION: Final Statement of Policy.

SUMMARY: On June 12, 1992, the Resolution Trust Corporation (Corporation) published in the **Federal Register** (57 FR 249937) an interim policy statement concerning properties marketed under the Affordable Housing Disposition Program. Under this interim policy statement, when more than one multifamily property is purchased from the Corporation as part of the same negotiation, the Corporation will require that not less than 15 percent of the dwelling units in each separate property purchased be made available to low-or very-low income individuals. Written comments on the interim policy statement were accepted for 30 days. RTC received one public comment on the interim policy. This commentor was supportive of the policy.

On May 6, 1992 (57 FR 19500) the Corporation published an Interim Final Rule (12 CFR part 1609) concerning the Affordable Housing Disposition Program and has requested public comments.

DATES: This final policy statement affects multifamily property marketed under the Affordable Housing Disposition Program for which the Corporation: (1) Issues a Notice of Marketing Period pursuant to 12 CFR 1609.7(b) on or after June 2, 1992, or (2) issues a Notice of Marketing Period pursuant to RTC Circular 10150.11 on or after June 2, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen S. Allen, Director, Affordable Housing Disposition Program, (202) 416–7348, or Barry R. Wides, Financing Coordinator, Affordable Housing Disposition Program, (202) 416–7138. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

1. Purpose

To establish a policy concerning the application of RTC's lower-income occupancy requirements for multifamily properties sold in bulk under the Affordable Housing Disposition Program as part of the same negotiation.

2. Scope and Applicability

This policy addresses application of certain procedures established in accordance with the affordable housing provisions of section 21A(c) of the Federal Home Loan Bank Act, as amended by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1441a).

3. Background

Under the Affordable Housing Disposition (AHD) Program, as described in 12 CFR part 1609, published in the **Federal Register** on May 6, 1992 (57 FR 19500), not less than 35 percent of all dwelling units purchased by a qualifying multifamily purchaser in a single transaction shall be made available for occupancy by and be maintained affordable for, lower-income families during the remaining useful life of the property in which the units are located, provided not less than 20 percent of all units shall be made available for occupancy by, and be maintained affordable for, very low-income families during the remaining useful life of such property. If an eligible multifamily purchaser, buys more than one eligible multifamily property as part of the same negotiation, the purchaser may meet the lower-income occupancy requirements "in the aggregate." For example, if 1,000 units in 10 properties (each with 100 units) were sold as part of the same negotiation with a single purchaser, the purchaser could place deed restrictions on as few as four of the buildings (350 units), leaving the remaining six buildings free of lower-income occupancy restrictions.

Administration of the "aggregation" provision in this manner has raised questions regarding the consistency of this approach with the statutory mandate that the RTC conduct operations in a manner which "maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals." If only a portion of the properties which are marketed through the AHD Program are actually subject to deed restrictions, then fewer properties are made available at restricted rents to low-income individuals. RTC believes that the goals of the AHD Program are better served by requiring that at least 15 percent of the units in each property marketed under the Program be made available to low- or very low-income individuals consistent with RTC's statutory mandate. Beyond this minimum, bulk purchasers are given maximum flexibility to meet the requirements "in the aggregate."

4. Policy and Guidelines

If a qualifying multifamily purchaser buys more than one Eligible Multifamily Property as part of the same negotiation, the lower-income occupancy requirements established in 12 CFR 1609.2(o)(1) (and the additional lower-income occupancy restrictions committed to pursuant to 12 CFR 1609.7(b)(9)) shall apply in the aggregate to the properties so purchased, provided that not less than 15 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained affordable (at rent levels established in 12 CFR 1609.7(b)(4)) for either very low-income or lower-income families for the remaining useful life of the property in which the units are located.

Dated at Washington, DC, this 11th day of August, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92–19677 Filed 8–18–92; 8:45 am]

BILLING CODE 6714–01–M

Privacy Act of 1974; System to Records

AGENCY: Resolution Trust Corporation.

ACTION: Notice of new system of records.

SUMMARY: The Resolution Trust Corporation (RTC) Office of Inspector General (OIG) is establishing a new system of records in accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act), entitled Office of Inspector General Investigative Files. This notice is intended to inform the public of the existence and character of this system of records. The RTC OIG is also proposing routine uses for this system.

DATES: Effective date of system: August 19, 1992. Comments concerning routine uses must be received on or before September 18, 1992.

ADDRESSES: Comments concerning routine uses should be addressed to: Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street—room 1122, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsman, Senior Assistant Counsel to the Inspector General at 703–908–7812.

SUPPLEMENTARY INFORMATION: In accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Pub. L. 101–73, 103 Stat. 393), which amends the Inspector General Act of 1978 (Pub. L. 95–452, as amended, 5 U.S.C. app. 3), the RTC OIG was established in April 1990. The OIG is an independent unit established to promote economy, efficiency, and effectiveness in the

administration of RTC programs and operations and to detect and prevent fraud, waste, and abuse in such programs and operations. In addition, the OIG assists in the prosecution of participants in such fraud or abuse and reports to the Attorney General whenever the Inspector General has grounds to believe there has been a violation of Federal criminal law. The OIG also keeps the RTC's President and Chief Executive Officer, the Thrift Depositor Protection Oversight Board, and Congress fully informed about any problems or deficiencies in the administration of RTC programs and operations and provides recommendations for correction of these problems or deficiencies.

The RTC OIG is establishing a new system of records, pursuant to the Privacy Act, entitled Office of Inspector General Investigative Files. This system of records will be maintained solely by OIG and will remain separate from other RTC records. The system will consist of files and records compiled by the RTC OIG concerning persons who have been part of an investigation of fraud and abuse pertaining to RTC programs or operations and investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. The proposed system will allow the RTC OIG to carry out its mandate under the Inspector General Act, as amended.

The RTC OIG proposes to exempt certain files within this system of records from disclosure to individuals who are the subject of a record in the system. The exemptions would cover only information compiled for the following purposes:

(1) Identifying criminal offenders and alleged offenders and consisting of identifying data and notations of sentencing, confinement, release, and parole and probation status;

(2) A criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual;

(3) Reports of enforcement of the criminal laws from arrest or indictment through release from supervision;

(4) Investigatory material compiled for law enforcement purposes; and

(5) Investigatory material compiled solely for the purposes of determining suitability, eligibility, or qualifications for Federal employment, Federal contracts, or access to classified information.

The above exemptions are the subject of a companion notice of interim rulemaking that appears elsewhere in today's issue of the **Federal Register**. A report of the proposal to establish this system of records was filed pursuant to 5 U.S.C. 552a(r) with Congress and the Office of Management and Budget.

Description of system of records

The RTC OIG is establishing the following system of records:

RTC-1

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA 22209.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) All documents and correspondence relevant to the investigation;

(2) All internal staff memoranda, copies of all subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits;

(3) Documents and records or copies obtained during the investigation;

(4) Legal briefs, memoranda, and other working papers of the staff and other documents and records relating to the investigation; and

(5) Opening reports, progress reports, and closing reports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are involved in or are the subject of investigations by the OIG relating to the programs and operations of the RTC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, 5 U.S.C. app. 3, 12 U.S.C. 1441a(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used as follows:

(1) In the event that a record from this system of records, by itself or in combination with other information, maintained by the OIG to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature; whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, then the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, foreign, State, or local, charged with enforcing or implementing the statute, regulation, or order.

(2) Disclosure may be made where necessary to Federal, foreign, State, or local agencies, or non-government parties, in order to obtain records or information in connection with an OIG investigation.

(3) Disclosure may be made to a Federal, State, or local financial regulatory agency where records in this system of records pertain to an applicant for employment, to a current employee of that agency where an agency decision with regard to the hiring or retention of the employee is pending, or to a current or former employee of a financial institution which is or has been operating as an RTC conservatorship or receivership. The information being transferred consists solely of the fact that OIG has conducted an investigation concerning the particular individual.

(4) Disclosure may be made to the Office of Special Counsel of information relevant and necessary to carry out its functions and relevant and necessary to carry out OIG operations to detect and prevent fraud, waste, and abuse.

(5) Disclosure may be made to the Thrift Depositor Protection Oversight Board of information relevant and necessary to carry out its oversight of the RTC and to carry out OIG operations to detect fraud, waste, and abuse.

(6) Disclosure may be made when OIG contracts with private firms for the purpose of maintaining, collating, analyzing, aggregating or otherwise reviewing records. Disclosure will also be made to independent auditors who, by contract, carry out audits on behalf of OIG. Such contractors will be required to maintain Privacy Act safeguards with respect to such records.

(7) In the event OIG deems it desirable or necessary to determine whether particular records are required to be disclosed under the Freedom of Information Act, then disclosure may be made to the Department of Justice for the purpose of obtaining its advice on applying the Freedom of Information Act to the record(s) at issue.

(8) In the event of litigation where one of the parties is:

(i) A component of the RTC, or any employee of the RTC in his or her official capacity,

(ii) The United States where the RTC determines that the litigation is likely to directly affect the operations of the RTC or any of its components or,

(iii) An RTC employee in his or her individual capacity, where the Department of Justice and/or the Legal Division of the RTC has agreed to

represent such employee, then the OIG may disclose such records as it deems necessary to the Department of Justice, the RTC Legal Division, other counsel or representative for the RTC, a court, adjudicative body, individual or entity designated by the OIG or the RTC to resolve disputes, and/or a potential witness.

(9) Disclosure of a record of an individual may be made to a Congressional office in response to an inquiry from that office made at the written request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) in accordance with Title 31 U.S.C. section 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of Inspector General Investigative Files consist of automated data and paper records. Paper records are stored in file cabinets and the automated data are maintained in secured offices in OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked offices at all other times. Access to automated data is controlled by computer access codes.

RETENTION AND DISPOSAL:

Files containing information or allegations, which are of an investigative nature but do not relate to a specific investigation, are retained for a period of 5 years and then destroyed. All other investigative files are placed in inactive files when the case is closed. From the end of the fiscal year in which the case is closed the files are retained for 10 years and then destroyed unless the record is deemed to have historical significance.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves, should write to the System Manager at the above address. The request should contain the full name, Social Security Number, signature of the individual, and copies of two forms of identification which contain the signature of the individual. An affidavit attesting to the identity of the individual is suggested.

RECORD ACCESS PROCEDURES:

See Notification Procedures above.

CONTESTING RECORD PROCEDURES:

See Notification Procedures above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from RTC staff and records, and from non-RTC persons and records, to the extent necessary to carry out OIG investigative operations by 5 U.S.C. app. 3. Individuals to be interviewed and records to be examined are selected based on the nature of the allegations being investigated.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), this system of records is exempt from 5 U.S.C. 522a except subsections (b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent the system of records pertains to the enforcement of criminal laws. Pursuant to 5 U.S.C. 552a(k)(2), this system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) to the extent it consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2), provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Pursuant to 5 U.S.C. 552a(k)(5), this system of records is also exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) to the extent the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. These exemptions are contained at 12 CFR 1680.33.

Issued at Washington, DC, this 7th day of August 1992.

Office of Inspector General

John J. Adair,

Inspector General, Resolution Trust Corporation.

[FR Doc. 92-19374 Filed 8-18-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

August 12, 1992.

On July 24, 1992, the Philadelphia Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7-8582	SNPX	SynOptics Communications, Common Stock $0.01, Par Value.
7-8583	WTHG	Worthington Industries, Common Stock $0.01, Par Value.
7-8584	QVCN	QVC Network, Common Stock $0.01, Par Value.
7-8585	SPLS	Staples Inc., Common Stock $0.0006, Par Value.
7-8586	SYGN	Synergen Inc., Common Stock $0.01, Par Value.
7-8587	CHRS	Charming Shoppes Inc., Common Stock $0.01, Par Value.
7-8588	NGNA	Neutrogena Corporation, Common Stock $0.001, Par Value.
7-8589	PMTC	Parametric Technology, Common Stock $0.01, Par Value.

File No.	Symbol	Issuer
7-8590	STRY	Stryker Corporation, Common Stock $0.10, Par Value.
7-8591	NDTA	National Data Corporation, Common Stock $0.125, Par Value.
7-8592	AMSWA	American Software, Class A Common Stock $0.10, Par Value.
7-8593	CRFC	Crestar Financial, Common Stock $5, Par Value.
7-8594	INEL	Intelligent Electronics, Common Stock $0.01, Par Value.
7-8595	DELL	Dell Computer, Common Stock $.01, Par Value.
7-8596	HECHA	Hechinger Company, Class A Common Stock $.10, Par Value.
7-8597	XOMA	XOMA Corporation, Common Stock $0.0005, Par Value.
7-8598	SFDS	Smithfield Foods, Common Stock $.25, Par Value.
7-8599	CORD	Cordis Corporation, Common Stock $1.00, Par Value.
7-8600	DSCD	Datascope Corporation, Common Stock $.01, Par Value.
7-8601	TOPP	Topps Company, Common Stock $.01, Par Value.
7-8602	SPCO	Software Publishing, Common Stock $.001, Par Value.
7-8857	TKOS	Tokos Medical, Common Stock $.001, Par Value.

Comments

Interested persons are invited to submit, on or before September 2, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19715 Filed 8-18-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #7675]

Alaska; Declaration of Disaster Loan Area

The areas near Norton Sound, from the Villages of Emmonak and Alakanuk northward to the Village of Wales, in the Unorganized Borough of Alaska constitute an economic injury disaster loan area due to the loss in 1992 of the annual herring fishery resulting from abnormally late sea ice breakup caused by near record March snowfall. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on April 28, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: July 28, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19779 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2570; Amendment #1]

Florida; Declaration of Disaster Loan Area

The above-numbered declaration is hereby amended to include Lee County and the contiguous counties of Collier and Hendry in the State of Florida as a disaster area as a result of damages caused by severe storms, heavy rains, and flooding June 25-27, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 8, 1992, and for economic injury until the close of business on April 8, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 3, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19780 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 9:30 a.m. on Tuesday, September 15, 1992, at the U.S. Small Business Administration, Newark District Office, 60 Park Place, 4th floor, Newark, New Jersey, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645-3580.

Dated: August 11, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-19778 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

Investment Advisory Council; Meeting

Time and Date: 8:30 a.m.-5 p.m., Thursday, September 24, 1992.

Place: The meeting will be held in the Administrator's Conference Room on the seventh floor of SBA Central Office at 409 3rd Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) Programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact Wm. H. Malloy III, Esq., room 6300, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-6510.

Dated: August 12, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-19777 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting from 9 a.m. on Tuesday, September 15, through noon Wednesday, September 16, 1992, at the Embassy Suites Hotel, 110 West 600 South, Salt Lake City, Utah.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members,

staff of the U.S. Small Business Administration, or others present.

For further information, write or call Judith Dunn, U.S. Small Business Administration, 5th Floor, 409 3d Street, SW., Washington, DC 20416, telephone (202) 205–7301.

Dated: August 10, 1992.

Caroline Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–19776 Filed 8–18–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–92–22]

Petition for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

SUMMARY: This action makes a correction to a Docket number in a notice of petitions for exemption published on July 12, 1992, (57 FR 36118). This action corrects that error.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 1, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, attn: Rules Docket (AGC–10), Petition Docket no. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9704.

SUPPLEMENTARY INFORMATION: The document was published July 12, 1992, (57 FR 36118). In the middle column under "petitions for exemption", the docket number "26898", for Boeing Commercial Airplane Group is in error. Please change the docket number to read "26896".

Issued in Washington, DC on August 13, 1992.

Denise Castaldo,

Manager, Program Management Staff.

[FR Doc. 92–19758 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–92–24]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 8, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

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

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 10, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26892.
Petitioner: Mr. Howard A. Aronson.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow Mr. Howard A. Aronson to serve as a pilot in part 121 air carrier operations after Mr. Howard A. Aronson's 60th birthday.

Dispositions of Petitions

Docket No.: 24800.
Petitioner: Tennessee Air Cooperative, Inc.
Sections of the FAR Affected: 14 CFR 103.1(e)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 5001, as amended, which allows Tennessee Air Cooperative, Inc., to operate powered ultralight vehicles at an empty weight of more than 254 pounds to accommodate physically disabled persons. Grant, August 3, 1992, Exemption No. 5001B.

Docket No.: 26245.
Petitioner: Airline Crew Training Corporation.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5183 from §§ 61.63(d)(2) and (3), 61.157(d)(1) and (2), and (e)(1) and (2), appendix A of part 61, appendix H of part 121, and unspecified sections of part 63 of the Federal Aviation Regulations (FAR). The requested exemption would permit Airline Crew Training Corporation to use FAA-approved simulators to meet certain training and testing requirements of 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61 of the FAR. Partial Grant, August 7, 1992, Exemption No. 5135A.

Docket No.: 26542.
Petitioner: Sky Shows, Inc.
Sections of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To allow Sky Shows, Inc., its employees, representatives, and other volunteer experimental parachute test jumpers under its direct supervision and control to make tandem parachute jumps, and to permit pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual harness, dual parachute pack having at least one

main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). Grant, August 4, 1992, Exemption No.; 5491.

Docket No.: 26681.
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a).
Description of Relief Sought/ Disposition: To permit Airlift International, Inc., to operate three Fairchild F–27 and one FH–227 aircraft without Traffic Alert and Collision Avoidance System (TCAS) II equipment. Dental, July 30, 1992, Exemption No. 5489.

Docket No.: 26693.
Petitioner: Wright Air Services, Inc.
Sections of the FAR Affected: 14 CFR 135.181(a)(1).
Description of Relief Sought/ Disposition: To permit Wright Air Services, Inc., to operate a single-engine aircraft, the Cessna Caravan I, Model C–208B Grand Caravan (C–208), carrying passengers in instrument flight rule (IFR) conditions. Denial, August 3, 1992, Exemption No. 5490.

Docket No.: 26753.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 61.49(a).
Description of Relief Sought/ Disposition: To permit an applicant who fails a written or practical test for the second or subsequent time to apply for retesting before 30-days have expired, as would be otherwise required. Grant, August 3, 1992, Exemption No. 5492.

Docket No.: 26802.
Petitioner: Atlantic Coast Airlines d.b.a. United Express.
Sections of the FAR Affected: 14 CFR 135.225(e)(1).
Description of Relief Sought/ Disposition: To allow Atlantic Coast Airlines d.b.a. United Express to make IFR takeoffs at any Canadian airport listed in paragraph C70 of its operation specifications when the visibility is less than 1 mile. Grant, August 3, 1992, Exemption No. 5499.

Docket No.: 26815.
Petitioner: International Aviation Consultants.
Sections of the FAR Affected: 14 CFR 61.55(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: to permit International Aviation Consultants, to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, August 7, 1992, Exemption No. 5494.

Docket No.: 26819.
Petitioner: Vector Air Services, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit Vector Air Services, Inc., to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, August 7, 1992, Exemption No. 5493.

Docket No.: 26825.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR appendix H, part 121.
Description of Relief Sought/ Disposition: To permit the 1-year employment requirement of Appendix H, Advanced Simulator Training Program for "Air Transportation Pilot Flight Instructors-Simulator only" to be satisfied by applying prior experience acquired with either another Part 121 certificate holder or the military, subject to certain conditions and limitations. Partial Grant, August 3, 1992, Exemption No. 5498.

Docket No.: 26871.
Petitioner: Jet Flight International Airline Training.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit Jet Flight International Airline Training, to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, August 7, 1992, Exemption No. 5496.

[FR Doc. 92–19760 Filed 8–18–92; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yakima Air Terminal, Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 18, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bruce Loy, Airport Manager for the City of Yakima and Yakima County at the following address: 2300 West Washington Avenue, Yakima, Washington 98903.

Air carriers and foreign air carriers may submit copies of written comments previously provided to City of Yakima and Yakima County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Johnson, Civil Engineer, (206) 227–2655; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 7, 1992 the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Yakima and Yakima County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 20, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1992.

Proposed charge expiration date: November 30, 1997.

Total estimated PFC revenue: $502,356.00.

Brief description of proposed project(s): Master plan update; Plan and rehabilitate 9–27 high intensity runway

lights (HIRL); Update airfield electrical system; Purchase snow blower/broom; Snow plow equipment; Runway sweeper; Passenger access lift and radio equipment; Modify and install taxiway signs; Design and construct cargo apron; Install security improvements; Install terminal elevator; Improve access road and renovate drive; Install heating, ventilation, air conditioning (HVAC) in terminal building; Modify baggage claim area.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators other than an air carrier, who conduct operations in air commerce carrying persons for compensation or hire, except, air taxi/commercial operators operating public or private charters in aircraft with a seating capacity of 60 or more shall be construed in this regulation to be an air carrier, unless the public or private charter is exclusively for government use.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Yakima and Yakima County.

Issued in Renton, Washington on August 7, 1992.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92-19728 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Special Request: The Internal Revenue Service is requesting OMB approval by September 14, 1992 in order to meet their September 15 print date. Comments must be received by the Internal Revenue Service and the Office of Management and Budget by close of business September 14, 1992 in order to be considered.

Internal Revenue Service

OMB Number: 1545-0976.
Form Number: IRS Forms 990-W and 990-W(FY).
Type of Review: Revision.
Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations (990-W); Fiscal Year Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations (990-W(FY)).
Description: Form 990-W is used by tax-exempt trusts and tax-exempt corporations to figure estimated unrelated business income tax liability and the amount of each installment payment. Form 990-W is a worksheet only. It is not required to be filed. Form 990-W(FY) is a fiscal year version of Form 990-W and is to be used by organizations with a fiscal year beginning July 1, 1992 through December 31, 1992.
Respondents: Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents/Recordkeepers: 27,265.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the or the form	Preparing the form
990-W	4 hr., 47 min	3 hr., 41 min	3 hr., 55 min.
990-W, Sch. A (Pt. I)	11 hr., 43 min	18 min	30 min.
990-W, Sch. A (Pt. II)	24 hr., 23 min	12 min	36 min.
990-W, Sch. A (Pt. III)	5 hr., 16 min		5 min.
Tax computation	2 hr., 23 min		2 min.

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeper Burden: 352,621 hours.
Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-19839 Filed 8-18-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0990.
Form Number: IRS Form 8610.
Type of Review: Revision.
Title: Annual Low-Income Housing Credit Agencies Report.
Description: Form 8610 is used by state and local low-income housing credit agencies to transmit copies of Form 8609 to the IRS.
Respondents: State or local governments.
Estimated Number of Respondents/Recordkeepers: 100

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hours, 35 minutes
Learning about the law or the form—1 hour
Preparing and sending the form to the IRS—1 hour, 6 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 568 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–19840 Filed 8–18–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0083.
Form Number: ATF F 5130.6 (Form 1582–B).
Type of Review: Extension.
Title: Drawback on Beer Exported.
Description: When beer is removed from a brewery and ultimately exported, the business exporting the beer is eligible for drawback (refund) of Federal excise taxes paid. By completing this form and submitting supporting documentation, the exporter may have Federal taxes refunded.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5,000 hours.
OMB Number: 1512–0354.
Form Number: ATF REC 5170/3.
Type of Review: Extension.
Title: Retail Liquor Dealers Records and Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Accounting tool; audit trail records show amounts purchased and from whom; completes final audit trail established at distilled spirits plant. Protection of the revenue.
Respondents: State or local governments, Business or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 360,412.
Estimated Burden Hours Per Recordkeeper: 1 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 360,412 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
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. 92–19746 Filed 8–18–92; 8:45 am]

BILLING CODE 4810–31–M

Office of Thrift Supervision

[AC–42; OTS No. 2435]

Cascade Savings Bank, FSB, Everett, Washington Final Action; Approval of Conversion Application

Notice is hereby given that on July 15, 1992, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Cascade Savings Bank, FSB, Everett, Washington, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Office of Thrift Supervision, Seattle Area Office, 2201 Sixth Avenue, suite 1500, Seattle, Washington 98121–1889.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–19669 Filed 8–18–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–43: OTS No. 3016]

First Federal Savings Bank, Pineville, Kentucky; Approval of Conversion Application

Notice is hereby given that on August 11, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Pineville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–19670 Filed 8–18–92; 8:45 am]

BILLING CODE 6720–01–M

[AC–41: OTS No. 6326]

First Federal Savings Bank of Morris, Morris, Minnesota, Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on July 9, 1992, the Deputy Director for Washington Operations approved the application of First Federal Savings Bank of Morris, Morris, Minnesota, for permission to convert to the stock form of organization, in connection with a holding company voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92–19668 Filed 8–18–92; 8:45 am]

BILLING CODE 6720–01–M

[AC-40: OTS No. 3242]

Heartland Federal Savings & Loan Association, Mattoon, Illinois; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on June 30, 1992, the Deputy Director for Washington Operations approved the application of Heartland Federal Savings and Loan Association, Mattoon, Illinois, for permission to convert to the stock form of organization, in connection with a holding company voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary

[FR Doc. 92-19667 Filed 8-18-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-45: OTS No. 0762]

The Jessamine First Federal Savings & Loan Association of Nicholasville, Nicholasville, KY; Approval of Conversion Application

Notice is hereby given that a August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of The Jessamine First Federal Savings and Loan Association of Nicholasville, Nicholasville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 E. Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR. Doc. 92-19672 Filed 8-18-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-44: OTS No. 0745]

Mid-Iowa Savings Bank, FSB, Newton, Iowa; Approval of Conversion Application

Notice is hereby given that on August 12, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Mid-Iowa Savings Bank FSB, Newton, Iowa for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-19671 Filed 8-18-92; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 161
Wednesday, August 19, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:30 a.m., Wednesday, August 26, 1992.

PLACE: Second Floor Board Room, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate
2. Leverage Ratio—Final Rule

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the July Board Minutes
2. Office of Strategic Planning
   A. Strategic Plan Update—Consensus Building Vehicle
   B. Leverage Ratio: Transitional and Operational Issues
   C. System Efficiencies Task Force (SETF) Update—Contract Approvals
3. The 2nd Quarter Actual Budget Performance
4. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(2), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552(b)(c)(2), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,
Deputy Executive Director.

[FR Doc. 92–19976 Filed 8–17–92; 3:58 pm]
BILLING CODE 6725–01–M

Corrections

Federal Register
Vol. 57, No. 161
Wednesday, August 19, 1992

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 HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P-0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

Correction

In rule document 92-18389, beginning on page 34244 in the issue of Tuesday, August 4, 1992, make the following correction:

On page 34244, in the first column, in the **DATES** section the first sentence is corrected to read as follows:

Effective October 5, 1992. All products initially introduced or initially delivered for introduction into interstate commerce shall comply on or after this date.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 169

[Docket No. 91P-0149]

Mayonnaise; Amendment of the Standard of Identity

Correction

In rule document 92-18390, beginning on page 34245, in the issue of Tuesday, August 4, 1992, make the following correction:

On page 34245, in the second column, the effective date is corrected to read as follows:

EFFECTIVE DATES: October 5, 1992. All affected products initially introduced or initially delivered for introduction into interstate commerce shall comply on or after this date.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-930-4214-10; AZA 26586]

Proposed Withdrawal and Opportunity for a Public Meeting; Arizona

Correction

In notice document 92-18207 beginning on page 34141 in the issue of August 3, 1992, make the following corrections:

1. On page 34141, in the second column, under **DATES**, in the second line "receive" should read "received".

2. On the same page in the same column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, the telephone number, should read "602-640-5509.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-777]

RIN 1218-AB36

Ergonomic Safety and Health Management

Correction

In proposed rule document 92-18312 beginning on page 34192 in the issue of Monday, August 3, 1992, make the following corrections:

1. On page 34192, in the second column, under **DATES**, in the third line, "February 1, 1992" should read "February 1, 1993".

2. On page 34199, in the second column, under *Written Comments and Information*, in the first paragraph, beginning in the fifth line, "[insert 180 days after ANPR is published in the Federal Register]" should read "February 1, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 4

[T.D. ATF-328; Re: Notice Nos. 731 and 594]

Winemaking Terminology (91F-015P)

Correction

In rule document 92-17510 beginning on page 33110 in the issue of Monday, July 27, 1992, make the following correction:

§ 4.35a [Corrected]

1. On page 33114, in the third column, in § 4.35a(e), in the third line, "July 27, 1992" should read "July 27, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515-AA84

Proposed Customs Regulations Amendments Relating to the United States-Israel Free Trade Area Agreement

Correction

In proposed rule document 92-17923 beginning on page 33909, in the issue of Friday, July 31, 1992, make the following correction:

1. On page 33909, in the second column, in the last paragraph, in the ninth line from the bottom, "not" should read "now".

§ 10.212 [Corrected]

2. On page 33912, in the third column, in § 10.212(a), in the second line, "agreement" should read "Agreement".

§ 10.213 [Corrected]

3. On page 33913, in the first column, in § 10.213(d), in the third line, "filled" should read "filed".

§ 10.214 [Corrected]

4. On page 33913, in the first column:

a. In § 10.214(b), in the fifth line, after "U.S." insert a comma.

b. In § 10.214(c), in the second line, after "and" insert "the", and in the

fourth line, after "designation" insert ", then".

§ 10.216 [Corrected]

5. On page 33913, in the second column:

a. In § 10.216(b), the second line should read, "*Materials produced in Israel" defined.*".

b. In § 10.216(b)(2), in the eighth line, "the" should read "The".

6. On the same page, in the third column, in § 10.216(b)(4)(A), in the first line, after "for" insert "the".

7. On the same page, in the same column, in § 10.216(c)(1)(i), in the first line, "cost" should read "costs".

8. On page 33914, in the first column, in § 10.216(c)(2)(ii), in the next to last line, "salesman's" should read "salesmen's" and after "salaries" insert a comma.

BILLING CODE 1505-01-D

federal register

Wednesday
August 19, 1992

Part II

Department of State

Office of Protocol

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1991; Notice

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1676]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1991

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1991 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the Federal Register is required by section 7342(f) of title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95–105, August 17, 1977, 91 Stat. 865).

Dated: August 10, 1992.

John F.W. Rogers,

Under Secretary for Management.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Flowers: approx. four (4) dozen long-stemmed red roses. No container. Accepted by other agency/official use. Recd: Dec. 23, 1991. Est. value: $225.	His excellency; (and Mrs.) Abdul Rahman Bin Fares Al-Khalifa, Ambassador of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Gold palm tree. Base of tree is made of 20K gold, approx. 1' high; 29 branches of several small leaves, all are 18K gold. Six clusters of 18K gold wire and several fresh water pearls. Total content of gold in tree is approx. 55 oz. Tree is mounted on a white marble base, approx. 14" in diam, display case is made of white goatskin leather; inside of case is also leather and white satin, depicting the emblem of Bahrain; approx. 34" high, 29" diam. Archives, Foreign. Recd: Oct. 15, 1991. Est. value: $30,500.	His Highness Shaikh Isa Bin Sulman Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Artwork: A set of prints, "Voyage Pittoresque Dans le Bresil," by Joao Rugendas, special edition issue, published 1972 on occasion of the celebration of the 150th anniversary of the independence of Brazil; unabridged French text and its translation into Portuguese and pictorial reproduction of the 1835 French edition, published by Englemann and Cie, Paris; contained in a suede-covered box. Archives, Foreign. Recd: Jun 18, 1991. Est. vaule: $550.	His Excellency and Mrs. Fernando Collor, President of the Federative Republic of Brazil, Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Crystal vase, approx. 13" x 6", etched portrait of the founder and First President of the Czechoslovak Republic. Crystal goblet with gilt rim and painted crest of Czechoslovakia. Archives, Foreign. Recd: Oct. 22, 1991. Est. value: $1,500.	His Excellency Vaclav Havel, President of the Czech and Slovak Federal Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Two color photographs of Her Majesty Queen Margrethe and His Royal Highness Prince Henrik, autographed; displayed in navy blue leather frames bearing gold-stamped Royal Crest at top; overall: 10" x 13". Residence; for official use/display. Recd: Feb. 20, 1991. Est. value: $300.	Her Majesty Margrethe, II, Queen of Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: (1) Red leather-bound book entitled "America is Lost" (New copy on 100-year-old paper of original document in the hand of King George III, about 1782). (For Pres.). (2) Halcyon days enamel key-wound carriage clock, beveled glass in brass case. (Mrs. Bush). (3) A 1760 porcelain lattice bowl, by Dr. Wall of Worcester, 8½" x 11", (for both). Archives, Foreign. Recd: May 14, 1991. Est. value: $8,100.	Her Majesty Elizabeth (Windsor) II, Queen, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Artwork: Porcelain figurine titled "The Spaniel," made in England by Royal Doulton; 3½" x 8½" x 11½". Archives, Foreign. Recd: Aug. 29, 1991. Est. value: $250.	The Right Honorable John Major M.P., Prime Minister, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Crystal and glass bowl titled "Arizona," No. 78 of limited edition, designed by Hilton McConnico and made by Daum of France; depicts cactus motif; 10" x 10" x 15"; (for Pres.); porcelain bowl, floral pattern on white background, by Sevres; 9" diam. (for Mrs. Bush). Archives, Foreign. Recd: Jul. 14, 1991. Est. value: $4,390.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Vase, porcelain, white with overall multicolored floral design on body and removable lid, by Meissen; 10" diam. across center, 18½" high. Archives, Foreign. Recd: Oct. 3, 1991. Est. value: $10,000.	His Excellency Hans-Dietrich Genscher, Minister of Foreign Affairs of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Jewelry: Two quartz wrist watches, dial depicts U.S. and Kuwaiti Flags and "Free Kuwait"; black leather straps; Swiss made; contained in gray cases with card attached to inside lid lettered "A Souvenir of the Liberation of Kuwait 1991, Ali Fahad Al Zaid, Ambassador of the State of Kuwait in Greece. Archives, Foreign. Recd: July 19, 1991. Est. value: $600.	His Excellency Ali Fahad Al Zaid, Ambassador of the State of Kuwait, in Greece, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Silver Copy of a bronze Kylix, (two-handed container), 2nd Half of the 6th century B.C.; 3" H., 10" long (for the President); silver copy of a black-glazed Kantharos (cup), classical period (from Nicholas P. Goulandris Foundation Museum of Cycladic Art); (for Mrs. Bush); 4½" x 7"; contained in velvet-covered cases; Archives, Foreign. Flowers: "Bouquet of Red Roses". Accepted by other agency/official use. Recd: July 18, 1991. Est. value: $275.	His Excellency Constantine Karamanlis, President of the Hellenic Republic, Greece..	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment. (1) Silver box (7" x 10" x 2½") inscribed To President Bush. (2) Photo album with embroidered Presidential Seal on cover, (8" x 10"). (3) Pin. 14K Gold flower with pearl center for (Mrs. Bush). Archives, Foreign. Recd: Oct. 2, 1991. Est. Value: $730.	His Excellency Jorge Serrano, President of the Republic of Guatemala, Guatemala.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: (1) Handcrafted Replica of The Ship St. Gernan, made famous by the romantic novel, "Paul et Virginie," written by Bernandin de St. Pierre, made of ebony, and displayed on wood base; 27" High, 37½" long. (for Pres.). (2) Table with cast iron base, glass top etched with Coat-of-Arms of Mauritius. (for Pres.). (3) Handmade cotton tablecloth, beige with red/blue stripes, and four beige napkins; cloth is 56" w., 7 ft., 11" l. (for Mrs. Bush). Archives, Foreign. Recd: June 5, 1991. Est. Value: $1,410.	The Right Honorable; (and Mrs.) Anerood Jugnauth Q.C., Prime Minister of Mauritius, Mauritius.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Flowers: A Large Arrangement of Lilies, Mums, Tulips, etc; accepted by other agency/official use. Container. A navy blue and gold porcelain container, made in China, depicting Chinese motifs on interior and exterior. 14" H., 12" diam; Archives, Foreign. Consumables: Food. An assortment of gourmet delicacies, including English biscuits, premium cocoa, apricots, special coffees, teas, etc; accepted by other agency/official use. Household: Chest. A pine painted chest, black and decorated in red oriental motifs, brass hardware. 22½" long, 11" deep, 11" high. Artwork: Figure. A crystal figure of two Peace Doves by Lalique Crystal of Paris. 8½" high, 6" wide, 5" deep. Archives, Foreign. Recd: Jan. 7, 1991. Est. value: $1,996.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Crystal decanter etched with the Royal Crest; a reproduction of a Williamsburg, Virginia style decanter; 5"×6"×6"; includes stopper; enclosed in a blue vinyl case. Archives, Foreign. Recd: Nov. 8, 1991. Est. value: $220.	Her Majesty Beatrix, Queen of the Netherlands, Netherlands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment. Ebony sculpture. Traditional maternity doll used in femininity initiation ceremonies. Sculpted by the Fanti and Ashanti of Ghana. 24"×8"×8". (for Pres.); Persian blue embroidered floor-length caftan (for Mrs. Bush). Teal blue silk blanket embroidered in gold; blanket has "Barbara" embroidered on it; (for Mrs. Bush); 98"×108". Archives, Foreign. Recd: Sept. 10, 1991. Est. value: $1,550.	His Excellency Abdou Diouf, President of the Republic of Senegal, Senegal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment. (1) Two volume leather book set, "El Palacio Real De Madrid," by Helena Iglesias; published by Lucam, S.A., Madrid, 1990; Spanish and English text with photos of Spain's Royal Palace. (2) Napkins and placemats. Two sets of six each, cream with embroidered gold flower. (3) Commemorative coin set. Twelve silver and gold coins depicting Spain's Royal Family. (4) Gold cuff links. Crown on letter "S" design. Archives, Foreign. Recd: Oct. 5, 1991. Est. Value: $3,660.	His Majesty Juan Carlos I, King of Spain, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment. (1) Gold Niello Bowl with a matching circular plate. Both are of ornately designed floral patterns, in a blue satin box, inside the lid of the box is an inscribed plaque. (2) Two woven straw handbags. (3) Thai silk pieces. One burgundy and Gold, approx. 3 × 1 yds; one lavender, approx. 3 × 1 yds.; one fringed silk shawl, approx. 4 FT. × 2 FT., and one blue scarf, 39> × 3.> (gifts are produced by the Queen's Foundation for trad. Thai arts.); Books: (1) Book of photographs of the Queen. (2) Book titled "His Majesty King Bhumibhol Adulyadej and his development work. (3) Book title "The King of Thailand in World Focus." (4) Book titled "Thailand: Seven Days in the Kingdom." Archives, Foreign. Recd: Oct. 28, 1991. Est. value: $740.	Her majesty sirikit, Queen of the Kingdom of Thailand, Thailand.	Non-acceptance would cause embarrassment to Donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: (1) Set of 5 pieces of brown leather luggage by Desa, monogrammed "GB" and "BB" respectively. (2) Two portraits of Pres. Bush, One on silk, one on wool, both handmade and displayed in white wood frame; 26> × 30> and 32> × 37>. (3) Hammered silver metal platter with portrait of Pres. Bush and armament of Desert Storm; 19> diam. (4) Set of 6 old-fashioned glasses and decanter, handblown, gold-decorated, in wood case. (5) Handmade quilt, blue silk w/red, white, and blue ruffles, hand-stitched with Date of visit, July 19, 1991. (6) 4 cotton monogrammed bathrobes by Penta (purple, green, black, and gray stripes for pres.); (blue W/Crown design for Mrs. Bush. (7) 2 China plates; one is handpainted, blue and white design by summerbank; The other depicts portraits of President Bush and Ozal, inscribed. (8) Book, >Turkey in Europe> by T. Ozal.(9) 3 Canes or walking sticks; one bamboo w/gold and jeweled handle; one is wood with silver and Niello, Handle; One is wood inlaid with mother-of-pearl and a silver and Niello handle; all by munteka Celebi; Enclosed in a velvet-covered case. (10) Clothing. Three pairs of shorts; one beige linen monogrammed >G. Bush," one dk. linen monogrammed >G. Bush", One Dk. linen monogrammed "B. Bush". Two hunter green seaters Monogrammed "G. Bush". Three white polo shirts monogrammed "George Bush". Three pairs of navy blue stocks monogrammed "G. Bush". One pair of brown brushed leather shoes, loafer style, One pair of brown brushed leather oxford shoes. HIP length leather zippered jacket (11) Book. "Ataturk," published by Turkish Republic Ministry of culture at Ajans-Turk Publishing and Printing Co., Inc., Ankara 1991; slip case; (12) Clothing, blue leather skirt and jacket with 4 buttons and embroidered pocket flaps and front panels. Matching derimod blue leather pumps and blue leather handbag with shoulder strap. Purple suede suit with shoulder strap. Purple suede suit with straight skirt, two button jacket with embroidered shoulders and cuffs. Matching derimod purple suede shoes with gold buckles and shoulder purse. Knit olive green shirt by Beymen monogrammed with a "B". Knit blue shirt by Beymen monogrammed with a "B". Two white penyelux white knit shirts monogrammed "Barbara". Archives, Foreign. Recd: July 22, 1991. Est. value: $9,720.	His Excellency (and Mrs.) Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Photograph: Photo album. A white leather album containing 192 color photos of President and Mrs. Bush, President and Mrs. Ozal, et al., taken on the occasion of the President and Mrs. Bush's visit to Turkey; each photo is 5> × 7>. Archives, Foreign. Recd: July 23, 1991. Est. value: $1,010.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment. (1) Costume, consisting of a dark blue velvet coat with silver threaded design, a white wool hat with embroidered design, a leather and silver belt with a blue stone on buckle, and a leather whip made with an animal's hoof decorated with silver designs. (2) Chess set consisting of a wooden case designed as a chess board and containing wooden decorated chess pieces. Archives, Foreign, Recd: Oct. 25, 1991. Est. value: $380.	His Excellency Askar Akayev, President of the Republic of Kyrgyzstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large spring arrangement of a palm tree with roses, tulips, anthuriums, orchids, and lilies, in copper container. Accepted by other agency official use. Recd: May 6, 1991. Est. value: $350.	His Highness Shaikh Zayid Bin Sultan Al Nahayyan, President, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: An 18 kt. gold medallion marking the 20th anniversary of the establishment of the Organization of Islamic Conference. Archives, Foreign. Recd: Jan. 22, 1991. Est. value: $445.	His Highness Sheikh Jabir Al-Ahmad Al-Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Sculpture of a bronze hand holding a brass Peace Dove, entitled "Hand of Peace," displayed on black base with brass plaque; 5" x 7" x 12"; enclosed in a navy blue case. Archives, Foreign. Recd: May 09, 1991, Est. Value: $220.	His Excellency Dr. Javier Perez De Cuellar, Secretary General of the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Woodcarved plaque shaped as a fish and depicting intricate human figures, lettered "President George Bush"; dark brown colored wood; inscribed on reverse; 14" x 14". Archives, Foreign. Recd: July 24, 1991. Est. value: $300.	His Excellency Ngirutkel Etpison, President of the Republic of Palau.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Portrait of a man with a white beard in a red hooded shawl, oil on canvas, by Juri Arrak, signed; image: 19½" x 23½"; framed overall: 23" x 27". Archives, Foreign. Recd: Mar. 29, 1991. Est. value: $450.	His Excellency Arnold Ruutel, Chairman of the Supreme Council of the Republic of Estonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: Bible, the first to be printed in Armenia, Dated 1666; Consumables: Brandy. 50-year old quantity of Armenian Brandy in a cut crystal bottle, titled "President." Archives, Foreign. Recd: Nov. 14, 1991. Est. value: $2,300.	His Excellency Levon Ter-Petrosian, President of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painted and lacquered wooden egg depicting a madonna and cross; 4" high. Item out on temporary loan. Recd: June 20, 1991. Est. value: $800.	His Excellency Boris Yeltsin, President of the Russian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment: (1) Wood statuette of a male warrior carrying a rifle, hatchet, knife, and grenades (all facsimiles); (hatchet broken when rec'd); lettered on base "Nenvika Ilha De Luanda, Aos 12 de Maio 1989, O Escultor, Joao Tl Mateo, Marfinaria"; 38" H. 2) Bar of Gold, 18 kt., stamped Mrst—Endiama, Bar 001, 1000 G. 3) pink diamond chip, 3.34 carats. Archives, Foreign. Recd: Sept. 16, 1991. Est. value: $9,850.	His Excellency Jose Eduardo Dos Santos, President of the People's Republic of Angola, Angola.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Bronze sculpture, titled "Rising Victory," by Marta Minujin, 1985, signed; a reproduction in three different positions of the famous "Victory of Samothrace" (C. 306/294 B.C., Louvre Museum, Paris); 7" D., 16" H., 16" L; on black marble base in handcrafted wood case. Painting, oil on canvas, titled "New Beginning," by A. Sarelli; (shows young girl on beach peering at ocean); woodframed; 44" x 56". Archives, Foreign. Recd: Nov. 14, 1991. Est. value: $10,000.	His Excellency Carlos Saul Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Jewelry: 18k gold wristwatch, made by Patek Phillipe, face depicts a striped design with 3 pt. diamonds marking each hour. Three rows of 3 pt. diamonds encircle the outer rim of the face. Pair of 18k gold cufflinks with circular pattern of diamond chips. Both are mounted in a red leather display case lined with white leather, Appx. 12" x 7". Archives, Foreign. Recd: Oct. 15. 1991. Est. value: $21,000.	His Highness Shaikh Isa Bin Sulman Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A bronze enameled medallion depicting the head of a woman and lettered on reverse "Le president de la commission des communautes Euro-peennes: 4¾" diam. Enclosed in a navy blue paper-covered box stamped with a circle of gold stars on Lid. Archives, Foreign. Recd: Apr. 11, 1991. Est. value: $500.	His Excellency Jacques Delors President of the Commission of the Economic Communities, Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: 1991 gold proof $100 coin struck to commemorate the 10th anniversary of Independence of Belize, in polished wood presentation box. Archives, Foreign. Recd: Sept. 27, 1991. Est. value: $225.	The Right Honorable George Price, Prime Minister of Belize, Belize.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Brass figures on wooden and leather base depicting a royal procession with tribesmen bearing their king, surrounded by other tribesmen carrying flags, fans, baskets, drums, and horns; 10" high, 11⅛" wide, 25" long. Archives, Foreign. Recd: Nov. 05, 1991. Est. value: $800.	His Excellency Nicephore Soglo, President of the Republic of Benin, Benin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Hand-wrought sterling silver tankard gilded with Buddhist emblems; 4" diam., 10" high. (2) Three volumes of new postage stamps from Bhutan. (3) A length of women's dress cloth fabric, multicolored geometric designs, cotton worked in silk; 59" x 92". Archives, Foreign. Recd: Apr. 19, 1991. Est. value: $1,089.	His Majesty Jigme Singye Wangchuck, King of the Kingdom of Bhutan, Bhutan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Bronze sculpture replicating the larger version of the statue of Simon Bolivar on horseback in the City of Pereira (birthplace of Gaviria), by Rodrigo Arenas, signed on brass plate attached to a gray marble base displaying the sculpture; marble is also from Colombia; Sculpture is 9½" high, 12½" long, 2" deep; base is 10" long, 5" high, 6" deep. Archives, Foreign. Recd: Feb. 26, 1991. Est. value: $2,000.	His Excellency Cesar Gaviria Trujillo, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Bronze statue of coffee plantation workers. Archives, Foreign. Recd: Oct. 10, 1991. Est. value: $3,000.	His Excellency Rafael Angel Calderon, President of the Republic of Costa Rica, Costa Rica.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: Hand-engraved pistol, model 75, CAL. 9mm, made in Czechoslovakia, numbered D5160; included are two magazines; contained in a fitted woodcarved box. Archives, Foreign. Recd: Apr. 17, 1991. Est. value: $1,625.	His Excellency Jiri Dienstbier, Minister of Foreign Affairs of the Czech and Slovak Federal Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Three color lithographic prints, by Niels Reumert, entitled "Born/ Children," "Dra- ma," and "Katten/ The Cat," signed; No. 75, No. 75, and No. 79 of limited edition 100; each displayed under glass in gold-toned wood frame; image: 20" x 225½"; overall: 26" x 31½". (gift presented separately from other gifts); Archives, Foreign. Book: "Niels Reumert—En Maler Og Hans Univers," by Jacob Wamberg; published in Denmark. Archives, Foreign. Recd: Feb. 20, 1991. Est. value: $460.	Her Majesty Margrethe II, Queen of Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A traditional ceremonial sword with ivory handle enclosed in a snake-skin scabbard decorated with burnished brass and semi-precious stones and included with a leather belt; displayed in a wood case with brass plaque engraved "Republique De Dji- bouti" attached to removable lid; sword is 24" long overall. Archives, Foreign. Stamps: An album of assorted postage stamps from Djibouti. Archives, Foreign. Recd: Apr. 24, 1991. Est. value: $700.	His Excellency El-Hadj Hassan Gouled Apti- don, President of the Republic of Djibouti, Djibouti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painting of a town scene in El Salvador, untitled, by Fausto Perez, 1991; acrylic on masonite, in golden wood frame; image: 16" x 20"; overall: 26½" x 30½"; (gift for the President's birthday). Wooden doll or statuette, "Virgin," an effigy with movable joints, made in Chalchuapa, Santa Ana Province, between 1890–1910; 25" H. (official gift). Archives, Foreign. Recd: June 13, 1991. Est. value: $1,700.	His Excellency Alfredo Cristiani, President of the Republic of El Salvador, El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic equipment: Set of four heavy chrome-plated horseshoes, each engraved "ER II"; enclosed in a fitted wood chest with lock; (key not included). Residence; for official use/ display. Recd: May 14, 1991. Est. value: $185.	Her Majesty Elizabeth (Windsor) II, Queen, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Historic Artifacts: Copper plate map of North America, in original outline and hand color, published in Amsterdam c. 1735, by Jean Covens and Cornellie Mortier; discovery routes indicated to west of map including that of Sir Francis Drake; matted under glass in goldleaf frame; labeled on reverse "London Economic Summit, July 1991"; map is 9" x 12"; overall: 17" x 19½". Archives, Foreign. Recd: July 14, 1991. Est. value: $585.	The Right Honorable John Major M.P., Prime Minister, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: A leather-bound fine art folio titled ". . . So Few", commemorating the 50th anniversary of The Battle of Britain, created by Michael Pierce, John Golley, Roy Asser, Bill Gunston, Brian Masterton and Avm Freddie Hurrell; No. 349 of limited edition 401; cover bears RAF Logo. Enclosed in a leather-bound case. Item out on temporary loan. Recd: Aug. 29, 1991. Est. value: $1,500.	The Right Honorable John Major M.P., Prime Minister, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Fishing Lures, assortment in wood box with engraved silver presentation plaque attached to lid; box is 8¾" x 14¼". A sterling silver circular tray with modernistic design, 13½" diam. Enclosed in a dark wood case with engraved silver presentation plaque attached to lid. Archives, Foreign. Recd: May 7, 1991. Est. value: $702.	His Excellency Mauno Koivisto, President of Finland, Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A light tan colored leather golf bag with zippered compartments; brass locks; by "Hermes" of Paris. Painting entitled "Confidences", by Gustave Alaux, signed; tempera on masonite; depicts a couple sharing a confidence in a grove of trees; displayed in a brown wood frame with goldleaf liner; image 18" x 21", overall: 22" x 25". Book, "Memoires De Martinique et De Guadeloupe". Book, "Caribbean Style". Both books contain bookplates. Archives, Foreign. Recd: Mar. 14, 1991. Est. value: $6,550.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Tray, silverplate, by Christofle, Engraved "To President Bush from the Mayor and the People of Cannes in Appreciation"; 16" x 21". Archives, Foreign. Recd: May 31, 1991. Est. value: $1,350.	Monsieur Michel Mouillot, Mayor, City of Cannes, France, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	"Deutschland," by Rudolf Walter Leonhardt and Josef H. Neumann, published by Bucher, Munich, 1991; inscribed by Chancellor Kohl. And a 1990 gold (585) commemorative coin. Archives, Foreign. Recd: May 20, 1991. Est. value: $450.	His Excellency; Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Wine. 12 bottles of German wine, vintages 1976 through 1989. Pate, 13 cans of German meats, consisting of Bratwurst, Lebenwurst, etc. Accepted by other agency/official use. Recd: Dec. 13, 1991. Est. value: $232.	His Excellency Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment: (1) Two white porcelain figurines of lions on bases by Hutschenreuther; one is 7" x 11" overall; the other is 6" x 8½"; (2) two white porcelain figurines of cherubs on bases, by Nymphenburg; 6½" x 7" high respectively; (3) a set of four classical recordings, including compositions by Mozart, Wagner, et al. Archives, Foreign. Recd: June 28, 1991. Est. value: $1,340.	His Excellency Max Streibl, Minister-President of Baveria, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Smoking accessories: Cigar box, sterling silver, bears facsimile signature of Constantine Karamanlis and emblem of Greece; 6" x 9" Archives, Foreign. Recd: Oct. 2, 1991. Est. value: $275.	His Excellency Constantine Karamanlis, President of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Album of 39 color photographs of President, Mrs. Bush, et al., taken on the occasion of the official visit to Greece, aboard the HS Lemnos/USS De Wert at Souda Base Crete, 19 July 1991; each photo is 8" x 10"; contained in a navy blue album. Archives, Foreign. Recd: Oct. 2, 1991. Est. value: $475.	His Excellency Ioannis M. Varvitsiotis, Minister of National Defense of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Five pieces of handpainted porcelainware by Herend: Large tray, soap dish, jewel box, candlestick, and a ring holder. Each depicting birds, butterflies, and bees. Pattern is "Rothschild Bird." Archives, Foreign. Recd: May 23, 1991. Est. value: $474.	His Excellency Arpad Goncz, President of the Republic of Hungary, Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A Waterford crystal pedestal bowl, scalloped edge, diamond pattern, lettered "Presented to President George Bush by Mr. Gerard Collins T.D. Minister for Foreign Affairs on St. Patricks Day 1991"; 10½" high, 10½" diam. across top. Archives, Foreign. Recd: Mar. 13, 1991, Est. value: $1,500.	His Excellency Gerard Collins, Minister for Foreign Affairs of Ireland, Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: Rare book, a copy of "Commentaria in M.T. Ciceronis Orationem Pro Prot. "A MILONE," by A. Bladum, published in Rome, 1549. Archives, Foreign. Recd: May 7, 1991. Est. value: $125.	His Excellency Francesco Cossiga, President of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: Medallions. A set of three medallions, gold, silver, and bronze, commemorating the 13th year of the reign of Pope John Paul II; each depicts on one side a profile likeness of Pope John Paul II and the reverse of each depicts a double shield, crown, and crossed keys design; each medallion is 1¾" diam; enclosed in a white leather case bearing the official emblem of the Pope on lid. Archives, Foreign. Recd: Nov. 8, 1991, Est. value: $720.	His Holiness John Paul II, Pope, Italy	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: Gold medallion of profile likenesses of Presidents Bush and Roh on one side and their country's respective flags on reverse; commemorates President Roh's State Visit to the United States; 99.9 percent gold, 70 grams, 40 mm. diam. Archives, Foreign. Recd: July 2, 1991. Est. value: $800.	His Excellency Tae Woo Roh, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Flowers: Large arrangement of mixed flowers (anthurium, snapdragons, greenery, etc.) in a pottery vase with a giraffe motif. Accepted by other agency/official use. Recd: May 7, 1991. Est. value: $250.	His Highness Sheikh Saad Al-Abdullah Al-Salem Al-Sabah, Prime Minister and Crown Prince of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of daisies, snapdragons, roses, etc. in a woven basket. Accepted by other agency/official use. Recd: June 12, 1991. Est. value: $300.	His Excellency Shaikh Saud Nasir Al-Sabah, Ambassador of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Sculpture symbolizing the occupation and liberation of Kuwait; a chain represents the occupation and wings represent the liberation by the allied forces; bears flag emblems of the participating countries; by Wolfers of Brussels; gold-electroplate over sterling silver; 10½" x 13½" x 15". Displayed in a red-velvet covered case. Archives, Foreign. Recd: Oct. 1, 1991. Est. value: $3,750.	His Highness Sheikh Jabir Al-Ahmad Al-Sabah, Amir of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Arrangement of mixed flowers (orchids, daisies, greenery, etc.) in heavy ceramic vase. Accepted by other agency/official use. Recd: May 7, 1991. Est. value: $350.	His Highness Sheikh Jabir Al-Ahmed Al-Sabah, Amir of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: "The Prophet," by Gibran Kahlil Gibran; published by Sader's Library, 1985, black leather bound; enclosed in a hinged wood case with a personalized brass plaque attached to cover. Archives, Foreign. Recd: Apr. 10, 1991. Est. value: $1,250.	His Excellency Elias Hraoui, President of the Republic of Lebanon, Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: (1) "Echternacher Sakramentar und Antiphonar," a leather-bound facsimile edition of a sacramentary and antiphonary from the monastery of echternach on the German-Luxembourg border original of which is housed in the State Library in Darmstadt, Germany. (2) A softcover version of the same volume. (3) A cloth covered volume, "Essai Historique et Musicologique Compare," by Paul Ulveling, Austria, 1982. All housed in a leather case. Archives, Foreign.	His Excellency Jacques Santer, President of the European Council, Luxembourg.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Wood coffee table w/ wicker top under glass; 17½" x 24" x 39½". (2) Painting, "Contact and Dialogue," Oil on masonite in gold color wood frame, 33" x 39". (for the President) (3) 3 nested tables, "12" x 15" x 16", 13" x 15" x 17", 14" x 18" x 21". (4) Glazed pottery vase depicting malawi village scene, W/lid (for Mrs. Bush). All gifts contemporary and of good quality materials and craftsmanship. Archives, Foreign. Recd: Sept. 11, 1991. Est. value: $240.	His Excellency; Dr. H. Kamuzu Banda, Life President of the Republic of Malawi, Malawi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: Gold (one ounce 22 karat gold) dodo: coin, 1988, commemorating Prime Minister Jugnauth. Contained in a red box bearing the Bank of Mauritius seal. Archives, Foreign. Recd: June 5, 1991. Est. value: $450.	The Right Honorable; (and Mrs.) Anerood Jugnauth Q.C., Prime Minister of Mauritius, Mauritius.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household: A sterling silver piece, designed as a clam shell, used as a glass holder in the Viceroys' dining rooms during the Mexican Viceroyalty period of the 1790's; displayed in a lucite case with black base; engraved presentation plaque attached; shell is 9" x 9"; case is 12" square. Archives, Foreign. Recd: Dec. 14, 1991. Est. value: $250.	His Excellency Carlos Salinas De Gortari, President of the United Mexican States, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Jewelry: Wristwatch, a chronometer style octagonal watch with brown ostrich band, 18 kt. gold by Jean D'Eve for Wolfers, Swiss made; contained in a blue leather case. Archives, Foreign. Recd: Feb. 20, 1991. Est. value: $2,000.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Chocolates, approx. 10 lbs. of assorted by Godiva, contained in a gold-folied covered box. Approx. 8 lbs. of candied dates and figs, each piece wrapped in gold foil contained in a gold-folied covered box; accepted by other agency/offical use. Flowers: Large mixed arragnement of orchids, roses, anthuriums, snapdragons, etc; accepted by other agency/offical use. Reproduction Oriental style jardiniere (sent with flowers). Archives, Foreign. Recd: May 08, 1991. Est. value: $1,030.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: 40 dozen Moroccan fresh cut red roses; accepted by other agency/official use. Consumables: gourmet delicacies contained in a wicker basket designed as a golf cart. Items include barbecue chips, Red River meat sauce, cooking implements, grills, herbs, cookbooks, etc; accepted by other agency/official use. Athletic equipment: Two golf clubs, No. 10 and No. 99 irons, 18.0 and 16.6 weight, 35" and 34½" long, handmade by Kenneth Smith; each bears King Hassan's facsimile insignia. Archives, Foreign. Recd: June 12, 1991. Est. value: $3,000.	His Excellency Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: World Globe, Bohemian crystal with continents in 18 karat brushed gold bordered with blue enamel; Mountains of engraved rockcrystal; Washington and Rabat symbolized by precious stones in colors of their national flags; globe upheld by gold meridian arc topped by rock crystal sphere; base holds drawer with batteries feeding 12-volt bulb activated by switch at base of axle. Displayed in green leather case w/gold monograms "GB" & "HII" and flags of U.S./Morocco. Archives, Foreign. Recd: Sept. 26, 1991 Est. value: $12,000.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment. (1) Adobe clay church, said "To ward off evil spirits", 22½" x 18" x 18" (2) Inca design tapestry, signed by Julio Montes, 53" x 48." (3) Statuettes of two churches, 2¼" x 1" and 2½" x 1". (4) Inca wall-hanging from San Pedro De Cajas signed Julio Montes, 48" x 53"; Archives, Foreign. Artwork: Marble plaque depicting an emblem of scales, U.S. and Peru flags, and a presentation plate in Spanish text; 5½" x 8". Archives, Foreign. Recd: Sept. 17, 1991. Est. value: $275.	His Excellency Alberto Kenyo Fujimori, President of the Republic of Peru, Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A set of crystal consisting of 12 glasses, a decanter with stopper, and an ashtray; contained in a red chest. Archives, Foreign. Recd: Mar. 20, 1991. Est. value: $660.	His Excellency Lech Walesa, President of the Council of State of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Photograph albums. Two vinyl-covered albums, containing 46 and 60 8" x 10" color photographs of President and Mrs. Bush, Saudi Arabian leaders, American troops, et al, Archives, Foreign. Recd: Jan. 15, 1991. Est. value: $1,160.	His Royal Highness Bandar Bin Sultan Bin Abdulaziz Prince; Ambassador of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of anthuriums, bird of paradise, orchids, etc., in vine basket. Accepted by other agency/official use. Recd: May 06, 1991. Est. value: $450.	Fahd Bin Abd Al-Aziz Saud, Custodian of the two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of tulips, hyacinths, lilies, daisies, roses, etc., in white basket. Accepted by other agency/official use. Recd: May 06, 1991. Est. value: $350.	His Royal Highness Sultan Bin Abdulaziz Al-Saud 2D Deputy Prime Minister of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large spring arrangement of anthuriums, bird of paradise, roses, etc., in a brass container; accepted by other agency/official use. Clothing and accessories: White T-shirt depicting an American Serviceman in a tank referring to Saddam Hussein and Picturing a VT-51 airplane and lettered "LT. Bush (now) C-IN-C"; SZ. LG. Archives, Foreign. Recd: May 06, 1991. Est. value: $310.	His Royal Highness Prince Bandar Bin Sultan, Ambassador of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Cut orchid plants in a woven container with bamboo and grass motif. Accepted by other agency/official use. Recd: June 11, 1991. Est. value: $250.	His Royal Highness Prince Bandar Bin Sultan Prince; Ambassador of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Cedarwood sculpture, "Mother and Child," mounted on wood base with engraved sterling silver presentation plaque; 18" high. (2) Wool rug in geometrical pattern in brown, beige, black, red; Woven by E.L.C. Art and Craft Centre; approx. 5 feet x 8 feet. Archives, Foreign. Recd: June 20, 1991. Est. value: $850.	Chief Mangosuthu Buthelezi, Chief Minister of Kwazulu, South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A hand-engraved facsimile of The Declaration of Independence, faithfully reproducing the character and calligraphy of the original document on handmade paper; 31" x 35"; No. 0 (ZERO) of a limited edition of 5,000 copies; enclosed in a blue vinyl case; archives, Foreign. Photograph: Six 5" x 7" color photographs of Mrs. Bush, the Queen of Spain, Robert and Georgette Mosbacher, Millie in a golf cart, et al. Files. Recd: Dec. 12, 1991. Est. value: $318.	His Majesty Juan Carlos, King of Spain, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Pair of sterling silver horses, each decorated with a gold saddle, bits, and semi-precious stones, mounted in a raised position on a black wood stand; 2" x 6" x 7"; housed in fabric-covered boxes. Archives, Foreign. Recd: Sept. 23, 1991. Est. value: $500.	His Royal Highness Norodom Sihanouk, Prince, (exiled in Thailand from Cambodia), Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Variegated Marble sculpture of a Peace Dove, designed as a flame, and depicting the Soviet and American flags and an Olive Branch; 20" high; contained in a vinyl-covered carrying case. Archives, Foreign. Recd: July 30, 1991. Est. value: $950.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Photographs of President, Mrs. Bush, et al., on occasion of their visit to the Soviet Union. There are twenty 9½"x10½" black and white photos, six 8"x10" color photos, and seven 5"x7" black and white photos. Archives, Foreign. Recd: Oct. 8, 1991. Est. Value: $284.	His Excellency Sergei V. Komissarenko Deputy Chairman of the Council of Ministers Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Leather album of 37 color photographs of President Bush, Dorothy Bush LeBlond, President Aguirre, et al., on occasion of the President's address to the Uruguayan Parliament. Archives, Foreign. Recd: Feb. 27, 1991. Est. value: $545.	His Excellency; Dr. Gonzalo Aguirre Ramirez, Vice President of the Oriental Republic of Uruguay, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: 22 color photographs of President Bush, Doro Bush LeBlond, President and Mrs. Perez, et al., during the President and Doro's visit to Caracas on December 7 and 8, 1990; contained in a leather-bound case; each photograph is 7⅜"x9½". Archives, Foreign. Recd: May 03, 1991. Est. value: $505.	His Excellency Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Briefcase of alligator skin with combination locks; (2) djelaeah robe of black cotton with multicolor embroidery down front; (3) antique necklace of silver and coral beads; (4) Silver and gold belt for 22" waist; (5) silver and gold decorative ornament; (6) jewelry set of necklace, ring, earrings and bracelet made from silver and coral beads in pink leather box. Archives, Foreign. Recd: Aug. 22, 1991. Est. value: $1,145.	His Excellency Ali Abdullah Saleh, President, Republic of Yemen, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Carved stone figure of monkeys, "Chatting Monkeys," by Henry Munyaradzi. engraved plaque attached; (sculpture is a symbol of wisdom in Zimbabwe); 6" d., 10" w., 18" h. Archives, Foreign. Recd: July 24, 1991. Est. value: $450.	His Excellency Robert Gabriel Mugabe, President of Zimbabwe, Zimbabwe.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Horses. Two pure-bred Argentine stallions. Government transfer pending. Government transfer. Recd: Dec. 5, 1990. Est. value: Indeterminable.	His Excellency Carlos Menem, President of the Argentine nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: Large arrangement of white peonies in a brown wicker basket. Accepted by other agency/official use. Recd: June 7, 1991. Est. value: $250.	His Royal Highness Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Flowers: A large Arrangement of mixed flowers including tulips, daisies, roses, carnations, etc., in a brass/copper container made in India; accepted by other agency/official use. Consumables: Gourmet basket of chocolates. A woven basket containing an assortment of Godiva chocolates and a box of peanut butter crunch. Tied with a fabric bow. Accepted by other agency/official use. Recd: Jan. 16, 1991. Est. value: $450.	His Majesty Hassan II, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Sweater. An Australian waratah and wattle cardigan sweater, multicolored wool design, by Jenny Kee. Archives, Foreign. Recd: Dec. 30, 1991. Est. value: $400.	Mrs. Kathryn Greiner (wife of the Premier of New South Wales), Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Two strands of pearls with 18K gold rondelles and clasp made with several 3 point diamonds; an oyster shell centerpiece that depicts a pattern of 92 three point diamonds. Total weight of diamonds in the necklace is appx. 3 carats. Archives, Foreign. Recd: Oct. 15, 1991. Est. value: $31,000.	His Highness Shaikh Isa Bin Sulman Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Two navy blue short-sleeve straight lined dresses; one is single-breasted, one double-breasted; one has brass buttons w/ lion's head motif; the other has brass buttons each lettered "R." both have epaulets; 100% cotton; sz. 18.; by Roni Blanshay, Montreal. Archives, Foreign. Recd: July 15, 1991. Est. Value: $273.	Mrs. Brian Mulroney (wife of the Prime Minister of Canada), Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Denim Jacket and slacks by Roni Blanshay of Montreal. Blouse has gold-colored buttons with an "R" and slash pockets trim in red and blue ribbon. Archives, Foreign. Recd: Aug. 29, 1991. Est. value: $238.	Mrs. Brian Mulrooney (wife of the Prime Minister of Canada), Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Necklace and earrings; 24 kt. gold-plated necklace with rock crystal, sodalite, and jade; and a pair of 24 kt. gold-plated earrings. Archives, foreign. Recd: Feb. 26, 1991. Est. value: $450.	Mrs. Cesar Gaviria Trujillo (wife of the President of the Republic of Colombia), Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Small wooden box depicting painting of a bird, appx. 8" x 5". Necklace made of round black onyx stones and 13k gold rondelles depicting a 13k gold charm of a bird; presented in a brown wooden box that is mounted on square of red velvet, with red, white, and blue ribbon, appx. 8" square overall. Archives, Foreign. Recd: Oct. 18, 1991. Est. value: $515.	His excellency and Mrs. Rafael Calderon, President, the Republic of Costa Rica, Costa Rica.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Porcelain covered vegetable bowl; floral and leaf motif, gold-trimmed, Royal Danica by Royal Copenhagen; numbered on underside, 20 3568; 9" diam. Archives, Foreign. Recd: Feb. 20, 1991. Est. value: $3,450.	Her Majesty Margrethe II, Queen of Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Coins: Two Coins, gold and silver, proof set, commemorating the XVIII Reunion Annual Assembly of Governors, May/June 1977. Archives, Foreign. Recd: June 13, 1991. Est. value: $375.	His Excellency Alfredo Cristiani, President of the Republic of El Salvador, El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household: Carriage clock, brass case with beveled glass, floral design and "D" emblem with crown encircled with a floral design on face, keywound, engraved on top "With My Love Diana, 17th July 1991"; 2¾" x 3¼" x 4¾". Archives, Foreign. Recd: July 14, 1991. Est. value: $2,000.	Her Royal Highness Diana (Windsor), the Princess of Wales, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Gold pin (750) decorated with three pearls, designed by Bjorn Weckstrom, from the Lapponia collection. 1¾" diam. Archives, Foreign. Recd: May 7, 1991. Est. value: $325.	His Excellency Mauno Koivisto, President of Finland, Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Five Porcelain dishes; four are small mint or nut dishes; one is a larger dish for holding mints or nuts; each is cobalt blue decorated with gold and a floral design, by Meissen; enclosed in a moire-covered octagonal box. Archives, Foreign. Recd: June 20, 1991. Est. value: $275.	His Excellency; and Mrs. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Evening bag, black leather envelope style with removable black tassle shoulder strap and a brass clasp, by Fendi; 6" x 9½". Archives, Foreign. Recd: May 7, 1991. Est. value: $2,600.	His Excellency Francesco Cossiga, President of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: 15 Approx. one-pound boxes of plain macadamia nuts. Accepted by other agency/official use. Recd: Sep. 11, 1991. Est. value: $225.	His Excellency Dr. H. Kamuzu Banda, Life President of the Republic of Malawi, Malawi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: Gigantic Arrangement of Peonies, Roses, Hybiscus, Leek, etc.; accepted by other agency/official use. Blue and white oriental style porcelain container. Archives, Foreign. Recd: June 7, 1991. Est. value: $400.	His Majesty Hassan II, King of Morocco, Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: Five bottles of toilet water from Morocco, each spray bottle has a gold-colored top and bears the King's facsimile signature; contained in a compartmentalized leatherette and gold-stamped case, key-locked. Archives, Foreign. Recd: June 10, 1991. Est. value: $700.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Silver, crescent-shaped filigree pin. Fur blanket in cream and brown hues. 87" x 78". Archives, Foreign. Recd: Sep. 17, 1991. Est. value: $395.	His Excellency Alberto Kenyo Fujimori, President of the Republic of Peru, Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: An amber necklace set in sterling silver. Archives, Foreign. Recd: Mar. 20, 1991. Est. value: $400.	His Excellency Lech Walesa, President of the Council of State of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Box of incense from Saudi Arabia. Small round glass jar of incense. Coin silver incense burner, appx. 10½" high, depicting an embossed floral motif. Archives, Foreign. Recd: Apr. 23, 1991. Est. value: $310.	His Highness Prince Sattam Bin Saud Bin Abdul Aziz Al-Saud, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Painting of trees in winter, oil on canvas, by donor/artist; displayed in an elaborate gold wood frame; image: 26" 39", overall: 31" x 44". Archives, Foreign. Recd: June 25, 1991. Est. value: $350.	Mr. Sergei F. Davidovich, Member of the Supreme Soviet of the Belorussian Soviet Socialist Republic, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Tea set, bone china, white with colorful rooster pattern, set of 12, made in the Soviet Union; contained in a wood dometop chest with metal hardware. Wool shawl, varicolored pattern on black background, handwoven; 58" x 59". Archives, Foreign. Recd: Aug. 1, 1991. Est. value: $575.	Mrs. Mikhail Gorbachev, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Paul W. Batemen, deputy assistant to the President for management and Director of the Office of Administration.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20-22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Small sterling silver dish with an engraved pattern; approx. 5" in diameter; Presidential staff to keep personally. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $530.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Susan D. Biddle, White House photographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Phillip D. Brady, assistant to the President and staff secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United of America 20–22 July 1991" with a colorful Turkish motif; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" × 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
D. Allan Bromley, Assistant to President and Director of the Office of Science and Technology Policy.	Purple vase made of chariote, a rare stone; approx. 3½" high. Three small squares of lazurite, nephrite, and chariote. Small aqua-colored lapel pin with lettering in Russian text. Presidential staff; for official use/display. Recd: May 16, 1991. Est. value: $250.	Dr. Nikolai Dobretshov, Acting President of the Siberian Academy of Science, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrashment to donor and U.S. Government.
R. Nicholas Burns, Director of European and Soviet Multilateral Affairs, National Security Council.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency President George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10", in diameter; Presidential staff to keep personally. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Small sterling silver dish with an engraved pattern; approx 5" in diameter; Presidential staff to keep personally. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early Bronze Age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $530.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Michael J. Busch, Assistant Press Secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency President George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10", in diameter; Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Erlinda E. Casey, Executive Assistant to the Chief of Staff.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10", in diameter. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sandra L. Charles, Former Director of Near East/South Asia Affairs, National Security Council.	Jewelry: Stainless steel ladies watch, made by Cupillard Rieme, Paris. GSA. Recd: May 01, 1991. Est. value: $300.	His Highness Shaikh Isa Bin Salman Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Laura Collins, White House Stenographer	Brown Leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the Rim; approx. 10" in diameter; GSA. Assortment of items, Book, "Turkiye". Promotional video cassette, several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carl Cordes, Audio Visual Lead, White House Television Office.	Brown Leather Briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Billy R. Dale, Director of the White House Travel and Telegraph Service.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Douglas A. Davidson, Assistant Press Secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus with President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Randy Dawson, Presidential Advance Team, Turkey Trip.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Timothy E. Deal, special assistant to the President for national security affairs.	Jewelry: Pair of 18k gold round cuff links depicting Saudi Arabian lettering and symbols. GSA. Recd: Apr. 19, 1991. Est. value: $250.	His Excellency Muhammad Ali Abalkhail, Minister of Finance, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
David F. Demarest, Jr., assistant to the President for communications.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
George Egolf, White House communications agency.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover. Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: Aug. 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
William S. Farish, the President's aide....	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyles, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Laurie Green Firestone, social secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyles, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Max Marlin Fitzwater, assistant to the President and press secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyles, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Multicolored wool tapestry depicting a geometric pattern, approx. 40" x 64"; Presidential staff; for official use/display. Household: Black clay teapot with a beak spout, make in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $280.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Florence E. Gantt, special assistant to the assistant to the President for national security affairs.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus with President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items inside briefcase: Book, "Turkiye" about Turkish lifestyle, art, and geography. Promotional video cassette. Various pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brenda Garcia, White House videographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus with President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, former assistant to the President and deputy for national security affairs.	Silver etched dagger with wooden handle, approx. 17" in length, with black shoulder strap. GSA. Recd: Feb. 12, 1991. Est. value: $500.	His Excellency Abdelhak El Kadiri, Chief of the Moroccan General Intel Service.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Spencer E. Geissinger, Former Special Assistant to the President for Presidential Press Advance.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Taddese Ghebermeschel, White House Transportation Office.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
David C. Gompert, Special Assistant to the President and Senior Director for European and Soviet Affairs.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; Approx. 10" in diameter; GSA. Multicolored wool tapestry depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early Bronze Age. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Kris Goodwin, Trip Coordinator, Office of Presidential Advance.	Brown Leather Briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turikye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Richard N. Haass, Senior Director of Near East/South Asia Affairs, National Security Council.	Jewelry: Gold pin, 18k gold with 18 carat crystal intaglios in the center and matching pair of earrings. GSA. Recd: July 11, 1991. Est. value: $1,350.	His Excellency Nasir Al-Sabah, Ambassador of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John F. Herrick, Special Assistant to the President for advance.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette title "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish, motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Edward A. Hewitt, special assistant to the President and senior director of Soviet Affairs, National Security Council.	Artwork: Black lacquer wall hanging depicting a dragon, from a Russian fairy tale; approx. 16" x 6". Presidential staff; for official use/display. Recd: July 18, 1991. Est. value: $670.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brenda I. Hilliard, Special Assistant to the Executive Secretary, National Security Council.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the Visit of His Excellency George Bush, President of the United States 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lt. Comm. Mary Jackson, White House Medical Unit.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the Visit of His Excellency George Bush, President of the United States 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Arnold Kanter, Special Assistant to the President and Senior Director for Defense Policy/Arms Control, National Security Council.	Artwork: Black lacquer wall hanging depicting the Village of Fedoskino, from a Russian fairy tale; approx. 12" × 7". Archives/staff gift special. Recd: July 18, 1991. Est. value: $600.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John Koloszar, White House, Transportation Office.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motiff around the rim; approx. 10" in diameter. GSA. Recd. July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carol Lavery, White House stenographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motiff around the rim; approx. 10" in diameter. Presidential staff to keep personally. Assortment of items. Book, titled "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd. July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Susan Leander, White House Stenographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, Lettered "To commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. Value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Burton J. Lee, physician to the President.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 million mornings Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Diane C. Leneghan, former staff assistant, Office of the Press Secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 million mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Christina M. Martin, Special Assistant to the Deputy Assistant to the President for Communications.	Brown Leather Briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, titled "Turkiye." Promotional Video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert Martinez, Director, Office of National Drug Control Policy.	Rare purple stone known as "Bolivianita," Per Boone and Sons, Jewelers, 40 carats. GSA. Recd: May 28, 1991. Est. value: $350.	His Excellency Paz Zamora, President, Bolivia.	Non-acceptance would cause embarrassment to Donor and U.S. Government.
Lt. Anthony J. Mauro, food service coordinator, White House mess.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geography; video cassette, and promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lynn McKenzie, former executive assistant to, the special assistant to President and deputy press secretary.	Brown leather briefcase with embossed lettering "Turkey": Europe You Don't Know, Asia You'll Discover." Briefcase contains book, "Turkiye" about Turkish lifestyle, art, and geography; promotional video and pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Scott McQueeney, White House Transportation Office.	Brown leather briefcase with embossed lettering "Turkey": Europe You Don't Know, Asia You'll Discover." Briefcase contains book, "Turkiye" about Turkish lifestyle, art, and geography; promotional video cassette and pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Laura M. Melillo, assistant press secretary.	Brown leather briefcase with embossed lettering "Turkey": Europe You Don't Know, Asia You'll Discover." Briefcase contains book, "Turkiye" about Turkish lifestyle, art, and geography; promotional video cassette and promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elaine E. Mitsler, executive assistant, office of the press secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Know, Asia You'll Discover"; Presidential Staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jay L. Parmer, special assistant to the President and director of presidential advance.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geography; and promotional video cassette and pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Roman Popadiuk, deputy assistant to the President and deputy press secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40"x64", GSA. Household: Clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. Value: $460.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joseph Thomas Ratchford, Associate Director for Policy and International Affairs, Office of Science and Technology Policy.	Book: Photography book with pictures and information about Leningrad, Titled "Leningrad Art and Architecture"; printed and bound by Globus in Vienna, Austria, published by Aurora Art, Leningrad, 1985. Presidential staff; for official use/display. Recd: May 22, 1991. Est. value: $450.	His Excellency Vladimir V. Ezhkov, Deputy Chairman of the State Committee for Science and Technology, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Edward M. Rogers, Jr., former deputy assistant to the President and executive assistant to the chief of staff.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye." and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United States of America, 20–22 July 1991." with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sigmund A. Rogich, assistant to the President for public events and initiatives.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United States of America, 20–22 July 1991." with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional pamphlets. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen. Brent Scowcroft, assistant to the President for national security affairs.	Clock with lacquer face that depicts a space program-related motif, approx. 8½" in diameter, covered in clear plastic, on a black lacquer base that depicts a tree. Clock is approx. 15" high and its style is called "Kahouli." Presidential staff; for official use/display. Recd: July 18, 1991. Est. value: $1,000.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gen. Brent Scowcroft, assistant to the President for national security affairs.	Artwork: Hand-hammered sterling silver sculpture depicting a calyx-shaped kylix; a replica from the early cycladic II period (2800–2300 BC.) from the Museum of Cycladic Art, Greece; approx. 5" in diameter, Presidential staff; for official use/display. Recd: July 18, 1991. Est. value: $375.	His Excellency Konstantinos Karamanlis, President of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gen. Brent Scowcroft, assistant to the President for national security affairs.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household; Black clay teapot with a beak spout, made in Turkey. It is a replica of a pot from the early bronze age. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sichan A. Siv, deputy assistant to the President for public liaison.	Artwork: Wooden plaque depicting a jungle scene; approx. 8" x 21". GSA. Recd: Aug. 1, 1991. Est. value: $250.	His Excellency Boun My Manivong, Deputy Governor of Luang Prabang, Laos.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sichan A. Siv, deputy assistant to the President for public liaison.	Expended for food, lodging, and transportation. Presidential staff to keep personally. Recd: Aug. 13, 1991. Est. value: Indeterminable.	The Foreign Ministry of the Kingdom of Thailand, Thailand.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.
Robert A. (Tony) Snow, Deputy Assistant to the President for communications and director of speechwriting.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John H. Sununu, chief of staff to the President.	Clock with lacquer face that depicts a space program-related motif, appx. 8½" in diameter, covered on clear plastic, on black lacquer base that depicts a tree. Clock is 15" high. The style of clock is "Kahouli." Archives/staff gift special. Recd: July 18, 1991. Est. value: $1,000.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John H. Sununu, chief of staff to the President.	Artwork: Hand-hammered sterling silver cup, approx. 4½" high and 2½" in diameter, crafted by the famous Lalaounis family in Greece. This is a premiere piece from this family's collection and was inspired by the cycladic period (2000 B.C.); with a certificate of authenticity. Archives/staff gift special. Recd: July 18, 1991. Est. value: $750.	His Excellency Constantin Mitsotakis, Prime Minister of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John H. Sununu, chief of staff to the President.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
William W. Working, special assistant to the President for national security affairs.	Brown billfold made of crocodile skin, with certificate of authenticity, made by Jacob De Julia, Paris. GSA. Recd: Aug. 8, 1991. Est. value: $295.	His Excellency Maj. Gen. Ayupoon Karnasuta, deputy director of the Thai national intelligence agency, Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
D. Allan Bromley, Assistant to the President for Science and Technology Policy.	Purple/Black chariote vase—3.5 inches high; Rec'd—5/16/91; Est. Value=$250.00; Del. to GSA 6/17/91.	Professor Nikolai Dobretshov, Acting President, Siberian Branch, Soviet Academy of Science.	Avoid embarrassment to donor.
J. Thomas Ratchford, Associate Director for Policy and Int'l Development.	Picture Book "Leningrad Art & Architecture"; Rec'd—5/12/91; Est. Value=$450.00; Del. to GSA 9/17/91.	Vladimir V. Ezhkov, Deputy Chairman of the State Committee for Science and Technology.	Avoid embarrassment to donor.

AGENCY—Executive Office of the Vice President

Report of Tangible Gifts—Report Date: 01/23/92—All Gifts Received from Foreign Officials over Minimum Dollars—Jan. 1 thru Dec. 31, 1991

Name and title of recipient	Gift, date of acceptance, est. value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
91–977, Vice President and Mrs. Quayle.	Multiple items: art works, in leather and cloth; archives, foreign; Recd: September 9, 1991; Est. value $425.	His Excellency Augustus Aikhomu, Vice President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–519, Vice President and Mrs. Quayle.	Multiple items: porcelain vase, set of photographs; residence; for official use/display; Recd: June 4, 1991; Est. value: $1000.	His Excellency Dr. Jozsef Antall, President of the Council of Ministers of the Republic of Hungary, Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–875, Vice President and Mrs. Quayle.	Art work: 30x40 oil painting; archives, foreign; Recd: August 8, 1991; Est. value: $350.	His Excellency Jean-Bertrand Aristide, President of the Republic of Haiti, Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—Executive Office of the Vice President—Continued

Report of Tangible Gifts—Report Date: 01/23/92—All Gifts Received from Foreign Officials over Minimum Dollars—Jan. 1 thru Dec. 31, 1991

Name and title of recipient	Gift, date of acceptance, est. value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
91-1023C, Vice President and Mrs. Quayle.	Multiple items: sculpture, necklace, linens, books; archives, foreign; Recd: September 9, 1991; Est. value: $400.	Mrs. Maryam I. Babangida, wife of President of the Federal Republic of Nigeria, Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-983, Vice President and Mrs. Quayle.	Multiple items: golden wooden stool, carved wooden figurine, terra cotta figurine, carved wooden mask; archives, foreign; Recd: September 13, 1991; Est. value: $1000.	His Excellency Felix Houphouet-Boigny, President of the Republic of Cote D'Ivoire, Ivory Coast.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-336, Vice President and Mrs. Quayle.	Art work: unframed oil painting; archives, foreign; Recd: April 4, 1991; Est. value: $900.	Her Excellency Violeta Barrios de Chamorro, President of the Republic of Nicaragua, Nicaragua.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-552, 554, Vice President and Mrs. Quayle.	Multiple items: porcelain coffee set, 1 set of handcut crystal tumblers; archives; foreign; residence, for official use/display; Recd: June 6, 1991; Est. value: $325.	His Excellency Vaclav Havel, President of the Czech and Slovak Federal Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-1109, Vice President and Mrs. Quayle.	Household: crystal vase; residence, for official use/display; Recd: October 23, 1991; Est. value: $300.	His Excellency Vaclav Havel, President of the Czech and Slovak Federal Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-528A, Vice President and Mrs. Quayle.	Household: binoculars; residence; for offical use/display; Recd: June 1, 1991; Est. value: $1000.	His Excellency Helmut Kohl, Chancellor of the Federal Republic of Germany, Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-450, Vice President and Mrs. Quayle.	Household: silver bowl w/blue enamel interior; residence, for official use/display; Recd: May 7, 1991; Est. value: $250.	His Excellency Mauno Koivisto, President of Finland, Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-132, Vice President and Mrs. Quayle.	Multiple items: porcelain ginger jar; 2 photographs in leather frames; residence, for official use/display; Recd: February 20, 1991; Est. value: $605.	Margrethe II and Prince Henrik, Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-1353, Vice President and Mrs. Quayle.	Household: silver goblet; residence, for official use/display; Recd: December 13, 1991; Est. value: $600.	His Excellency Constantineitsotakis, Prime Minister of the Hellenic Republic, Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-694, Vice President and Mrs. Quayle.	Art work: cloth of multicolored patchwork; archives, foreign; Recd: June 28, 1991; Est. value: $850.	His Excellency Alassane Ouattara, Prime Minister of the Republic of Cote d'Ivoire, Republic Cote d'Ivoire.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-280, Vice President and Mrs. Quayle.	Art work: silk wall hanging; residence, for official use/display; Recd: March 24, 1991; Est. value: $800.	His Excellency and Mrs. Turgut Ozal, President of the Republic of Turkey, Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-512, Vice President and Mrs. Quayle.	Art work: framed art; OEOB, for official use/display; Recd: May 22, 1991; Est. value: $600.	His Excellency S.H. Sudharmono, Vice President of the Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-718, Vice President and Mrs. Quayle.	Art work: handcarved wooden screen; residence, for official use/display; Recd: July 1, 1991; Est. value: $1800.	His Excellency Nawaz Sharif, Prime Minister of the Islamic Republic of Pakistan, Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-555, Vice President and Mrs. Quayle.	Household: crystal platter; residence, for official use/display; Recd: June 7, 1991; Est. value: $250.	His Excellency Lubomir Skalos, Mayor of Bardejov, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-514, Vice President and Mrs. Quayle.	Art work; wooden carving, two Balinese figures; archives, foreign; Recd: May 22, 1991; Est. value: $600.	His Excellency Soeharto, President of the Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-513, Vice President and Mrs. Quayle.	Household: antique silver tray; archives, foreign; Recd: May 22, 1991; Est. value: $300.	Mrs. E.N. Sudharmono, Wife of the Vice President of the Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-1147, Vice President and Mrs. Quayle.	Household: 6 enamel covered cups w/ fruit decoration on lid; residence, for official use/display; Recd: October 29, 1991; Est. value: $1200.	The Honorable Park Tae-Joon, Co-Chairman of the Democratic Liberal Committee of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-511, Vice President and Mrs. Quayle.	Household: 4-piece antique silver tea service; archives, foreign; Recd: May 22, 1991; Est. value: $500.	Mrs. Tien Suharto, wife of President of Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-263, Vice President and Mrs. Quayle.	Household: cut crystal serving plate; residence, for official use/display; Recd: March 20, 1991; Est. value: $1500.	His Excellency Lech Walesa, President of the Council of State, of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91-723, Vice President and Mrs. Quayle.	Multiple items: black lacquer jewelry box w/mother of pearl inlay, black lacquer box w/ornate mother of pearl; residence, for official use/display; Recd: July 2, 1991; Est. value: $670.	His Excellency Roh Tae Woo, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

UNITED STATES SENATE

Report of Tangible Gifts—Calendar Year 1991

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bill Bradley, U.S. Senator	Sony compact disc player recd—January 15, 1991. Est. value—$150. Deposited with the Secretary of the Senate.	Members of the Japanese Diet	Refusal would likely cause offense or embarrassment.
Thad Cochran, U.S. Senator	Hand painted glass pitcher and bowl set recd—August 23, 1990. Est. value—$800. Disposition: Display in Senator's office.	President Turgut Ozal, Government of Turkey and Foreign Minister Ali Bozer, Government of Turkey.	Refusal would likely cause offense or embarrassment.
Thad Cochran, U.S. Senator	3×4 silk rug recd—August 23, 1990. Est. value—$2,000. Disposition: Display in Senator's office.	President Turgut Ozal, Government of Turkey and Foreign Minister Ali Bozer, Government of Turkey.	Refusal would likely cause offense or embarrassment.
Dave Durenberger, U.S. Senator	Fossilized stone gray box recd—May 28, 1991. Est. value—$150. Disposition: Display in Senator's office.	Ambassador Robie Olhaye, Embassy of Djibouti.	Refusal would likely cause offense or embarrassment.
John Glenn, U.S. Senator	Man's watch from Riviera collection recd—October 24, 1991. Est. value—$3,100. Deposited with the Secretary of the Senate.	Government of Bahrain	Refusal would likely cause offense or embarrassment.
Patrick J. Leahy, U.S. Senator	Painting of a street scene recd—September 26, 1991. Est. value—$150. Deposited with the Secretary of the Senate.	President Rafael Callejas, Government of Honduras.	Refusal would likely cause offense or embarrassment.
John McCain, U.S. Senator, and Cindy H. McCain, Spouse of U.S. Senator.	Floral arrangement recd—April 11, 1991. Est. value—$220. Disposition: Display in Phoenix office.	H.E. Saud Nasir Al-Sabah, Ambassador of Kuwait.	Refusal would likely cause offense or embarrassment.
Cindy H. McCain, Spouse of Senator McCain.	Silver and gold plated plate recd—April 25, 1991. Est. value—$200. Deposited with the Secretary of the Senate..	H.E. Abd al-Wahab Sulayman al-Fawzan, Minister of Health, Government of Kuwait.	Refusal would likely cause offense or embarrassment.
Cindy H. McCain, Spouse of Senator McCain.	1 pair 24 karat gold earrings. Est. value—$350. 1 24 karat ring, est. value—$250. 1 gold ingot with chain, est. value—$300 recd—April 8, 1991. Deposited with the Secretary of the Senate.	H.E. Saud Nasir Al-Sabah, Ambassador of Kuwait.	Refusal would likely cause offense or embarrassment.
George J. Mitchell, U.S. Senator	Two photographs of Queen Elizabeth and Prince Phillip in blue leather frames recd—July 11, 1991. Est. value—$318. Deposited with the Secretary of the Senate.	Queen Elizabeth and Prince Phillip of England.	Refusal would likely cause offense or embarrassment.
George J. Mitchell, U.S. Senator	10×7 wooden framed handdrawn picture of Vilnius recd—May 7, 1991. Est. value—$200. Deposited with the Secretary of the Senate.	President Vytautas Landsbergis, Government of Lithuania.	Refusal would likely cause offense or embarrassment.

UNITED STATES SENATE

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Richard Arenberg, Professional Staff Member, Office of Majority Leader.	Food and lodging in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Max Baucus, U.S. Senator	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Daniel Bob, Special Assistant to Senator Roth.	Lodging and meals in country, Aug. 24-26, 1991.	Government of Japan	Nonacceptance would cause donor embarrassment.
Daniel Bob, Special Assistant to Senator Roth.	Meals from Dec. 8-11, 1991 and lodging on Dec. 8, 1991.	Government of Australia	Nonacceptance would cause donor embarrassment.
Daniel Bob, Special Assistant to Senator Roth.	Meals in country from Dec. 12-15, 1991.	Government of New Zealand	Nonacceptance would cause donor embarrassment.
Hank Brown, U.S. Senator	Food, lodging and transportation in country, including air transportation between Beijing and Shanghai, Aug. 11-17, 1991.	Republic of China, Chinese People's Institute of Foreign Affairs.	Nonacceptance would cause donor embarrassment.
Nan Brown, Spouse of Senator Brown	Food, lodging and transportation in country, including air transportation between Beijing and Shanghai, Aug. 11-17, 1991.	Republic of China, Chinese People's Institute of Foreign Affairs.	Nonacceptance would cause donor embarrassment.
Les Brownlee, Professional Staff Member, Committee on Armed Services.	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Betty F. Bumpers, Spouse of Senator Bumpers.	Transportation, lodging and meals in country May 15–21, 1991.	Republic of China, All-China Women's Federation.	Nonacceptance would cause donor embarrassment.
Conrad Burns, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Conrad Burns, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia, and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John H. Chafee, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Dan Coats, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
William S. Cohen, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Alan Cranston, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Alfonse M. D'Amato, U.S. Senator	Transportation within Saudi Arabia, to and from Kuwait and Bahrain, Mar. 1–5, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Dennis DeConcini, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Christopher J. Dodd, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2, & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Dave Durenberger, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Wendell H. Ford, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John Glenn, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John Glenn, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Scott Harris, Professional Staff Member, Democratic Policy Committee.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John Heinz, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Howell Heflin, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Jesse Helms, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabi and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John F. Kerry, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John F. Kerry, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John F. Kerry, U.S. Senator	Lunch and air transportation from Phnom Penh to Siemreab Province on Aug. 22, 1991.	Government of Cambodia	Nonacceptance would cause donor embarrassment.
Michael T. Kinsella, Administrative Assistant, Office of Senator D'Amato.	Transportation within Saudi Arabia, to and from Kuwait and to and from Bahrain, March 1–5, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Frank R. Lautenberg, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Joseph I. Lieberman, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Craig Lovitt, Executive Assistant to Senator Dixon, Springfield Office.	Food, lodging and transportation in country, Aug. 11-17, 1991.	Republic of China, Chinese People's Institute of Foreign Affairs.	Nonacceptance would cause donor embarrassment.
John McCain, U.S. Senator	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Mitch McConnell, U.S. Senator	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Tom McMahan, Delegation Press Secretary, Office of Senator Heflin.	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Kathleen Merrigan, Professional Staff Member, Committee on Agriculture, Nutrition and Forestry.	Meals in country, May 31, 1991	Government of Norway, Norwegian Research Council for Science and the Humanities.	Nonacceptance would cause donor embarrassment.
Daniel Patrick Moynihan, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Daniel Nelson, Legislative Assistant, Office of Senator Pressler.	Transportation from Riga to Vilnius, Aug. 30, 1991.	Government of Latvia	Nonacceptance would cause donor embarrassment.
Daniel Nelson, Legislative Assistant, Office of Senator Pressler.	Transportation within country on Nov. 28-Dec. 2, 1991.	Government of Cuba	Nonacceptance would cause donor embarrassment.
Don Nickles, U.S. Senator	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Sam Nunn, U.S. Senator	One night lodging and meals in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Sam Nunn, U.S. Senator	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would cause donor embarrassment.
Claiborne Pell, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation from Riga to Vilnius, Aug. 30, 1991.	Government of Latvia	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation within country from on Nov. 28-Dec. 2, 1991.	Government of Cuba	Nonacceptance would cause donor embarrassment.
Arnold Punaro, Staff Director, Senate Armed Services Committee.	One night lodging and meal in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Arnold Punaro, Staff Director, Senate Armed Services Committee.	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would casue donor embarrassment.
William V. Roth, Jr., U.S. Senator	Lodging and meals in country, Aug. 24-26, 1991.	Government of Japan	Nonacceptance would cause donor embarrassment.
William V. Roth, Jr., U.S. Senator	Meals from Dec. 8-11, 1991 and lodging on Dec. 8, 1991.	Government of Australia	Nonacceptance would cause donor embarrassment.
William V. Roth, Jr., U.S. Senator	Meals in country on Dec. 12-15, 1991	Government of New Zealand	Nonacceptance would cause donor embarrassment.
Paul S. Sarbanes, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
R.J. Short, Chief of Staff, Office of Senator Thurmond.	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Gerald Sinclair, State Director, Office of Senator Simon.	Transportation and lodging within country, Oct. 12-19, 1991.	Government of Germany	Nonacceptance would cause donor embarrassment.
Anne Smith, Legislative Assistant, Foreign Relations Committee.	Transportation from Riga to Vilnius, Aug. 30, 1991.	Government of Latvia	Nonacceptance would cause donor embarrassment.
Nancy Stetson, Professional Staff Member, Foreign Relations Committee.	Lunch and air transportation from Phnom Penh to Siemreab Province, Aug. 22, 1991.	Government of Cambodia	Nonacceptance would cause donor embarrassment.
Walter J. Stewart, Secretary of the Senate.	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Strom Thurmond, U.S. Senator	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Patrick Tucker, Staff Director and Counsel for the Minority, Senate Armed Services Committee.	One night lodging and meals in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Patrick Tucker, Staff Director and Counsel for the Minority, Senate Armed Services Committee.	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would cause donor embarrassment.
Trina Y. Vargo, Office of Senator Kennedy.	Transportation, lodging and meals in country, Jun. 1-6, 1991.	Government of Ireland	Nonacceptance would cause donor embarrassment.
Malcolm Wallop, U.S. Senator	Lodging and meals in country, Mar. 15-16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Sally Walsh, Deputy Director, Office of Interparliamentary Services.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John W. Warner, U.S. Senator	Lodging and meal in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John W. Warner, U.S. Senator	One night lodging and meals in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John W. Warner, U.S. Senator	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would cause donor embarrassment.
Lt. Col. Grayson Winterling, U.S. Army (Ret.), Office of Senator Warner.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John Ziolkowski, Professional Staff Member, Committee on Agriculture, Nutrition and Forestry.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Frances Zwenig, Administrative Assistant, Office of Senator Kerry.	Lunch and air transportation from Phnom Penh to Siemreab Pronvince, Aug. 22, 1991.	Government of Cambodia	Nonacceptance would cause donor embarrassment.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
James H. Bilbray, Member of Congress	Food, lodging and transportation in People's Republic of China, from August 11–16, 1991 to participate in meetings with Government Officials.	People's Republic of China	Travel authorized by the Foreign Gifts and Decoration Act.
Philip Crane, Member of Congress	Food, lodging and transportation from Beijing to Shanghai to Hong Kong for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Eliot L. Engel, Member of Congress	Food, lodging and transportation from Beijing to Shanghai for 5 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Jaime Fuster, Member of Congress	Food, lodging and transportation from Hong Kong to Beijing to Shanghai for 4 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
William Goodling, Member of Congress	Food, lodging and transportation from Beijing to Shanghai for 6 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Ben Lewis Jones, Member of Congress.	Ground transportation, food and lodging within the People's Republic of China for 4 days.	The Chinese People's International Friendship Association.	Fact-finding.
Michael R. McNulty, Member of Congress.	Food, lodging and transportation from Beijing to Shanghai for 6 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Arthur Ravenel, Jr., Member of Congress.	Meals, lodging and transportation from Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Floyd Spence, Member of Congress	Meals, lodging and ground transportation from Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Barbara Vucanovich, Member of Congress.	Meals, lodging and travel from Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Glenda C. Booth, Rep. Peter Hoagland	Travel within Germany with officials of the German Parliament; travel to Czechoslovakia with member of German Parliament from April 6 to 21, 1991.	German Bundestag	Staff exchange program.
Glenda Burr, Rep. Andy Ireland	Transportation from Moscow to Blogorod from April 15–April 24, 1991.	Soviet Union	Attendance at conference.
Joseph J. Eule, Rep. Robert Dornan	Lodging, meals and transportation from Hong Kong to Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Scott Feeney, Rep. Dan Burton	Lodging, meals and transportation from Hong Kong to Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Wendy Herzog, Rep. Ben Jones	Ground transportation, food and lodging within the People's Republic of China from Sept. 2–5, 1991.	The Chinese People's International Friendship Assn.	Fact-finding.
Wendy Herzog, Rep. Ben Jones	Food and lodging in Israel from Feb. 1–9, 1991 to participate in a volunteer program.	Israeli Defense Forces	Program participant.

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Charles M. Segall, Rep. Michael McNulty.	Food, lodging and transportation from Beijing to Shanghai from Aug. 11–17, 1991.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Thomas S. Foley, Speaker	Painting entitled "Spirit of Tenderness" by Antonio Sarelli: Recd: December 10, 1991. Est. Value: $2,000. Approved for official display.	Carlos Ortiz de Rozas, Ambassador of the Argentine Republic for Dr. Carlos Saul Menem, President of Argentina.	Non-acceptance would have caused embarrassment to donor.
Thomas S. Foley, Speaker	Portrait of Thomas G. Masaryk: Recd: October 23, 1991. Est. Value: $15,000. Approved for official display.	President Vaclav Havel of the Czech and Slovak Republic.	Non-Acceptance would have caused embarrassment to donor.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT REPORT OF TANGIBLE GIFTS

Name and title of person accepting gifts on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
R. Ray Randlett, Assistant Administrator, Legislative Affairs.	Twentieth Century Impressions of Ceylon. Recd—August 27, 1991. Approx. Value—19,000 rupees or U.S. Dollars $475.00. Approve for official use. Displayed in Dept of State, Rm 2895.	Ven. Galboda Gnanissara Thero the Chief Priest of the Gangarama Temple, Colombo Sri Lanka.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard J. Kerr, Deputy Director, Central Intelligence.	Tunisian hand woven rug 8.3 × 5.9. Horizontal field woven with stylized rosettes, leaves, and animals and blue-to-red-to-ivory ground, and palmette guard border on ivory ground. Recd—October 28, 1991. Est. value—$250.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard J. Kerr, Deputy Director, Central Intelligence.	Cultured pearl and diamond pendant necklace. The 14 karat yellow gold scroll contemporary mount with chain attached, and set with a cultured pearl measuring approximately 9½mm, and four melee faceted diamonds. Recd—November 20, 1991. Est. value—$250.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William H. Webster, Director, Central Intelligence.	Herend tea set, numbered G13/MHG. Consisting of coffee pot, covered sugar, creamer, six cups, six saucers, in a fitted case. Recd—March 7, 1991. Est. value—$350.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William H. Webster, Director, Central Intelligence.	Saudia Arabian silver incense burner. Maker: Fitaihi. With 800-standard mark. Pedestal-form with applied floral decoration alternating with engraved palm trees, crossed swords and Arabic inscription. H: 12 inches, Wt: 41 oz. In green velvet carrying case. Recd—March 10, 1991. Est. value—$750.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Korean yellow gold figure of a tortoise. Stamped 99%. L: 3½" Weight approximately 1 oz. Recd—April 1, 1991. Est. Value—$350.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Ruby and diamond dinner ring. The 18 karat yellow gold mount, set with an oval faceted cushion cut ruby, measuring approximately 5.8 × 4.6 × 1.8. Estimated carat weight 1.20 carats, & surrounded by two tiers of melee round faceted diamonds. Recd—November 20, 1989. Est. value—$350.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Rolex Oyster Perpetual Date-Adjustable gentleman's wristwatch w/stainless steel case and band. Recd—December 15, 1991. Est. value—$500.00. To be retained for official display.	5 USC 7342 (f)(4)	Non.acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Tunisian hand woven rug 7.2 × 4.8. Red ground with floral medallion and rose lattice spandrels, and palmette and trellising vine guard border, on light blue ground. Recd—October 30, 1991. Est. value—$250.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Sako Deluxe Grade All 308 Winc. Cal. rifle. Serial number 36347. Having a 23½ inch round blue steel barrel with a five-shot-magazine, mounted on a French checkered European walnut stock with Monte Carlo cheekpiece, with rosewood grip cap and forend tip, and semi-beavertail forend; together with a plastic carrying case. Recd—Approximately August 1986. Est. Value—$600.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEFENSE MAPPING AGENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William K. James, Director	20 reproductions of historic maps of Spanish speaking countries. Recd—20 June 1991. Est. Value—$300.00. Will be used for display purposes in Headquarters building.	Mr. Antonio Flos Bassols, Technical General Secretary, Ministry of Defense, Spain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES DEPARTMENT OF AGRICULTURE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Edward Madigan, Secretary, U.S. Department of Agriculture.	Etched sterling silver and gilt gravy boat and ladle. The gravy boat in form of stylized bird. The bowl raised on animal legs and feet, approxdmately 7". The ladle, with etched handle and gilt bowl, made by Tane Brothers. Recd: September 10, 1991 Est. value: $1,200. On display in Secretary's office.	Carlos Hank Gonzalez, Secretary of Agriculture, Mexico.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lieutenant General Joseph W. Ashy, Commander, Air Training Command, Randolph AFB, Texas.	Swiss-made Robert Weil wristwatch. Recd—November 1, 1991. Est. Value—$350. On official display within Headquarters Air Training Command.	Air Vice Marshall Talib, Chief of Staff of Air Force of Oman.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Colonel David A. Benson, Commander, 27 Combat Support Group, Cannon AFB, New Mexico.	Mounted silver dagger and sheath, enclosed in a wooden box with a glass door for access. Recd—March 31, 1991. Est. Value—$200 to $300. On official display at the Headquarters Building, 27 Combat Support Group.	Brigadier General Abdul Rahman Al-Fahad Al-Faisal, Commander of King Fahad Royal Air Base, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ms. Elizabeth J. Keefer, Deputy Under Secretary of the Air Force/International Affairs.	Rug, Cotton Rabat, hand woven, 6' x 9' with a floral medallion and a floral border. Recd—December 23, 1991. Est. Value—$400. On official display within the office of Deputy Under Secretary of the Air Force International Affairs.	Ambassador Jaidi, Counsel General to the Kingdom of Morocco.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	A signed and numbered print done by Ecuadorian artist E. Kingman, Print #17 of 100 and signature of the artist is an original. Recd—June 6, 1991. Est. Value—$500. On official display at the Office of the Chief of Staff, USAF, Room 4E925, Pentagon, Washington, DC.	Brigadier General William Birkett, Commander, Ecuadorian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Lalique Crystal Broceliande Vase; approximately 14 inches high. Recd—July 25, 1991. Est. Value—$845. On official display at the Air House, the official residence of the Chief of Staff.	General Jean Fleury, Chief of Staff, French Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Baccarat Crystal Decanter, with French Air Force Seal on side. Recd—July 25, 1991. Est. Value—$405. On official display at the Air House, the official residence of the Chief of Staff.	General Jean Fleury, Chief of Staff, French Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Colonel Stephen M. Peterson, Commander, 1704 Photo Reconnaissance Squadron, Beale AFB, California.	Mounted silver dagger and sheath, enclosed in a wooden box with a glass door for access. Recd—March 11, 1991. Est. Value—$200 to $300. On official display at 1704 Photo Reconnaissance Squadron.	Brigadier General Abdul Rahman Al-Fahad Al-Faisal, Commander of King Fahad Royal Air Base, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Major General William A. Studer, Commander, 13 Air Force, Andersen Air Force Base, Guam.	Silver tea set consisting of tray, sugar bowl, tongs, and creamer. Recd—October 29, 1991. Est. Value—$300. On official display within Headquarters 13 Air Force, Andersen Air Force, Base Guam.	Air Chief Marshall Kaset Rochananil, Commander-in-Chief, Government of Thailand.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Major General William A. Studer, Commander, 13 Air Force, Andersen Air Force Base, Guam.	Silver fruit bowl. Recd—October 29, 1991. Est. Value—$225. On official display within Headquarters 13 Air Force, Andersen Air Force Base, Guam.	Air Chief Marshall Kaset Rochananil, Commander-in-Chief, Government of Thailand.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF DEFENSE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency.	18K gold cuff links and tie tack set, with pearls: Recd: May 6, 1991. Est. value: $750. Delivered to GSA Dec. 11, 1991.	Yukihiko Ikeda, Minister of State for Defense, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency, and Mrs. Allen.	Large blue vase, approx. 15" x 7½" diameter, with wooden stand; and embroidered tablecloth and napkins (5) set: Recd: May 7, 1991. Est. value: $275. Stored in vault pending disposition.	General and Mrs. Chen Hsing-Ling, Chief of the General Staff, Ministry of National Defense, Republic of China.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency, and Mrs. Allen.	Celadon tea service set for two (2); and 14K gold amethyst pendant: Recd: May 7, 1991. Est. value: $315. Delivered to GSA Dec. 11, 1991.	Park Woong, Second Assistant Minister, Ministry of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency.	Two (2) silver chalices, replicas of the "Byzantine chalice of the 14th Century, from the epoch of Konstantinos Paleologos," approx. 6¼" tall x 3¼" diameter: Recd: June 3, 1991. Est. value: $350. Reported to GSA July 18, 1991; pending transfer to GSA.	Lt. Gen Athanasios Stathias, Chief of the Hellenic Air Force, Greece.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Six (6) brandy glasses, and small brass tank: Recd: July 14, 1991. Est. value: $247. Approved for official display.	Polish Minister of Industry Zawislak, Republic of Poland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Tank T54 model and tank-shaped whiskey dispenser: Recd: July 18, 1991. Est. value: $245. Approved for official display.	Jan Segla, General Director, Martin Plant, Czechoslovakia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Men's Chopard watch, gold and stainless steel with small diamonds around the dial, date window, with matching cuff links, in red case: Recd: Oct. 15, 1991. Est. value: $4,650. Reported to GSA Dec. 9, 1991; pending transfer to GSA.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Chopard "Luna D'Oro" table clock, round gold and brass case, with three (3) inner dials showing the month, day and date, red emblem at top of dial, Quartz, approx. 5½" diameter, in navy blue case: Recd: Oct. 15, 1991. Est. value: $295. Reported to GSA Dec. 9, 1991; purchased from GSA Feb. 14, 1991.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Donald J. Atwood, wife of Deputy Secretary of Defense.	Ladies' Chopard watch, gold and stainless steel with small diamonds around the dial, in red case: Recd: Oct. 15, 1991. Est. value: $2,795. Reported to GSA Dec. 13, 1991; pending transfer to GSA.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTC Mark L. Brophy, USMC, ISA Country Director for the Persian Gulf States.	Men's Baume and Mercier watch, gold and stainless steel, in gray box: Recd: Oct. 11, 1991. Est. value: $500. Stored in vault pending transfer to GSA.	Shaikh Khalifa bin Ahmad al-Khalifa, Minister of Defense, State o Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Silver coffee/tea server; and book: "Macedonia," 4000 years of Greek History and Civilization: Recd: Apr. 22, 1991, Est. value: $300. Stored in vault pending transfer to GSA.	Ioannis Varvitsiotis, Minister of National Defense, Greece, and Mrs. Varvitsiotis.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	18K gold pin/pendant, with nine (9) pearls, in shape of grapes: Recd: Apr. 30, 1991. Est. value: $500. Delivered to GSA Dec. 11, 1991.	Yukihiko Ikedo, Minister of State for Defense, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Small black iron pot with three (3) legs, approx. 8½" tall; and double strand of coral beads, approx. 18" long, in blue velour case: Recd: May 7, 1991. Est. value: $315. Reported to GSA Sept. 16, 1991; pending transfer to GSA.	General Chen Hsing-Ling, Chief of General Staff, Republic of China, and Mrs. Chen Hsing-Ling.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Silver dagger with silver and red velvet case; and silver-plated tea/coffee server set with tray and incense burner: Recd: May 7, 1991. Est. value: $550. Approved for official display.	Khalifa bin Hamad Al Thani, Amir of the State of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Double strand of pearls with gold clasp; Men's 18K gold Rolex watch, Oyster Perpetual, President model, in brown leather case, with leather-covered memo pad; and 22 K gold dagger with gold case: Recd: May 8, 1991. Est. value: $15,600. Pearls and watch were delivered to GSA Dec. 11, 1991; dagger was approved for official display.	Isa bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	22K gold bracelet with alternate links of cartouches and scarabs: Recd: June 1, 1991. Est. value: $500. Delivered to GSA Dec. 11, 1991.	Arab Republic of Egypt	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	18K gold link bracelet with Egyptian symbols: Recd: June 2, 1991. Est. value: $1200. Stored in vault pending transfer to GSA.	Mrs. Wagida Tantawi, wife of Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ms. Liz Cheney, daughter of the Secretary of Defense.	18K gold necklace with beetle pendant: Recd: June 2, 1991. Est. value: $250. Stored in vault pending transfer to GSA.	Mrs. Wagida Tantawi, wife of Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ms. Mary Cheney, daughter of the Secretary of Defense.	18K gold necklace with Cleopatra pendant: Recd: June 2, 1991. Est. value: $250. Stored in vault pending transfer to GSA.	Mrs. Wagida Tantawi, wife of Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	18K gold cuff links and key chain set with cartouche design: Recd: June 3, 1991. Est. value: $500. Stored in vault pending transfer to GSA.	General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Partial shell of the one of the bombs used in Desert storm, painted with Egyptian symbols and signs; Recd: June 3, 1991. Est. value: Indeterminable. Stored in vault pending transfer to GSA.	General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Steel sword with bone/steel handle, gold tassel and strap, in burgundy case: Recd: June 12, 1991. Est. value: $300. Approved for official display.	Lubos Dobrovsky, Minister of Defense, Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Bohemian glass vase and platter: Recd: June 12, 1991. Est. value: $150. Approved for official display.	Lubos Dobrovsky, Minister of Defense, Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Garnet and gold necklace and earrings set: Recd: June 12, 1991. Est. value: $80. Stored in vault pending transfer to GSA.	Mrs. Dobrovsky, wife of the Minister of Defense, Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Antique musket in long wooden case: Recd: June 13, 1991. Est. value: $560. Stored in vault pending transfer to GSA.	Zine El Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Tan leather attache case, embossed cowhide: Recd: June 27, 1991. Est. value: $395. Delivered to GSA December 11, 1991.	Erman Gonzales, Minister of Defense, Argentina.	Non-acceptance would have caused embarrassment to donor and U.S Government.

AGENCY—DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dick Cheney, Secretary of Defense	Wooden table with eight (8) sides, cut-out design with brass inlay, approx. 36" diameter, with separate folding wooden stand: Recd: July 9, 1991. Est. value: $300. Approved for official display in office of Assistant Secretary of Defense (Special Operations/Low Intensity Conflict), room 2E258, Pentagon.	Mohammad Nawaz Sharif, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Silver and gold dagger in red velour case; Recd: Oct. 9, 1991. Est. value: $250. Approved for official display.	Major General Khalifa bin Ahmed Al-Khalifa, Minister of Defence and Deputy Commander-In-Chief, Bahrain Defence Force, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Mikimoto evening bag of gold and cream-colored fabric, with gold clasp with three (3) pearls on it, and gold-tone chain: Recd: Nov. 22, 1991. Est. value: $600. Stored in vault pending transfer to GSA.	Mrs. Yukihiko Ikeda, member of the House of Representatives, Tokyo, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Pewter bottle set with shot glasses and tray; sterling silver bowl; and small round bronze plaque: Recd: Nov. 1991. Est. value: $410. Stored in vault pending transfer to GSA.	Elisabeth Rehn, Minister of Defense, Republic of Finland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Multi-colored glassware set, with eighteen (18) glasses of six (6) each of shot, wine and cocktail glasses; and six (6) glass coasters; in large red case: Recd: Dec. 11, 1991. Est. value: $350. Stored in vault pending transfer to GSA.	Vaclav Havel, President of Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Carl W. Ford, Jr., Acting Assistant Secretary of Defense (International Security Affairs).	Men's Baume & Mercier watch, gold and stainless steel: Recd: Oct. 10, 1991. Est. value: $500. Stored in vault pending transfer to GSA.	Isa Bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral David E. Jeremiah, USN, Vice Chairman, Joint Chiefs of Staff.	Sterling silver box, with engraving on top and embossed design, wooden interior with three compartments, approx. 11" × 4": Recd: Sept. 25, 1991. Est. value: $350. Approved for official display.	Gen. Tan Sri Dato' Yaacob, Acting Chief of Defence Force, Malaysia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Commander James Kudla, USN, Military Assistant to the Assistant Secretary of Defense (Public Affairs).	Men's Roamer watch, gold and stainless steel, Quartz, with Roman numerals: Recd: May 9, 1991. Est. value: $225. Delivered to GSA Dec. 11, 1991.	Isa Bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral T. Joseph Lopez, USN, Senior Military Assistant to the Secretary of Defense.	18K gold cuff links and tie tack set with pearls: Recd: May 8, 1991. Est. value: $295. Delivered to GSA Dec. 11, 1991.	Yukihiko Ikeda, Minister of State for Defense, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Alma J. Powell, wife of General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Sterling silver framed mirror, with embossed design and chain for hanging, oval-shaped, approx. 12" long, in black velour box: Recd: May 30, 1991. Est. value: $300. Delivered to GSA Dec. 11, 1991.	Turgut Ozal, President, Republic of Turkey, with the compliments of his wife, Mrs. Semra Ozal.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Colin L. Powell Chairman, Joint Chiefs of Staff.	Painting, "What Doesn't Change/Is The Will To Change," by noted Australian artist, Mr. Tim Storrier: Was accepted on behalf of the Men and Women of the Armed Forces, Sept. 11, 1991. Approved for official display in the Chairman's office.	Rear Admiral A. M. Carwardine, Head Australian Defence Staff, Embassy of Australia, on behalf of General Gration, Chief of the Australian Defence Force, Australia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Model of a Turtle Ship in a glass case with presentation plaque, approx. 7" long, case is approx. 11"×9½"×7" Recd: Nov. 22, 1991. Est. value: $250. Stored in vault pending transfer to GSA.	Lee Jong Koo, Minister of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency, and Mrs. Rudd.	Large blue Oriental vase, with wooden stand, approx. 10" tall; and tablecloth and napkins (12) set: Recd: May 7, 1991. Est. value: $345. Stored in value pending transfer to GSA.	General Chen Hsing-Ling, Chief of the General Staff, Ministry of National Defense, Republic of China, and Mrs. Chen Hsing-Ling.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Sterling silver dagger in large red case: Recd: Oct. 9, 1991. Est. value: $250. Delivered to GSA Dec. 11, 1991.	Major General Khalifa Bin Ahmed Al-Khalifa, Minister of Defence and Deputy Commander-in-Chief, Bahrain Defence Force, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Alma J. Powell, wife of General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Gold bracelet with links of scarabs: Recd: Oct. 31, 1991. Est. value: $300. Delivered to GSA Dec. 11, 1991.	Mrs. Tantawi, wife of General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Statue of a Samurai Warrior on a horse, heavy metal with presentation plaque on metal stand, approx. 13½" tall, 9½" long: Recd: Nov. 18, 1991. Est. value: $400. Approved for official display.	Admiral Makoto Sakuma, Chairman, Joint Staff Council, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Frederick C. Smith, Acting Deputy Assistant Secretary of Defense for Near East and South Asian Affairs, and Mrs. Smith.	Men's Baume & Mercier watch, gold and stainless steel; and single strand pearl necklace with graduated pearls and sterling silver clasp: Recd: Oct. 11, 1991. Est. value: $1000. Stored in vault pending transfer to GSA.	Shaikh Khalifa bin Ahmad al-Khalifa, Minister of Defence, and Deputy Commander-in-Chief, Bahrain Defence Force, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Frederick C. Smith, Acting Deputy Assistant Secretary of Defense for Near East and South Asian Affairs.	Men's Baume & Mercier watch, gold and stainless steel: Recd: Oct. 18, 1991. Est. value: $500. Stored in vault pending transfer to GSA..	Isa bin Salman al-Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Pete Williams, Assistant Secretary of Defense for Public Affairs.	Small silver box, engraved with Egyptian figures, lined with blue velour, approx. 7"×4": Recd: June 3, 1991. Est. value: $225. Reported to GSA July 15, 1991; pending transfer to GSA.	General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Under Secretary of Defense for Policy.	Silver model of a Korean turtle boat in a glass display case: Recd: May 11, 1991. Est. value: $262. Stored in vault pending transfer to GSA..	Lee Jong Koo, Minister of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Under Secretary of Defense for Policy.	Men's Baume Mercier watch, gold, and stainless steel: Recd: Oct. 17, 1991. Est. value: $550. Stored in vault pending transfer to GSA.	Isa bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Louis W. Sullivan, wife of the Secretary of Health and Human Services.	Gold necklace and bracelet. Recd—January 7, 1991. Est. value—$2,000. Returned to donor through Embassy of Cote d'Ivoire, Washington.	Felix Houphouet-Boigny, President of the Cote d'Ivoire.	Gift delivered following meeting with the President. Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Leah G. Levy, Office of the Secretary.....	Two, Indian paintings depicting methologic events. Recd: September 25, 1991. Estb Value: $250.00. Approved for Official use.	Mr. Murli S. Deora, Member of Indian Parliament.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF JUSTICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William P. Barr, Attorney General	Gold and silver cufflinks. Recd—August 4, 1991. Est. Value—$225. Pending disposition to GSA.	Ignacio Morales, Attorney General, Mexico.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
William P. Barr, Attorney General	Mexican print. Recd—August 4, 1991. Est. Value—$300. Pending disposition to GSA.	Ignacio Morales, Attorney General, Mexico.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
William B. Sessions, Director, Federal Bureau of Investigation.	Pistol, bolt action. Recd—June 19, 1991. Est. Value—$400. Approved for official use.	Dr. Romeu Tuma, Sr., Director General of Federal Police, Brasilia, Brazil.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
George J. Terwilliger, III, Principal Associate Deputy Attorney General.	Mexican print. Recd—August 4, 1991. Est. Value—$300. Pending disposition to GSA.	Ignacio Morales, Attorney General, Mexico.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
Richard Thornburgh, Former Attorney General.	Gucci briefcase. Recd—February 5, 1991. Est. Value—$835. Pending disposition to GSA.	Hon. Vincenzo Scotti, Interior Minister, Rome, Italy.	Christmas present sent after attendance at the Dec. 1990 meeting.

AGENCY: DEPARTMENT OF THE NAVY

Report of Tangible Gifts

Name and title of person accepting gifts on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colonel Robert R. Blackman, Jr., Executive Officer, U.S. Central Command.	Rolex Oyster Perpetual Watch. Recd—October 1, 1991. Est. Value—$1,860. Being retained at Headquarters, U.S. Central Command.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Honorable H. Lawrence Garrett, III, Secretary of the Navy.	Oriental Rug 6'4"×4'4". Recd—December 1991. Est. Value—$200. Being held in Office of the Secretary of the Navy pending transfer to GSA for disposition.	General Mohammed H. Tantawi, Minister of Defense, Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Rolex Oyster Perpetual Watch. Recd—October 1, 1991. Est. Value—$9,995. Being retained at Headquarters, U.S. Central Command.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Ceremonial Sword with Scabbard. Recd—September 26, 1991. Est. Value—$375. Being retained at Headquarters, U.S. Central Command.	Brigadier General Mohammed Bin Abdullah Al-Attiya, Deputy Commander in Chief, Quatari Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Rolex Oyster Perpetual Watch. Recd—October 1, 1991. Est. Value—$7,250. Being retained at Headquarters, U.S. Central Command.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
J. Daniel Howard, Under Secretary of the Navy.	Sterling Silver Bedwin Teapot. Recd—May 7, 1990. Est. Value—$1,500. Being held in Office of the General Counsel pending transfer to GSA for disposition.	His Highness Sayyid Faisal, Minister of National Heritage and Culture, Oman.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Frederick E. Ludwig, II, USNR, Officer in Charge, Host Nation Detachment, Salmaniya Hospital, Bahrain.	Rolex Oyster Perpetual Watch. Recd—April 22, 1991. Est. Value—$4,350. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain R.C. Williamson, USN, Commanding Officer, USS NIMITZ (CVN 68).	AK-47 gun in brown case. Recd—April 20, 1991. Est. Value—$750. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Air Vice Marshall Ian D. Mac Fadyen, Commander, British Forces Middle East.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF STATE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State	(1) Danish Royal Ginger Jar; (2) Blue Leather Picture Frame. Recd: February 20, 1991. Est. value: $465. In Office of Protocol pending transfer to GSA.	Queen Margrethe II & Prince Henrik, Queen & Prince, Denmark.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Piaget four-time zone watch. Recd: March 10, 1991. Est. value: $1,000. In Office of Protocol pending transfer to GSA.	King Fahd, King, Saudi Arabia	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Book: The Prophet (in wood case). Recd: April 8, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Ilyas Harawi, President, Lebanon	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Rug with blue, maroon, yellow, and green design. Recd: April 8, 1991. Est. value: $350. In Office of Protocol pending transfer to GSA.	Sahabettin Harput, Governor: Hakkari Province, Turkey.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Book: Muzeul National de Arta al Romaniei; (2) Frosted glass vase with green and brown leaves. Recd: April 16, 1991. Est. value: $235. In Office of Protocol pending transfer to GSA.	Petre Roman, Prime Minister, Romania	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Painting by Luis Alvarado entitled "Granada Colonial". Recd: April 17, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Violeta Chamarro, President, Nicaragua	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large knife in matching sheath with leather strap in large wooden box. Recd: April 24, 1991. Est. value: $275. In Office of Protocol pending transfer to GSA.	Hassan Gouled Aptidon, President, Djibouti.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large ornate mirror. Recd: June 5, 1991. Est. value: $400. In Office of Protocol pending transfer to GSA.	Anerood Jugnauth, Prime Minister, Mauritius.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Large framed black & white lithograph of "Haendel"; (2) Silver box with wooden insert. Recd: June 18, 1991 Est. value: $725. In Office of Protocol pending transfer to GSA.	Mr. and Mrs. Hans-Dietrich Genscher, Foreign Minister, Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Silver statue of Scanderbeg sitting on a horse; mounted on wood with plaque. Recd: June 21, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Mr. & Mrs. Muhamet Ismail Kapllani, Foreign Minister, Albania.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Puchong ware vase in refined style of Koryo Kingdom: Birds/flowers signed by Pres. Roh. Recd: July 2, 1991. Est. value: $275. In Office of Protocol pending transfer to GSA.	Roh Tae Woo, President, Republic of Korea.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large ornate wooden screen with inlays. Recd: July 1, 1991. Est. value: $600. In Office of Protocol pending transfer to GSA.	Mohamm Nawaz Sharif, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Sterling silver Elizabethan alms dish. Recd: July 15, 1991. Est. value: $220. In Office of Protocol pending transfer to GSA.	John Major, Prime Minister, United Kingdom.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Canon Sure Zoom Camera; (2) Framed commemorative mirror with applied Malaysian kite. Recd: July 23, 1991. Est. value: $270. In Office of Protocol pending transfer to GSA.	Abdullah Bin Haji Ahmad Badawi, Foreign Minister, Malaysia.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Laquer box w/scene of St. Basil's Cathedral. Recd: July 31, 1991. Est. value: $550. Transferred to GSA.	Mikhail Gorbachev, President, USSR	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Silver Dove of Peace mounted on marble base. Recd: August 4, 1991. Est. value: $275. In Office of Protocol pending transfer to GSA.	Zine El Abidine Ben Ali, President, Tunisia.	Non-acceptance would have caused embarrassment to donor & U.S. Government

AGENCY—DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State	(1) Large piece of Amber mounted on piece of wood. In Office of Protocol pending transfer to GSA. Est. value: $400.. (2) Lithuanian Flag. Retained. Est. value: $40. Recd: September 14, 1991.	Vytautas Landsbergis, President, Lithuania.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Traditional Kazakh robe of blue velvet with gold embroidery matching velvet hat trimmed with fur. Recd: September 15, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Nursultan Nazarbayev, President, Kazakhstan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Crane Ena Graphite Driver. In Office of Protocol pending transfer to GSA. Est. value: $350. (2) Int-Est Graphite Iron. Retained. Est. value: $165. Recd: November 12, 1991.	Taro Nakayama, Member of the Diet, Japan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Gold & Amethyst cufflinks and tie clasp. Recd: November 13, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Lee San Ock, Foreign Minister, Korea	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large oil painting. Recd: December 15, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Eduard Shevardnadze, Foreign Minister, USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Black leather briefcase; (2) 3 lengths of silk: red/black, blue/white, white/yellow/pink floral; (3) Gold jewelry set: bangle bracelet, earrings, necklace. Recd: March 9, 1991. Est. value: $650. In Office of Protocol pending transfer to GSA.	Jaber Al Ahmed Al Sabah, Amir, Kuwait.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Wooden box w/mother of pearl and wood inlay; (2) Swath of silk with gold thread and vibrant colors. Recd: March 13, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Amal Shara, wife, Foreign Minister, Syria.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Landscape oil painting w/gold frame. Recd: March 15, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Marina Bessmertnykh, wife, Foreign Minister, USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Jewelry box made of hand painted horn decorated w/flowers and birds. Recd: July 2, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Kim Ock Sook, wife, President, Korea	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Hand-woven wool rug; green/blue/purple w/fringe; (2) 5 pillow covers in assorted shapes in green/blue/purple. Recd: July 21, 1991. Est. value: $550. In Office of Protocol pending transfer to GSA.	Queen Noor, wife, King, Jordan	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Basket of flowers w/stones pin; (2) Large, square silk scarf; (3) 4 yards of floral silk. Recd: July 23, 1991. Est. value: $395. In Office of Protocol pending transfer to GSA.	Endon Datin, wife, Foreign Minister, Malaysia.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Long maroon vest with gold trim. Retained; (2) Maroon velvet hat with fur trim. In Office of Protocol pending transfer to GSA; (3) Framed painting of vase with flowers. In Office of Protocol pending transfer to GSA. Recd: September 15, 1991. Est. value: $350.	Sara Nazarbayeva, wife, President, Kazakhstan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Gold and pearl brooch. Recd: November 12, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Hanako Nakayama, wife, Foreign Minister, Japan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Covered silver dish w/horse drawn chariot from tetradrachm coin of Acragas on lid. Recd: December 12, 1991. Est. value: $220. In Office of Protocol pending transfer to GSA.	Constantinos Mitsotakis, Prime Minister, Greece.	Non-acceptance would have caused embarrassment to donor & U.S. Government

AGENCY—DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. James A. Baker III, wife of Secretary of State.	(1) White linen tablecloth with 6 napkins; (2) Embroidered cat on screen, on wooden stand. Recd: November 16, 1991. Est. value: $210. In Office of Protocol pending transfer to GSA.	Wu Yi, Vice Minister, Foreign Economic Relations & Trade, China.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Angeline Biegler, Economic Officer, Muscat, Oman.	Silver coffee pot. Recd: August 1991. Est. value: $494. Approved for official use.	Khamis Kiyumi, Ministry of Commerce & Industry, Oman.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard A. Clarke, Assistant Secretary of State, Bureau of Politico-Military Affairs.	Silver incense burner. Recd: December 18, 1991. Est. value: $650 Approved for official use.	Commander, Royal Air Force, Oman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard A. Clarke, Assistant Secretary of State, Bureau of Politico-Military Affairs.	Sterling silver tea pot. Recd: June 18, 1991. Est. value: $200+. Approved for official use.	Khalifa bin Hamad Al Thani, Amir, Qatar.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard A. Clarke, Assistant Secretary of State, Bureau of Politico-Military Affairs.	Jade ram. Recd: August 14, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Chen Hsing-Ling, Defense Minister, China.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Christine B. Crocker, wife of Ambassador to Lebanon.	Gold ring with pearl. Recd: August 10, 1991. Est. value: $250. Transferred to GSA.	Mrs. Hraoui, wife of the President, Lebanon.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Charles Dunbar, Ambassador, Yemen	Folkloric handicrafts. Recd: 1991. Est. value: $200+. Approved for official use.	Ali Abdullah Saleh, President, Yemen	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lawrence Eagleburger, Deputy Secretary of State.	1) Man's Chopard watch with matching cufflinks;. 2) Lady's Chopard watch. Recd: October 15, 1991. Est. value: $4,000. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Charles W. Hostler, Ambassador Bahrain.	Universal Tredex—large black motorized treadmill exerciser. Recd: May 13, 1991. Est. value: $7,800. Approved for official use.	Shaikh Khalifa bin Sulman Al-Khalifa, Prime Minister, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Arnold Kanter, Under Secretary of State for Political Affairs.	Baume & Mercier "Riviera" men's wrist watch. Recd: October 18, 1991. Est. value: $2,900. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Robert M. Kimmitt, Under Secretary of State for Political Affairs.	Large wooden chest measuring 17.75×24×14 with in-laid brass designs and handles. Recd: July 1, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Mohammed Nawaz Sharif, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
David Lamberton, Ambassador, Thailand.	Longines wrist watch. Recd: November 14, 1991. Est. value: $800. In Office of Protocol pending transfer to GSA.	Charoen Pokphand Group, Thailand	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard T. McCormack, Under Secretary of State for Economic and Agricultural Affairs.	Brass clock commemorating the French Bicentennial. Recd: July 1989. Est. Value: $400. In Office of Protocol pending transfer to GSA.	Government of France	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard McKee, Director, NEA/ARP	Baume & Mercier wrist watch. Recd: October 19, 1991. Est. value: $2,000. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Sinclair S. Martel, Deputy Assistant Secretary, Bureau of Politico-Military Affairs.	Watch. Recd: May 9, 1991. Est. value: $300 In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Thomas J. Miller, Director NEA/AFN	Moroccan Rug (7'×10'). Recd: November 7, 1991. Est. value: $200+. Approved for official use.	Abdeslam Jaidi, Ambassador, Morocco	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Phyllis E. Oakley, wife of the Ambassador to Pakistan.	Pendant with small cut stones on gold chain. Recd: May 23, 1991. Est. value: $450. In Office of Protocol pending transfer to GSA.	Mrs. Nawaz Sharif, wife of Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Phyllis E. Oakley, wife of the Ambassador to Pakistan.	Gold bracelet with enameled filagree. Recd: May 23, 1991. Est. Value: $565. In Office of Protocol pending transfer to GSA.	Mrs. Shabaz Sharif, wife of brother of Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY—DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ambassador Joseph Verner Reed, Chief of Protocol.	3'x5' silk carpet in beige and rose tones. Recd: June 6, 1989. Est. value: $800. Approved for official use.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ambassador Joseph Verner Reed, Chief of Protocol.	Leopard skin rug. Recd: January 17, 1990. Est. value: $200+. In office of Protocol pending transfer to GSA.	Moumouni Adamou Djermakoye, Ambassador, Niger.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Nancy C. Rolph, Special Agent, DS	Gold and diamond broach in design of a winged insect. Recd: November 1991. Est. value: $6,000. In Office of Protocol pending transfer to GSA.	Queen Sirikit, Queen, Thailand	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Michael M. Skol, Ambassador to Venezuela.	Iron sculpture entitled "Designio" by J.J. Moros Manzo. Recd: May 16, 1991. Est. value: $500. Approved for official use.	Carlos Tablante, Governor, State of Aragua, Venezuela.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Steven Slatin, Consular Officer, Rangoon, Burma.	Mounted set of Asiatic wild buffalo horns. Recd: August, 1991. Est. value: $200+. Approved for official use.	Government Official, Burma	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Joseph Stafford, Deputy Director NEA/AFN.	Moroccan Rug (240cm x 170cm). Recd: November 7, 1991. Est. value: $200+. Approved for official use.	Abdeslam Jaidi, Ambassador, Morocco	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Patrick N. Theros, Political Advisor, U.S. CENTCOM.	Rolex Watch. Recd: September 1991. Est. value: $3,000. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Vernon A. Walters, Ambassador, Germany.	Brass ship's compass set into a wooden box. Recd: October 11, 1990. Est. value: $812. Approved for official use.	Klaus Wedemeir, Lord Mayor, Bremen, Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Edwin D. Williamson, Legal Adviser	Iranian carpet. Recd: July 30, 1991. Est. value: $200+. Approved for official use.	Dr. Goudarz Eftekhar, Presidential Legal Adviser, Iran.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Edmund De Jarnette, Ambassador: Tanzania.	Recd—November 10, 1991. Est. Value—$235. Expended for airfare and hotel.	People's Defense Force; Tanzania	Guest speaker at Defense Force Academy in Arusha.
Roger McGuire, Consul, Porto Alegre, Brazil.	Recd—December 3, 1991. Est. Value—$857.14. Expended for airfare and hotel.	State of Santa Catarina; Brazil	Attend State's legislative assembly.
Richard and Margaret Melton, Ambassador and Mrs.: Brazil.	Recd—December 3, 1991. Est. Value—$242.80. Expended for airfare and hotel.	State of Santa Catarina; Brazil	Attend and speak at State's legislative assembly.
Richard Schifter, Assistant Secretary of State.	Recd—May 15, 1991. Est. Value—$1,200. Expended for hotel and car transportation.	Regional Assembly of Sicily; Italy	Attendance at European Commission of Democracy through Law.
Thomas Shannon, Special Assistant, Brasilia.	Recd—December 3, 1991. Est. Value—$364.20. Expended for airfare and hotel.	State of Santa Catarina; Brazil	Attend State's legislative assembly.

AGENCY: DEPARTMENT OF THE TREASURY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Hollis McLoughlin, Assistant Secretary, Policy Management.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
Jospeh Eichenberger, International Economist.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
David Mulford, Under Secretary, International Affairs.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
Meredith Oliver, Deputy Assistant Secretary, Policy Management.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
Nicholas Brady, Secretary	Framed 1698 North America map. Recd: July 17, 1991. Est. value: $1,670. Pending approval for official use.	Jacques Attalli, President, European Bank for Reconstruction and Development, London, United Kingdom.	Non-acceptance embarrasses donor and U.S. Government.
Nicholas Brady, Secretary	Russian hanging carpet. Recd: September 19, 1991. Est. value: $1,200. Retained by Treasury for official Treasury use.	Konstantin Borovoy, CEO, JT. Stock Sosiety, Russian, Moscow, U.S.S.R.	Non-acceptance embarrasses donor and U.S. Government.
Nicholas Brady, Secretary	Woolen wall hanging. Recd: September 30, 1991. Est. value: $2,200. Pending Approval for official use.	Famara Ibrahima Sagna, Minister of Finance, Senegal.	Non-acceptance embarrasses donor and U.S. Government.

AGENCY: GENERAL ACCOUNTING OFFICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Bowsher, Comptroller General of the United States.	Silver/silver-plated set of 2 gamecocks and a mirror, Recd—October 9, 1991. Est. Value—$225. Currently at GAO's Office of Property Management pending transfer to GSA.	Dr. Luz Arna Saenz, the Auditor General of Peru.	Non-acceptance would have caused embarrassment to donor & U.S. Government

AGENCY: GENERAL ACCOUNTING OFFICE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Harry S. Havens, Assistant Comptroller General.	Recd: September 28, 1991. Est. value: $1,487. Expended for airfare, hotel and meals.	Supreme Soviet of the Russian Federation, Russia.	To provide technical assistance on government financial management and the establishment of a democratic, federal form of government and a market based economy.
Allan I. Mendelowitz, Group Director	Recd: December 1, 1991. Est. value: $375. Expended for hotel.	Annual Federal and State Comptroller Conference of the Government of Mexico, Mexico.	Guest speaker at conference.
J. Dexter Peach, Assistant Comptroller General; Victor Rezendes, Group Director; Duane Fitzgerald, Assistant Group Director.	Recd: May 17, 1991. Est. value: $789 total for three GAO staff. Expended for airfare and hotel.	Cogema (a private industrial group owned by the French Atomic Energy Commission of the French Government), France.	Guest observers of French handling of spent nuclear fuel reprocessing and preparation of high-level radioactive waste for final disposal.
Lawrence H. Thompson, Assistant Comptroller General.	Recd: April 9, 1991. Est. value: $255. Expended for hotel and meals.	The Federal Ministry of Labour and Social Affairs of Czechoslovakia, Czechoslovakia.	Guest speaker for conference on complementary pensions schemes.

AGENCY: THE LIBRARY OF CONGRESS

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Gillian Anderson, music specialist	Two round-trip airline tickets, Paris, France, to Venice, Italy, to Paris, France on Air France—October 1991: $347 each.	Cine-Memoire, Paris, France; Pordenone Silent Film Festival, Pordenone, Italy.	Ms. Anderson was on annual leave. She was hired through the Colonial Singers and Players, a non-profit tax-exempt American corporation, to conduct the original orchestrations for the silent films, Wings (1927) and Carmen (1915, DeMille). She received no fee: she was reimbursed for her expenses only.

AGENCY: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
John-David Bartoe, Deputy Director, Space Station Operations and Utilization.	Recd: April 8, 1991. Est. value: $1,060. Expended for airfare, hotel and meals.	Association of Space Explorers, U.S.S.R.	Attend the 30th Anniversary Celebration of Yuri Gagarin's First Flight.
Donna Bartoe, Law Clerk	Recd: April 8, 1991. Est. value: $1,060. Expended for airfare, hotel and meals.	Association of Space Explorers, U.S.S.R.	Attend the 30th Anniversary Celebration of Yuri Gagarin's First Flight.

AGENCY: NATIONAL COUNCIL ON DISABILITY

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Ethel D. Briggs, Executive Director	Recd: July 12, 1991. Est. value: $2,500. Expended for hotel and some meals.	China; Disabled Persons Federation	To review disability programs in China and make recommendations to the Federation.
Sandra S. Parrino, Chairperson	Recd: July 12, 1991. Est. value: $2,500. Expended for hotel and some meals.	China; Disabled Persons Federation	To review disability programs in China and make recommendations to the Federation

AGENCY: NATIONAL SPACE COUNCIL

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Simon P. Worden, Director for Advanced Concepts, Science, and Technology (outgoing).	Recd: August 22, 1991. Est. value: $237.00. Expended for accommodations.	"Ettore Majorana", International Centre For Scientific Culture, Office of the President, Italy.	To attend international seminar on Satellite Monitoring of the Global Environment.
Steven D. Harrison, Director for Advanced Concepts, Science, and Technology (incoming).	Recd: August 22, 1991. Est. value: $237.00. Expended for accommodations.	"Ettore Majorana", International Centre For Scientific Culture, Office of the President, Italy.	To attend international seminar on Satellite Monitoring of the Global Environment.

AGENCY: UNITED STATES POSTAL SERVICE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Anthony Frank, Postmaster General.....	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Edward Horgan, Associate Postmaster General.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Thomas Leavey, Assistant Postmaster General International Postal Affairs.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Joseph Caraveo, Regional Postmaster General, Western Region.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William P. Harris, Sen. Int'l Agreements and Studies Specialist.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $250. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, UNITED STATES TRADE REPRESENTATIVE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ambassador Carla A. Hills, U.S. Trade Representative.	Baccarat Crystal Vase, 10 inches high. Recd: April 29, 1991. Est. value: $450. On display in USTR's outer office.	Given by Jean-Marie Rausch, French Trade Minister.	Presented at the end of a meeting in Washington, DC. to discuss trade issues between the countries; accepted to avoid cultural misunderstanding

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federal register

Wednesday
August 19, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

NOFA for Fair Housing Initiatives Program; Special Competitive Solicitation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket Nos. N-92-3480; FR-3296-N-01]

NOFA for Fair Housing Initiatives Program; Special Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1992.

SUMMARY: This NOFA announces the availability of $300,000 to fund activities related to the case of *Young* v. *Kemp* (Civil Action No. P-80-8-CA, U.S.D.C., E.D. Tex.) in the 36 East Texas counties involved in this class action suit. Of this amount, $200,000 is made available from the Fair Housing Initiatives Program (FHIP). An additional $100,000 reserved from the Housing Counseling Program is also made available through this notice for activities related to *Young* v. *Kemp*. In the body of this document is information concerning the purpose of the NOFA eligibility for funding, available amounts, selection criteria and application processing.

DATES: No applications will be accepted after 4 p.m. on September 18, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

ADDRESSES: To obtain a copy of the application kit, please write to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, or call on telephone number (202) 708-3214.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Funded Programs Division, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-2000. Telephone number (202) 708-3214. This number also has TDD capabilities. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529-0033.

I. Purpose and Substantive Description

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The FHIP has three funding categories: the Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. This Notice announces the availability of funding under the Education and Outreach Initiative.

Funds are also available under this NOFA from the appropriation for the Housing Counseling Program. The Housing Counseling Program, established in accordance with section 106 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701x, funds housing counseling for homebuyers, homeowners, and tenants under HUD programs.

(b) Allocation Amounts

A total of $300,000, of which $200,000 is from the fund for regional, State, or local projects under the Education and Outreach Initiative of FHIP ($100,000 carried over from FY 1991 funds and $100,000 of FY 1992 funds), and $100,000 is funded from the Housing Counseling Program, is reserved in FY 1992 for activities related to the case of *Young* v. *Kemp* (Civil Action No. P-80-8-CA, U.S.D.C., E.D. Tex). HUD retains the right to shift funds to other eligible Education and Outreach activities if an insufficient number of acceptable applications for this activity is received.

(c) Eligibility

(1) *Eligible activities.* The $300,000, to be awarded on the basis of FHIP criteria, is to be used to further fair housing in the 36 East Texas counties included in the *Young* v. *Kemp* class action through:

(i) Providing counseling as to fair housing opportunities to the actual and potential consumers of this housing; and

(ii) Encouraging and assisting the development of desegregated housing opportunities.

(2) *Eligible applicants.* The following types of organizations, which do not have to be from the area where the activities will be conducted, are eligible to receive funding:

(i) State or local governments;

(ii) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(iii) Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); and,

(iv) Community Housing Resource Boards (CHRBs).

(d) Selection Criteria/Ranking Factors

(1) General Selection Criteria for Ranking Applications for Assistance.

All projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) The anticipated impact of the project proposed on the concerns identified in the application (25 points);

(ii) The extent to which the applicant's professional and organizational experience will further the achievement of project goals (25 points);

(iii) The extent to which the project will provide benefits in support of fair housing after funded activities have been completed (20 points);

(iv) The extent to which the project utilizes other public or private resources that may be available (20 points); and

(v) The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner (15 points).

(2) Further Clarification of General Selection Criteria.

(i) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.)

(ii) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's management of past and current FHIP or other grant programs, the experience and qualifications of existing personnel identified for key positions, or a description of the process and qualifications to be used for selection of key personnel, including subcontractors/consultants. This experience should include both fair housing experience and experience in implementing education, outreach or public information programs.

(iii) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed.

(iv) In determining the extent to which other public or private resources are available, HUD will consider both monetary and in-kind resources identified in the application.

(v) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the reasonableness of the proposed timetable for implementation and completion of the project, as well as the adequacy and clarity of proposed procedures to be used by the agency for monitoring progress of the project and ensuring its timely completion. The applicant must have demonstrated administrative capability so as to assure consistency with HUD procurement requirements, and have an accounting component to assure accurate reporting on the use of all funds. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) demonstrated through previous FHIP or other grant funding will be taken into account as part of the assessment. HUD will also consider the degree to which the applicant proposes to use funds for program costs, as opposed to administrative costs. (Applicants that have high administrative costs will receive a lower score on this factor.)

(3) Selection Process.

Each application for funding will be evaluated competitively, and awarded points based on the General Selection Criteria identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, HUD will fund in rank order.

(4) Cost Factors.

If two or more complete and eligible applications, after evaluation against the Selection Criteria, are considered equal in technical merit, the project's relative evaluated cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

(5) Reduction of Requested Grant Amounts and Special Conditions.

HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR part 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(vi) For any other reason where good cause exists.

(e) Applicant Notification and Award Procedures

(1) *Notification.* No information concerning the selection process will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process.

(2) *Negotiations.* The duty to use grant funds in accordance with the requirements of this NOFA will be incorporated in a grant agreement negotiated and executed by HUD and each selected applicant. After an application has been approved and accepted, HUD and the grantee (selected applicant) shall enter into a grant agreement setting forth the amount of the grant and applicable terms, conditions, financial controls, payment schedule, and special conditions, including sanctions for violation of the agreement.

(3) *Funding instrument.* HUD expects to award a cost reimbursable or fixed-price cooperative agreement to the successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) *Performance sanctions.* A recipient failing to comply with the requirements or the procedures set forth in its application for funding will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the initiative, reduction or limitation of further funding for education and outreach activities, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Statement of Work (SOW) and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll free number 1–800–343–3442. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Applications are due before 4 p.m. on September 18, 1992. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid

any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

Applicants who desire confirmation of receipt of their application are encouraged to submit the application by certified mail, return receipt requested or similar delivery method. Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) General requirements. The application kit will contain a checklist of application submission requirements to complete the application process. Each application for funding under the Fair Housing Initiatives Program must contain the items set forth below:

(1) A description of the practice or practices at the community, regional or national level which have affected adversely the achievement of the goal of fair housing. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A description of the specific activities to be conducted with the requested funds, including the final products and any reports to be produced, the cost of each activity proposed and a schedule for completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(4) A statement indicating the need for Federal funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress and for assessing the result of the proposed activities;

(6) A description of the benefits that successful completion of the project will produce to enhance fair housing and the concerns identified, and the indicators by which these benefits are to be measured; and;

(7) A description of the long-term usefulness of project results.

(8) HUD Form 2880, Applicant Disclosures.

(9) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 87, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF-LLL).

(b) Additional Education and Outreach Initiative requirements.

(1) In addition to meeting the application requirements contained in section III.(a) of this NOFA, all applications for funding must describe how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(2) Coordination of activities. Each non-governmental applicant for funding that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a substantially equivalent fair housing law must provide, with its application, evidence that it has consulted with the agency or agencies to coordinate activities to be funded under this NOFA. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other.

IV. Corrections to Deficient Applications

Applicants will not be initially disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

Applicants will not have an opportunity to submit information omitted from the Application Kit that directly relates to the evaluation factors contained in the "Factors for Award" of this NOFA so as to enhance the merits of the application.

V. Other Matters

Section 504 Requirements

Recipients will be expected to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and 24 CFR part 8. Section 504 prohibits discrimination based on handicap in federally assigned programs.

Lobbying Requirements

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans exceeding $100,000 of a new prohibition against use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient had made an acceptable certification regarding lobbying. In addition, the recipient must file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

Environmental Impact

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of

families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Section 102 HUD Reform Act Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosures requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 13, 1992.

Leonora L. Guarraia,

Acting Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92–19673 Filed 8–18–92; 8:45 am]

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federal register

Wednesday
August 19, 1992

Part IV

Department of Education

34 CFR Parts 300 and 303

Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers With Handicaps; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 303

RIN 1820 AA71

Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations at 34 CFR part 300, implementing the Assistance to States for the Education of Handicapped Children program authorized by Part B of the Individuals with Disabilities Education Act (Part B), and the regulations at 34 CFR part 303, implementing the Early Intervention Program for Infants and Toddlers with Disabilities authorized by Part H of the Individuals with Disabilities Education Act (Part H), by removing from their nonsupplanting regulations the provisions that prohibit the use of funds awarded under those programs to displace State and local funds for any "particular cost".

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 persons. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin or JoLeta Reynolds, U.S. Department of Education, 400 Maryland Avenue, SW., rooms 3092 and 3082, Switzer Building, respectively, Washington, DC 20202–2732. Telephone: (202) 205–8825 and (202) 205–8152, respectively. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–887–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Part B authorizes formula grants to States, and through them to local educational agencies, to help provide special education and related services to children with disabilities. To receive these funds from the State, each local educational agency (LEA) is required to submit an application that contains specified assurances regarding use of those funds, including an assurance that the funds will be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant those State and local funds. The statutory requirement prohibiting LEAs from supplanting State and local funds is implemented by 34 CFR 300.230 of the Part B regulations.

Part H authorizes assistance to States to help them plan, develop, and implement a State-wide system of early intervention programs for infants and toddlers with disabilities and their families. Each participating State must make an application to the Secretary for its award. The statute requires this application to contain specified assurances regarding the use of the funds, including an assurance, similar to the assurance in Part B, that Part H funds will be used to supplement, and not supplant, State and local funds expended for early intervention services for infants and toddlers with disabilities. The statutory requirement prohibiting States from supplanting State and local funds is implemented by 34 CFR 303.124 of the Part H regulations.

During the Education Summit held in September 1989, President Bush made a commitment to the State Governors that the Federal Government would give States more flexibility in the use of Federal education program funds while ensuring accountability in the use of those funds by recipients. These regulatory changes, which continue to require that States maintain or increase the total amount of funds spent to meet Part B and Part H requirements, are being made consistent with this commitment. These regulatory changes also are supportive of the goals of the AMERICA 2000 Education Strategy, because they will increase the ability of States and LEAs to develop and implement innovative strategies to meet the needs of children with disabilities more effectively.

The Parts B and H nonsupplanting provisions, which are virtually identical, currently include the following two-pronged test for determining compliance with the nonsupplanting requirements for these programs:

Aggregate Test: The total amount of State and local funds budgeted for expenditures in the current fiscal year for the education of children with disabilities under Part B or for early intervention services for infants and toddlers with disabilities and their families under Part H must be at least equal to the amount of those funds actually expended in the most recent preceding fiscal year for which information is available.

Particular Cost Test: Funds awarded under Parts B and H may not be used to displace State or local funds for any "particular cost."

The particular cost test was included in the Part B regulations, first published in 1977, to assist in ensuring that these funds would be used to increase State and local efforts for the education of children with disabilities. Because the Secretary sought to coordinate the fiscal requirements in Part H with those of Part B as closely as possible, the nonsupplanting provisions in the Part H regulations published in 1989 were modeled after those in the Part B regulations. However, the particular cost test could penalize the agencies to which it applied, even though expenditures of State and local funds for special education or early intervention services increased. For example, If an LEA spends Part B funds to pay for a teacher's salary that was previously paid for with State or local funds, a supplanting violation would occur, even though the total amount of State and local funds spent on special education is greater than the amount spent the previous year.

The Secretary believes that the particular cost test is unnecessary to ensure compliance with the statutory requirements that Federal funds be used to supplement or increase the level of State and local funds expended to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families. The Secretary also believes that the particular cost provision limits the ability of State and local agencies to make financial adjustments that could assist in improving the quality of services for children with disabilities and for infants and toddlers with disabilities and their families.

Therefore, to give States and LEAs more flexibility in the use of Part B and Part H funds, while still requiring that they maintain or increase the total amount of State and local funds expended to meet Part B and Part H requirements, the Secretary amends the Part B regulations at 34 CFR 300.230 by deleting the particular cost provision at § 300.230(b)(2) and amends the Part H regulations at 34 CFR 303.124 by deleting the particular cost provision at § 303.124(b)(2). Also, the Secretary deletes the comment following § 300.230 of the Part B regulations and the note following § 303.124 of the Part H regulations since this comment and note were intended primarily to distinguish between the aggregate and particular cost tests.

The Secretary believes that these regulatory changes will serve to

enhance State and local efforts to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families and will in no way serve to diminish the rights and protections guaranteed to children with disabilities and their parents by Part B of the Act and the rights and protections guaranteed to infants and toddlers with disabilities and their families by Part H of the Act.

On December 30, 1991, the Secretary published a notice of proposed rulemaking for these amendments in the **Federal Register** (56 FR 67420). There are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, a total of 75 parties submitted comments on the proposed regulations. Seventy (70) of the commenters addressed the proposed change in the nonsupplanting regulations for Part B, and 68 commenters responded to the proposed change in Part H. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Technical and minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comments: The majority of commenters supported the proposed deletion of the particular cost requirement from § 300.230(b)(2), and § 303.124(b)(2) because the change would provide necessary flexibility and financial relief to States and LEAs.

The commenters who opposed the deletion for both the Part B and Part H programs expressed the following concerns: One commenter felt that the proposed change would permit Part B and Part H funds to be treated as a block grant and diverted away from use for children with disabilities, thereby lessening substantive protections under these programs. Some commenters opposed deletion of the requirement on the ground that it has been helpful in maintaining certain levels of services in the face of rising costs and increasing budget constraints at the State and local levels. One commenter requested that the particular cost test be maintained in its current form or in a modified form tied to certain categories of expenditures.

One commenter was concerned that removal of the requirement would eliminate the only auditing mechanism that establishes a link between Federal, State, and local funds expended for special education. Another commenter was concerned that, without the particular cost test, funds under Parts B and H would be commingled with funds that are used for purposes other than special education. One commenter asked for guidelines to implement the new system.

Discussion: In the December 30, 1991 NPRM, the Secretary emphasized his commitment to giving States and LEAs more flexibility in the use of funds under Parts B and H while ensuring that the level of total State and local expenditures for requirements under these Parts would not be reduced. The Secretary believes that removal of the particular cost requirement is consistent with this commitment. The aggregate cost provision, which remains, ensures that the total amount of State and local funds budgeted by an LEA for the education of children with disabilities and by a State for early intervention services in the current fiscal year will be at least equal to the amount of these funds actually expended in the most recent fiscal year for which the information is available, even if the LEA or State uses Federal funds under this part to pay for a service that was previously supported with State or local funds.

In addition to the aggregate cost test of the nonsupplanting regulations, several related requirements will continue to ensure that funds available under Parts B and H will be expended for proper program purposes. Those provisions under Part B include (1) the prohibition of commingling (§ 300.145), (2) the excess cost requirement (§§ 300.182–300.186), (3) the provision on comparable services (§ 300.231), and (4) the priorities in the use of funds (§§ 300.321 and 300.323). The requirements remaining in effect under Part H include (1) the prohibition against commingling (§ 303.123), (2) the "payor of last resort" regulation (§ 303.126), and (3) the assurance regarding use of funds (§ 303.127).

With regard to the financial accountability issues raised by the commenters, States and LEAs must follow the financial administration requirements of 34 CFR part 80, including the requirement in § 80.20(a) that "fiscal control and accounting procedures of the State * * * must be sufficient to * * * permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of [Part B and Part H]."

Because the amendments to the nonsupplanting regulations simply remove the particular cost provision and do not add a new requirement, the Secretary does not believe that further guidance is needed.

Based on these considerations and the largely positive response to the proposed changes in these regulations, the Secretary concludes that removal of the particular cost test (1) will not reduce the total amount of State and local funds budgeted for the education of children with disabilities or for the provision of early intervention services for infants and toddlers with disabilities, (2) will not impede the Secretary's ability to identify misuse of Part B and Part H funds, and (3) will enable LEAs to make financial adjustments that could assist in improving the quality of services provided to these children. The Secretary also concludes that these changes will in no way diminish any of the rights and protections guaranteed to infants and toddlers and their families under Part H, or to children with disabilities and their parents under Part B.

Changes: None.

Comments: Two commenters expressed support for deleting the particular cost requirement from the Part B regulations, but opposed its deletion from the regulations for Part H, because the Part H program is still in its formative stage and is not yet in full operation in all States. One of these commenters stated that the Part H program depended heavily on complex interagency involvement, and that the "payor of last resort" requirement under Part H would not be able to be met without some type of particular cost test.

Discussion: The Secretary sees no difference in the applicability of the particular cost provision under Parts B and H and does not believe that it is necessary to delay the implementation of the proposed rule change until Part H is in full operation in all States.

Deletion of the particular cost requirement in 34 CFR § 303.124(b)(2) would not impede implementation of the "payor of last resort" requirements (20 U.S.C. 1481 and 34 CFR § 303.527(a)). The "payor of last resort" provision concerns programs and services an individual child is currently entitled to receive under another program, whether funded from a Federal, State, local, or private source. In contrast, the particular cost requirement compares the source of funding used by the Part H program to fund a particular activity in the previous year with the funding source used for the same activity in the current year. In order to implement the "payor of last resort" provision there is no need to identify whether a particular activity

was paid for by Part H or State and local funds in the prior year.

Changes: None.

Executive Order 12291

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

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.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

List of Subjects

34 CFR Part 300

Administrative practice and procedures, Education, Education of individuals with disabilities, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 303

Education, Education of the handicapped, Grant programs—education, Medical personnel, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children and 84.181; Early Intervention program for Infants and Toddlers with Handicaps)

Dated: August 6, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending parts 300 and 303 as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§ 300.230 [AMENDED]

2. Section 300.230 is amended by removing the colon after the word "section" in paragraph (b) introductory text; removing "(1) The" in paragraph (b)(1) introductory text and adding in its place ", the "; removing paragraph (b)(2), and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; removing "; and " at the end of redesignated paragraph (b)(2), and adding a period in its place; and removing the Comment following the section.

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

1. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

§ 303.124 [Amended]

2. Section 303.124 is amended by removing the dash after the word "section" in paragraph (b) introducing text; removing "(1) The" in paragraph (b)(1) introductory text and adding in its place ", the"; removing paragraph (b)(2) and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; removing "; and" at the end of redesignated paragraph (b)(2), and adding a period in its place; and removing the Note following the section.

[FR Doc. 92–19691 Filed 8–18–92; 8:45 am]

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Federal Register

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August 19, 1992

Part V

National Indian Gaming Commission

25 CFR Parts 531 et al.

Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act; Proposed Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 531, 533, 535, 537 and 539

Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission is proposing regulations to implement the management contract provisions of the Indian Gaming Regulatory Act of 1988. The proposed rule would establish requirements and procedures for the approval of management contracts concerning Indian gaming operations and the conduct of related background investigations.

DATES: Comments must be received by September 30, 1992.

ADDRESSES: Commenters may submit their comments by mail, facsimile, or delivery to: Management Contract Rule Comments, National Indian Gaming Commission, suite 250, 1850 M Street NW., Washington, DC 20036–5803. Fax number: 202–632–7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch at 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published final rules (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12382), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated primarily under negotiated tribal-state compacts).

The Commission also has proposed rules regarding its review and approval of tribal gaming ordinances and resolutions under Sections 2710 and 2712 of the Act (57 FR 30346, July 8, 1992), and compliance and enforcement procedures under section 2705 and 2706 of the Act (57 FR 30584, July 9, 1992). The regulations proposed today would implement the Commission's authority to review and approve management contracts and to require related background investigations.

Statutory Authority

Section 2711(h) of the IGRA transferred to the Commission the authority of the Secretary of the Interior (Secretary) under 25 U.S.C. 81 to review and approve management contracts concerning Indian gaming. This transfer will become effective upon the promulgation of proposed parts 531, 533, 535, 537 and 539. Sections 2710(d)(9) and 2711 of the IGRA require tribes to submit new management contracts to the Chairman for his or her review and approval, and provide standards for approval. Section 2712 contains standards and procedures for the Chairman's review of existing contracts. Section 2706(b)(10) authorizes the Commission to promulgate such regulations as it deems appropriate to implement the provisions of the IGRA.

Regulatory Definitions

Several of the regulatory definitions that the Commission has adopted have a direct bearing on the rule proposed today. They are included here for ease of reference:

Gaming operation means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity (25 CFR 502.10).

Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation (25 CFR 502.15).

Person having a direct or indirect financial interest in a management contract means—

(a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; or

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract (25 CFR 502.17).

Person having management responsibility for a management contract means the person designated by the management contract as having management responsibility for the gaming operation, or a portion thereof (25 CFR 502.18).

Primary management official means—

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility (25 CFR 502.19).

Collateral agreement means any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor) (25 CFR 502.5).

Net revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, excluding management fees (25 CFR 502.16).

Contents of Management Contracts

Part 531 would implement Section 2711(b) of the Act by setting forth the requirements for an approvable management contract. This part identifies required and prohibited provisions and imposes certain technical requirements. The contract terms themselves will be the result of negotiations between the tribe and the management contractor.

Under proposed § 531.1(a), a management contract must provide that all gaming will be conducted in

accordance with the governing tribal ordinance. The management contract also should state how any changes to the ordinance that affect contract terms will be handled.

Section 531.1(b) would require that the contract assign responsibility for each identifiable function of the gaming operation. The requirements included here and in § 531.1(c) (discussed below) are matters that the parties should discuss and resolve before executing the contract. This will enable the parties to minimize later disagreements. Moreover, under the Act the Chairman must be satisfied that the tribe is adequately protected under the contract. The Commission believes that these requirements are necessary to ensure that protection.

Section 531.1(c) requires that the management contract provide for the establishment and maintenance of adequate accounting systems and procedures. Such requirements include, among other things, maintaining an adequate system of internal accounting controls, audit trails, and sufficiently detailed supporting data to permit both the preparation of financial statements, and the performance of any computations required under the regulations, the governing ordinance, or the contract itself. For class II operations, for example, 25 CFR 514.1(c) (the Commission's fee regulations) requires tribes to file quarterly statements with the Commission that "show the amounts derived from each class II type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures."

Section 531.1(f) requires that the contract provide for a minimum monthly payment to the tribe, in accordance with Section 2711(b)(3) of the IGRA. This payment must be stated in dollar terms, rather than as a percentage of some unknown figure. This requirement is for a minimum only, an additional amount could be provided for and could be stated as a percentage.

Section 531.1(g) would implement Section 2711(b)(4) of the IGRA by requiring that a management contract provide a maximum total dollar amount that the management contractor may receive as recoupment for development and construction costs.

Proposed § 531.1(l) requires that the contract state whether and to what extent assignments and subcontracting are permitted. If they are, any such assignments and subcontracts will require the approval of the Chairman.

Review and Approval of Management Contracts

Proposed part 533 deals with the management contract submission, review, and approval process. The requirement that management contracts be reviewed and approved by the Chairman is contained in sections 2710)(d)(9), 2711, and 2712 of the IGRA and in 25 U.S.C. 81 (the responsibility for which, as previously discussed, was transferred from the secretary to the Commission by Section 2711(h) of the IGRA, effective upon promulgation of proposed parts 531, 533, 535, 537 and 539).

Proposed § 533.2 would require contracts approved by the Secretary to be submitted to the Chairman within 60 days after a request by the Chairman. Contracts that have not been approved by either the Secretary or the Chairman are required to be submitted to the Chairman upon execution, and are not effective until the Chairman has approved them.

Proposed § 533.3 sets forth the items a tribe must submit to the Chairman as part of any request for approval of a management contract. Among the items to be included are: The contract itself; proof of authority to execute; a list of persons for whom background investigations are required; financial statements or a business plan; and a justification for any extraordinary provisions.

The business plan should set forth the parties' goals, objectives, budgets, financial plans, and related matters for at least the first three years of operations. The Chairman will rely on the business plan, among other things, to ensure that there is a meeting of the minds between the parties regarding key terms of the contract, that those terms are reasonable, and that the tribe is the primary beneficiary of the gaming operation.

Proposed § 533.6 implements the Act's standards for the Chairman's review of management contracts. As discussed below, those standards also apply to proposed modifications to approved management contracts. In addition to the specific requirements for approval in parts 531 and 533, proposed § 533.6(e) would implement the general standard of section 2711(e)(4) of the IGRA by providing that the Chairman may disapprove a management contract if a trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

Modifications

Proposed part 535 provides procedures to address postapproval contract modifications and noncompliance with the standards contained in parts 531 and 533. Although the Act does not, *per se*, address contract modifications proposed by the parties to the contracts, the Chairman will apply the IGRA's standards for approval of management contracts to his or her review of proposed modifications.

Section 535.3 requires the Chairman to notify a tribe and its management contractor if the Chairman intends to exercise his or her authority under section 2711(f) of the IGRA. Under section 2711(f), the Chairman may require modification of, or void, an approved management contract if he or she determines that any of the provisions of section 2711 (or corresponding parts) have been violated.

Approval of Persons With a Financial Interest in, or Management Responsibility for, a Management Contract

Proposed part 537 would implement section 2711(a) of the Act by setting forth the requirements for background investigations of persons with a financial interest in, or having management responsibility for, a management contract.

Under sections 2711 and 2712 of the IGRA, an Indian tribe may enter into a contract for the management of a class II or class III gaming operation subject to the approval of the Chairman. The Chairman's review and approval of a management contract for a class II operation is governed by the standards contained in section 2711 of the IGRA. Under section 2710(d)(9), the Chairman's review and approval of a management contract for a class III operation is governed by the provisions of section 2711 (b), (c), (d), (f), (g), and (h) (but not (a), (e), or (i)). The omitted subsections deal with suitability determinations and background investigations of persons having a direct financial interest in, or management responsibility for, a management contract.

These omissions notwithstanding, the Commission believes that the IGRA authorizes the Chairman to conduct background investigations and otherwise determine the suitability of persons having a financial interest in or management responsibility for a management contract concerning both class II and class III gaming. First, section 2712(b)(1) of the IGRA provides that the Chairman shall subject existing class II and class III management contracts (that is, contracts that have been approved by the Secretary) to the requirements of section 2711 (including

subsections (a), (e), and (i)). Second, section 2711(h) of the IGRA transferred to the Commission the Secretary's authority under 25 U.S.C. 81 to review and approve management contracts concerning Indian gaming. This authority also applies to both class II and class III management contracts. In reviewing management contracts pursuant to section 81, the Chairman is required to act in the best interests of the tribes. See *United States ex rel. Shakopee Mdewakanton Sioux Community* v. *Pan American Management Co.*, 616 F. Supp. 1200 (D. Minn. 1985). In order to fulfill its statutory responsibility, the Commission has determined that management contracts for class II and class III gaming should be subject to the same requirements.

The Commission recognizes that many tribal-state compacts provide for background investigations of persons having a financial interest in or management responsibility for a contract. Accordingly, the Chairman, in reviewing class III management contracts, will rely to the maximum extent possible on background investigations conducted by a tribe or state pursuant to a tribal-state compact. The Chairman also will determine the suitability of persons having a financial interest in or management responsibility for a class III management contract. The Commission invites comments on its determination that management contracts concerning class III gaming are subject to the same background investigation requirements as class II under the IGRA.

Proposed § 537.1(b) requires that a management contractor submit to the Chairman certain information regarding persons subject to background investigations. This information is necessary to ensure accurate identification when, for example, data bases maintained for investigative purposes include different individuals who have the same or very similar names.

Related to background investigations under the IGRA are procedures under the Privacy Act, 5 U.S.C. 552a. Management contractors are not subject to that Act in their recordkeeping; the Commission is, however, due to its status as a federal agency. Because management contractors are required to provide the Commission with certain records, those records become subject to the Privacy Act. Therefore, management contractors must follow certain procedures under that Act. The Commission has proposed regulations under the Privacy Act (57 FR 30353, July 8, 1992), and is establishing a system of records under that Act. The Commission will be amending its system of records to include the information collected.

Proposed § 537.1(b)(4) requires that a management contractor submit a statement containing a privacy notice signed by each person subject to a background investigation. This notice lets individuals know that information about them may be used by the Commission when it undertakes a background investigation under section 2711 of the IGRA. It also lets them know that information contained in the application and subsequent background investigation may be disclosed not only to the Commission but to tribes and appropriate federal, tribal, state, local, or foreign law enforcement agencies in connection with the issuance or revocation of an Indian gaming license, or investigations of Indian gaming under section 2716(b) of the IGRA. That section directs the Commission to provide information indicating a violation of federal, State, or tribal statutes, ordinances or resolutions to appropriate law enforcement officials. Without such a privacy notice, the Commission could not maintain information on individuals and therefore would be unable to perform its duties under the IGRA.

Section 537.1(b)(5) warns persons subject to a background investigation to be accurate in supplying the information requested by the Commission. Federal law provides penalties for making false statements to an entity regulated by the federal government. The federal statute states: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both." 18 U.S.C. 1001.

Appeals

Part 539 provides a right to an appeal from the Chairman's decision on a management contract and the results of a background investigation. Appeals from the Chairman's intent to require modification of, or to void, a management contract that has already been approved by the Chairman under proposed section 535.3 (implementing section 2711(f) of the IGRA) are subject to the more formal appeal process of proposed 25 CFR part 577 (57 FR 30584, July 9, 1992). The contract involved in such a case has already been subjected to the IGRA's standards for approval of management contracts, and it is the Chairman (rather than the parties) who is proposing to require modification of or to void the contract. Under these circumstances, the Commission believes that the contract rights at stake warrant more careful scrutiny of the Chairman's intent to affect those rights. All other actions of the Chairman under proposed parts 531, 533, 535 and 537 will be subject to the less formal appeal process of part 539. Regardless of which process the Commission employs to hear appeals, however, parties will have a right to appeal any final actions of the Commission to the appropriate federal district court under section 2714 of the Act.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has tentatively determined that this document is not a major rule under Executive Order 12291. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has tentatively determined that this rule will not have a significant economic impact on a substantial number of small entities. The Commission solicits comment on these preliminary determinations under the Executive Order and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

National Environmental Policy Act

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the

National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the National Indian Gaming Commission has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of the Executive Order 12278, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: August 13, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Parts 531, 533, 535, 537 and 539

Gaming, Indian lands.

For the reasons set forth in the preamble, chapter III, title 25 of the Code of Federal Regulations is proposed to be amended by adding new parts 531, 533, 535, 537 and 539.

PART 531—CONTENT OF MANAGEMENT CONTRACTS

Sec.

531.1 Required provisions.
531.2 Prohibited provisions.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 531.1 Required provisions.

A management contract shall address the following provisions in the manner indicated:

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the governing tribal ordinance(s);

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Hiring and scheduling the auditors;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage; and

(14) Complying with all applicable provisions of the Internal Revenue Code;

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a class II gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services;

(d) *Reporting.* Require the management contractor to provide the tribal governing body on a monthly basis with verifiable financial reports or all information necessary to prepare such reports;

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate;

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment in a sum certain to the tribe that has preference over the retirement of development and construction costs;

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs;

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time;

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee;

(j) *Termination provisions.* Provide the grounds and mechanisms for modifying or terminating the contract (termination of the contract shall not require the approval of the Chairman);

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) the management contractor and the tribe; and

(3) the management contractor and the gaming operation employees;

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible; and

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

§ 531.2 Prohibited provisions.

A management contract shall not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

Sec.

533.1 Requirement for review and approval.
533.2 Time for submitting management contracts.
533.3 Submission of management contract for approval.
533.4 Action by the Chairman.
533.5 Notice of noncompliance.
533.6 Approval.
533.7 Void agreements.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 533.1 Requirement for review and approval.

Subject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity Such contract shall become effective upon approval by the Chairman.

§ 533.2. Time for submitting management contracts.

A tribe shall submit a management contract to the Chairman for review as follows:

(a) Contracts approved by the Secretary, within sixty (60) days after a request by the Chairman.

(b) All other contracts, upon execution.

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(3) Terms that meet the requirements of part 531 of this chapter;

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract;

(c) Copies of documents evidencing the authority under paragraph (b) of this section;

(d) A list of all persons having a direct or indirect financial interest in the management contract or having management responsibility for the management contract; and either:

(1) The information and documents required under § 537.1 of this chapter; or

(2) The dates on which the information was previously submitted;

(e) (1) For new contracts, a three (3)-year business plan; or

(2) For existing contracts, income statements and sources and uses of funds statements for the previous three (3) years, to the extent that such data exist;

(f) If applicable, a justification, consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years; and

(g) If applicable, a justification, consistent with the provisions of § 531.1(i), for a fee in excess of thirty (30) percent.

533.4 Action by the Chairman.

(a) The Chairman shall provide notice of noncompliance under § 533.5 of this part, or shall approve or disapprove a management contract applying the standards contained in § 533.6 of this part, within 180 days after the date on which the Chairman receives a complete submission under § 533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not provide notice of noncompliance or approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not provided notice of noncompliance of approved or disapproved the contract under this part.

§ 533.5 Notice of noncompliance.

(a) If a management contract previously approved by the Secretary fails to meet the requirements of this part, the Chairman shall notify the tribe and management contractor, in writing, of the specific areas of noncompliance.

(1) The Chairman shall allow the tribe and the management contractor 120 days from receipt of such notice to modify the contract.

(2) If the Secretary approved a management contract before October 17, 1988, the Chairman shall allow the tribe and the management contractor 180 days from receipt of such notice to modify the contract.

(b) If a tribe and a management contractor fail to modify a management contract within the time provided by the Chairman, the contract shall be deemed disapproved and void.

§ 533.6 Approval.

The Chairman may approve a management contract unless:

(a) It fails to meet the standards of part 531 of this chapter and § 533.3 of this part.

(b) *Individual disqualifiers.* The Chairman determines that any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(1) Is an elected member of the governing body of the tribe that is party to the management contract;

(2) Has been convicted of any felony or gaming offense;

(3) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(4) Has refused to respond to questions asked by the Chairman in accordance with his responsibilities under this part; or

(5) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(c) *Undue influence.* The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation; or

(d) *Noncompliance.* In the case of a management contract previously approved by the Secretary, the management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution.

(e) *Trust responsibility.* A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Chairman in accordance with the requirements of this part, are void.

PART 535—POST-APPROVAL PROCEDURES

Sec.

535.1 Modifications.

535.2 Assignments.

535.3 Post-approval noncompliance.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 535.1 Modifications.

(a) Subject to the Chairman's approval, a tribe may enter into a modification of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit a modification to the Chairman upon its execution.

(c) A tribe shall include in any request for approval of a modification under this part:

(1) A modification containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an

authorized tribal official to act for the tribe concerning the modification;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) along with the information required under § 537.1 or the date on which such information was previously submitted;

(5) If applicable, a justification, consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years; and

(6) If applicable, a justification, consistent with the provisions of § 531.1(i), for a management fee in excess of thirty (30) days.

(d) The Chairman shall have thirty (30) days from receipt to approve or disapprove a modification, or to notify the parties that an additional thirty (30) days is required to reach a decision, except that when a modification requires a background investigation under part 537, the Chairman shall approve or disapprove such modification as soon as practicable but in no event later than 180 days after the Chairman receives it. If the Chairman does not approve or disapprove, he shall respond in writing noting that no action has been taken on the proposed modification. The request shall therefore be deemed disapproved and the parties shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e) The Chairman may approve a modification of a management contract unless:

(1) The request for approval of the modification fails to meet the submission requirements of paragraph (c) of this section; or

(2) The Chairman determines that the modification fails to meet the standards contained in § 533.6 of this chapter.

(f) Modifications that have not been approved by the Chairman in accordance with the requirements of this part are void.

§ 535.2 Assignments.

Subject to the approval of the Chairman, a management contractor may assign its rights under a management contract to the extent permitted by the contract. A tribe or a management contractor shall submit such assignment to the Chairman upon execution. The Chairman shall approve or disapprove an assignment applying the standards of, and within the time provided by paragraphs § 535.1 (d) and (e) of this section.

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in this chapter, the Chairman may require modification of, or may void, a management contract approved by the Chairman under this chapter, after providing the parties an opportunity for an appeal to the Commission as set forth elsewhere in this chapter.

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

Sec.

537.1 Applications for approval.
537.2 Submission of background information.
537.3 Fees for background investigations.
537.4 Determinations.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 537.1 Applications for approval.

(a) The Chairman shall conduct a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interests in an entity that is a party to a management contract;

(4) Any entity with a financial interest in a management contract; and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, and all languages (spoken or written);

(ii) A current photograph;

(iii) Currently and for the previous five (5) years: business and employment positions held, business and residence addresses, and driver's license numbers;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person during each period of residence listed under paragraph (b)(1)(iii) of this section;

(v) Current business and residence telephone numbers;

(vi) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition; and

(xi) A complete financial statement showing all sources of income for the previous three (3) years, as assets, liabilities, and net worth as of the date of the submission.

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD–258, Applicant Fingerprint Card, for each person for whom background information is provided under this section.

(3) *Responses to questions.* Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions that the Chairman may ask.

(4) *Privacy notice.* In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the suitability of individuals for Indian gaming. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation

or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) *Notice regarding false statements.* Each person required to submit information under this section shall sign and submit the following statement:

A false statement contained in any of the information provided pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) a listing of all persons identified in paragraphs (c)(1)(i)(A) through (c)(1)(i)(C) of this section showing for each their full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, and all languages (spoken or written):

(A) When a trust is a party to a management contract, for each beneficiary or trustee;

(B) When a partnership is a party to a management contract, for each partner; and

(C) When a corporation is a party to a management contract, for any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition; and

(x) Complete financial statements for the previous three (3) fiscal years.

§ 537.2 Submission of background information.

A management contractor shall submit the background information required in § 537.1 of this part:

(a) in sufficient time to permit the Commission to complete its background investigation by the time the individual is to assume management responsibility for, or the management contractor is to begin managing, the gaming operation; and

(b) within ten (10) days of any proposed change in financial interest.

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor—$10,000
(2) Each individual—5,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be stopped if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

§ 537.4 Determinations.

The Chairman shall determine whether the results of a background investigation preclude the Chairman from approving a management contract because of the individual disqualifiers contained in § 533.6(b)(1) of this chapter. The Chairman shall promptly notify the tribe and management contractor if any findings preclude the Chairman from approving a management contract or change in financial interest.

PART 539—APPEALS

Sec.
539.1 Scope of this part.
539.2 Appeals.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract under this chapter, except that appeals from the Chairman's decision to require modification of or to void a management contract subsequent to his or her initial approval are addressed elsewhere in this chapter.

§ 539.2 Appeals.

Any person with an interest that is or may be adversely affected by the Chairman's approval or disapproval of a management contract or modification may appeal the Chairman's determination to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after receipt of the Chairman's determination, or within forty-five (45) days after the date of the Chairman's determination, whichever is earlier. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. An appeal under this section shall specify the reasons why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within forty-five (45) days after receipt of the appeal, the Commission shall render a decision, unless the Commission notifies the person requesting the appeal that it requires additional time to render a decision.

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federal register

Wednesday
August 19, 1992

Part VI

Department of Justice

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: In this document, the Bureau of Prisons is publishing a consolidated listing of its institutions. New Federal Correctional Institutions are being designated at Estill, South Carolina; Florence, Colorado; and Manchester, Kentucky. A new Federal Prison Camp is being designated at Florence, Colorado. A new Low Security Correctional Institution is being designated at Allenwood, Pennsylvania. A new Metropolitan Detention Center is being designated at Guaynabo, Puerto Rico.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, (202) 307–3062.

SUPPLEMENTARY INFORMATION: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the **Federal Register** on December 10, 1991 (56 FR 64525).

This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Ashland, Kentucky;
(2) Bastrop, Texas;
(3) Big Spring, Texas;
(4) Butner, North Carolina;
(5) Danbury, Connecticut
(6) El Reno, Oklahoma;
(7) Englewood, Colorado;
(8) Estill, South Carolina;
(9) Fairton, New Jersey;
(10) Florence, Colorado;
(11) Fort Worth, Texas;
(12) Jesup, Georgia;
(13) La Tuna, Texas;
(14) Loretto, Pennsylvania;
(15) Lompoc, California;
(16) Manchester, Kentucky;
(17) Marianna, Florida;
(18) McKean, Pennsylvania;
(19) Memphis, Tennessee;
(20) Milan, Michigan;
(21) Morgantown, West Virginia;
(22) Oakdale, Louisiana (formerly Oakdale I);
(23) Otisville, New York;
(24) Oxford, Wisconsin;
(25) Petersburg, Virginia;
(26) Phoenix, Arizona;
(27) Pleasanton, California;
(28) Ray Brook, New York;
(29) Safford, Arizona;
(30) Sandstone, Minnesota;
(31) Schuylkill, Pennsylvania;
(32) Seagoville, Texas;
(33) Sheridan, Oregon;
(34) Talladega, Alabama;
(35) Tallahassee, Florida;
(36) Terminal Island, California;
(37) Texarkana, Texas;
(38) Three Rivers, Texas; and
(39) Tucson, Arizona.

C. The Bureau of Prisons institution at Allenwood, Pennsylvania is designated as a Low Security Correctional Institution.

D. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Boron, California;
(4) Bryan, Texas;
(5) Duluth, Minnesota;
(6) Eglin Air Force Base, Florida;
(7) Florence, Colorado;
(8) Ft. Bliss, El Paso, Texas;
(9) Homestead Air Force Base, Homestead, Florida;
(10) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
(11) Millington, Tennessee;
(12) Nellis Air Force Base, Las Vegas, Nevada;
(13) Saufley Field, Pensacola, Florida;
(14) Seymour-Johnson Air Force Base, North Carolina;
(15) Tyndall Air Force Base, Panama City, Florida; and
(16) Yankton, South Dakota.

E. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

F. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

G. The Bureau of Prisons institutions at the following locations are designated as Federal Medical Centers:

(1) Carville, Louisiana;
(2) Lexington, Kentucky; and
(3) Rochester, Minnesota.

H. The Bureau of Prisons institution at Oakdale, Louisiana (formerly Oakdale II) is designated as a Federal Detention Center.

I. The Bureau of Prisons institution at the following locations are designated as Metropolitan Detention Centers.

(1) Guaynbo, Puerto Rico; and
(2) Los Angeles, California.

Dated: July 29, 1992.

Thomas R. Kane,

Acting Director, Federal Bureau of Prisons.

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August 19, 1992

Part VII

Department of Labor

Employment Standards Administration; Wage and Hour Division

29 CFR Part 541

Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers; Rule and Proposed Rule



DEPARTMENT OF LABOR

Employment Standards Administration
Wage and Hour Division

29 CFR Part 541

RIN 1215-AA77

Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides revised final Regulations, 29 CFR part 541, governing the criteria for exemption from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act ("FLSA" or "Act") for public sector employees employed in *bona fide* executive, administrative, and professional capacities. A special, limited exception from the exemption's requirement for payment "on a salary basis" is provided for certain public sector pay systems that reduce the pay of otherwise-exempt employees for partial-day absences when paid leave is not used to cover such absences, and for deductions due to budget-required furloughs.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523-8412 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

II. Background

A. Summary of Statutory and Regulatory Provisions

The FLSA (29 U.S.C. 201, *et seq.*) requires that covered, non-exempt employees receive not less than the Federal minimum wage for all hours worked and overtime premium pay (at one-and-one-half times the regular rate of pay) for all hours worked over 40 in a workweek. Section 13(a)(1) of the Act (29 U.S.C. 213(a)(1)) provides a statutory exemption from these requirements for employees employed in a *bona fide* executive, administrative, or professional capacity, as follows:

> Section 13. (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—
>
> (1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as much terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *).

The scope of the exemption provided by Section 13(a)(1) of the FLSA is defined and explained in Department of Labor regulations, codified at 29 CFR part 541. The regulations generally require that, to be exempt, employees must meet specified regulatory standards with respect to their job duties and responsibilities, and be compensated "on a salary basis" at a level that is not less than the stated amounts.[1]

Employees whose terms and conditions of employment meet the stated exemption requirements need not be paid the FLSA minimum wage or overtime premium pay for hours worked over 40 per week.

The regulations defining "salary basis" (at § 541.118) provide that an employee will be considered to be paid "on a salary basis" if the employee regularly receives each pay period a predetermined amount constituting all or part of the employee's compensation and the predetermined amount is not subject to reduction because of variations in the quality or quantity of work performed. Subject to specified exceptions, the employee must receive the full salary for any week in which any work is performed without regard to the number of days or hours worked, subject also to the general rule that an employee need not be paid for any workweek in which no work is performed.

Deductions may not be made "* * * for absences occasioned by the employer or by the operating requirements of the business," such as "deductions * * * for time when work is not available" (§ 541.118(a)(1)). Deductions also may not be made for activities such as jury duty, attendance as a witness, or temporary military leave (§ 541.118(a)(4)).

Deductions may be made from an employee's predetermined compensation without invalidating the employee's salaried status when an employee is absent from work for a full day or more for personal reasons, other than sickness or accident, as provided in § 541.118(a)(2). Deductions are also permitted for absences of a day or more because of sickness or disability if the employer has a *bona fide* plan, policy or practice that provides compensation for loss of salary due to sickness and disability (§ 541.118(a)(3)). Deductions imposed "in good faith for infractions of safety rules of major significance" also will not affect an employee's salaried status (§ 541.118(a)(5)).

The regulations also state that the effect on the salaried status of an employee, and thus eligibility for exemption, when an impermissible deduction is made will depend upon the facts in each case. This provision permits an employer who makes impermissible deductions from the predetermined compensation of an otherwise salaried employee to reimburse the employee for the deductions in certain circumstances, thereby restoring the exempt status of the employee. In particular, § 541.118(a)(6) provides:

> (6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable * * * during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

The salary requirement has been an integral part of the 541 regulations since 1940. The existing regulatory interpretation of "salary basis" dates back to 1954 (19 FR 4405; July 17, 1954). These provisions were developed from extensive hearings and record evidence showing that executive, administrative, and professional employees employed in industries then-subject to the FLSA, which excluded governmental employers, were nearly universally paid on a salary basis. Employers not

[1] The existing exemption criteria include specified duties and responsibilities tests, in addition to a salary requirement. To qualify, an employee must be paid a weekly salary of a least $155 as an executive or administrative employee, and $170 as a professional, and must meet all the other tests (the "long tests" for exemption). If such employees receive $250 (or more) in salary, a shorter, less-stringent duties test applies (the "short test" or "upset salary test"). Consideration of these compensation levels will be undertaken in connection with any further rulemaking.

compensating on a salary basis have had ample opportunity to conform their pay practices to the requirements if they chose to claim exemption for their employees, or pay overtime premium pay. In contrast, the public sector pay policies at issue in this rulemaking evolved over the years subject to constraints in statutes, ordinances or policies based on public accountability principles that preclude paying public employees for hours not worked, under systems that regarded management employees as being exempt from overtime.

B. Legislative History of the FLSA in the Public Sector

Since FLSA was enacted in 1938, the Congress and the U.S. Supreme Court have periodically acknowledged the special circumstances of, and different treatment to be accorded to, governmental employers and employees under the FLSA, as distinguished from the private sector. Originally, the FLSA did not apply to employees of States or political subdivisions. Congress extended coverage in 1966 to employees of State and public entities operating transit companies, hospitals, schools and related institutions. The U.S. Supreme Court upheld the constitutionality of applying the Act to such entities in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968).

In 1974, Congress extended coverage to all public sector employees, exempting only elected officials and their immediate staffs. It did so with the stated intent to cover virtually all public sector employees who were not within the scope of the section 13(a)(1) exemption. The committee report accompanying the bill that became the 1974 Amendments described the provisions affecting Federal, State and local government employees in the following manner:

> Section 6 of the bill extends minimum wage and overtime coverage to about 5 million *non-supervisory* employees in the public sector not * * * [then] covered by the Act. * * * The bill will provide that virtually all *non-supervisory* government employees will be covered. * * * By the same token, the committee intends to cover all employees *(except professional, executive, and administrative personnel who are exempted under section 13 of the law)* in all civilian branches of the Federal Government." (H.R. Rep. No. 93–313, p. 27 (1974); emphasis added.)

In 1976, however, the U.S. Supreme Court considered the special nature of State and local governments under the FLSA and ruled that the FLSA's minimum wage and overtime pay provisions could not constitutionally be applied to State and local government employees engaged in traditional governmental activities. *(National League of Cities* v. *Usery*, 426 U.S. 833 (1976).) The Court expressly overruled *Maryland* v. *Wirtz* with regard to the Act's application to public school and hospital employees, but National League did not alter the continued application of FLSA to employees engaged in activities that are not "traditional" functions of government.

In 1985, the Supreme Court reversed National League in *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). The Court reasoned that sufficient authority existed to apply the FLSA to State and local governments under the commerce clause of the Constitution and found that applying Federal regulation based on the distinction between "traditional" and "nontraditional" governmental functions was unsound and unworkable. In response to Garcia, Congress amended the FLSA in November 1985 to address particular concerns of State and local governments and to provide relief from liability during a temporary adjustment period after the Garcia decision. New provisions were added to allow the use of compensatory timeoff in lieu of cash wages for overtime in the public sector, with a higher maximum limit on the number of hours that can be accumulated by public safety and certain other employees; to include overtime exemptions for certain employment situations in which employees work dual jobs; and to provide special rules for public agency volunteers. The 1985 Amendments did not, however, affect section 13(a)(1) of the Act or specifically address the application of the executive, administrative, or professional employee exemption to State and local government employees. Neither the statutory changes nor the legislative history of the 1985 Amendments contain any significant references to section 13(a)(1) or 29 CFR part 541.

C. Public Sector Pay Systems and the FLSA

Some State and local government jurisdictions operate pay policies based on constitutional or statutory provisions while others are derived from regulations or policies that have evolved over the years. The rules and procedures of many of these pay systems were in place long before FLSA coverage of the public sector brought on by the 1985 Garcia decision. Such pay systems are generally premised on a concept derived from principles of public accountability that governmental employees should not be paid for time not worked due to the need to be accountable to the taxpayers for the expenditure of public funds.

At the time of Garcia, therefore, most public employers had in place compensation systems requiring all employees, regardless of how paid, to use accrued leave time or incur a reduction in pay for any absences from work. Such Governmental payroll systems prohibited paying employees for time not actually worked that was not covered by accrued leave, regardless of whether the time not worked was greater or less than one full work-day. Thus all public employees under such systems, including highly-compensated managers who otherwise would clearly be exempt from the overtime requirements, could be classified as non-salaried and thus non-exempt. As a consequence, few public employers compensated employees in a manner that would satisfy the "on a salary basis" provision required by the regulations.

The Department first observed this anomaly when responding to written inquiries from public sector employers following the Supreme Court's Garcia decision in 1985. It was also raised in public comments received on the Department's Advance Notice of Proposed Rulemaking (ANPR) on Part 541 published in the **Federal Register** on November 19, 1985 (see 50 FR 47696), before the 1985 FLSA Amendments went into effect. One issue raised in the ANPR was whether the salary tests for exemption should be increased or eliminated.

During this same time frame, the Office of Personnel Management (OPM) issued regulations on the 541 exemption for executive, administrative, and professional employees of the federal government. Under OPM's regulations, exempt status was determined according to grade level and the position classification system rather than salary, and did not include a "salary basis" requirement.[2] With this background, the ANPR also raised the question "[s]hould the Department recognize individual State and local government civil service systems for classifying [executive, administrative, and professional] EAP employees in applying the exemption to employees of such governments?"

[2] Section 4(f) of the FLSA provides that the Department of Labor will administer the Act for employees employed in the Library of Congress, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority. OPM administers FLSA with respect to all other employees of the Federal Government except certain Congressional employees. See 29 U.S.C. section 204(f), Reorganization Plan No. 2 of 1978 (92 stat. 3783), and section 8 of the Fair Labor Standards Amendments of 1989 (Pub. L. 101–157).

Two commenters responding to the ANPR pointed to the conflict between State and local laws and § 541.118 by noting that State or local laws frequently prohibit employees from being paid for time not actually worked, or not covered by annual, sick, or other types of paid leave. These commenters cited the example of an otherwise exempt public employee who is absent from work for personal reasons, or is unable to work because of illness or accident, where the employee has not accrued, or has exhausted, paid leave time, being paid only for the hours actually worked in accordance with applicable State or local law. Consequently, a public employer that makes deductions from pay for absence(s) computed on an hourly basis would not be in compliance with the "salary basis" requirements in § 541.118 that allow for deductions to be made in such cases only for absence(s) of a full day or longer.

The Department also received comments expressing concerns about the "salary basis" requirement for exemption for public sector employers in response to proposed regulations issued to implement the 1985 FLSA Amendments (51 FR 13402; April 18, 1986). These comments were noted in the preamble to the final rule as follows:

> Finally, several commenters requested various forms of special treatment for State and local governments with respect to the section 13(a)(1) exemption for bona fide executive, administrative, and professional employees, particularly with respect to the requirement in 29 CFR Part 541 that such employees be paid on a salary basis. The commenters argued that State and local governments should be permitted to make deductions from an exempt employee's salary for absences of less than a day. They argued that this change is necessary to recognize current payroll practices, as well as State and local government laws which preclude the payment of wages for hours not worked (except for earned leave).

On November 19, 1985, the Department of Labor published in the **Federal Register** (50 FR 47696) an advance notice of proposed rulemaking requesting the views of the public on any changes they felt were necessary in 29 CFR part 541. The comment period ended on March 22, 1986. However, the Department expects to publish a notice of proposed rulemaking concerning Part 541 during 1987. Interested parties will have an opportunity to offer comments on the subject matter of that regulation at that time.

In light of the separate rulemaking process with respect to part 541, it would not be appropriate for the Department to address this issue in developing a final rule for part 553.

* * *

And:

> Several commenters, including various cities, the National League of Cities (NLOC) and the National Public Employer Labor Relations Association (NPELRA), stated that 29 CFR part 541 should be revised to eliminate the requirement that an exempt employee be paid on a salary basis.
>
> As discussed earlier under § 553.32, there is a separate rulemaking process with respect to part 541.
>
> Therefore, it would not be appropriate for the Department to address this issue in developing a final rule for part 553.
>
> This discussion of comments received on proposed 29 CFR § § 553.32 (at 52 FR 2019) and 553.216 (at 52 FR 2023) was published in the **Federal Register** January 16, 1987.

D. The Department's 1987 Enforcement Policy

The Department initially attempted to address the special circumstances of the public sector by means of an enforcement policy issued by the Wage and Hour Administrator on January 9, 1987, as follows:

> It has come to our attention that some State and local government jurisdictions have statutory provisions which prohibit any employee from being paid for time not actually worked, or not covered by annual, sick, or other type of paid leave. Such statutory provisions conflict with the salary basis of payment described in § 541.118 of 29 CFR Part 541. For example, where an otherwise exempt public employee is absent from work for personal reasons, or is unable to work because of illness or accident, and the employee has not accrued, or has exhausted, paid leave time, such employee is paid only for hours actually worked in accordance with applicable State or local law. This practice is similar to the practice applicable to Federal employees. Consequently, a public employer may make deductions from pay absence(s) on an hourly basis which is contrary to the position in § 541.118 that deductions may be made only for absence(s) of a day or longer.
>
> Revisions to the provisions of 29 CFR part 541, including the salary tests, have been under consideration as indicated in the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** on November 19, 1985 (50 FR 47696). The ANPR was published in order to obtain the views of the public on needed changes in the regulations. A commenter representing public employers has pointed out the problem described above and has proposed changes in § 541.118 that would allow deductions to be made for absence(s) of less than a day, or to eliminate the salary test entirely.
>
> While consideration is being given to proposed changes in the regulations, a nonenforcement policy is being adopted with regard to the salary basis of payment for otherwise exempt public employees. Wage-Hour will not deny an exemption under section 13(a)(1) to an otherwise exempt public employee whose pay is reduced by deductions for absence(s) of less than a day for personal reasons, or because of illness or accident, because the employee does not have, or has exhausted available paid leave for such absence(s).
>
> This nonenforcement policy will be followed only where the public employer can show that a provision contained in applicable State or local law in effect prior to April 15, 1986, prohibits payments to an employee for absence(s) of the type described above which are not covered by available paid leave. This nonenforcement policy is not intended to affect any employee's rights under section 16(b) of FLSA.
>
> If you have any questions concerning the above policy, please contact the Wage and Hour Division's Office of Program Operations, Branch of FLSA Enforcement, at FTS 523–7043.

This announced enforcement policy was routinely communicated to the public in response to inquiries and widely disseminated to State and local governments (see, e.g., Fair Labor Standards Handbook For States, Local Governments and Schools, app. III, pp. 148–149 (Thompson Publishing Group, Inc., 1987)).

E. Developments in Private Lawsuits

The Wage and Hour Division's 1987 enforcement policy expressly stated that it was not intended to affect the rights of public employees to file private lawsuits under section 16(b) of the FLSA.[3] Since the Supreme Court's *Garcia* decision in 1985, numerous lawsuits have been filed by public employees seeking to recover overtime premium pay from their employers, and in many of these cases the resolution of the exempt status of employees turned solely on the court's reading of the "salary basis" requirement in the regulations. The courts have interpreted the construction of the regulations in different ways, reaching different results.

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[3] Under section 10 of the Portal-to-Portal Act of 1947, Public Law No. 49, 80th Cong., ch. 52, 1st Sess. (29 U.S.C. 251 *et seq.*), an employer has a defense against liability for failure to pay minimum wages or overtime compensation under the FLSA if the employer pleads and proves that "* * * the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, * * * or any administrative practice or enforcement policy of [the Wage and Hour Administrator] with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." (*See also* 29 CFR 790.13 & .18.)

In circumstances where the public entity's pay practices called for the docking of pay for partial-day absences when leave was not available, some courts concluded that a salary was not "subject to" deduction where there was no evidence that the employee's pay was ever reduced; that only actual and not "theoretical" deductions could invalidate the salary basis of compenstion; [4] and that rare instances of docking pay for absences of less than a day did not defeat eligibility for the exemption except in the workweek in which a deduction was made.[5] Other courts have allowed public employers to utilize the "remediation" provisions at 29 CFR 541.118(a)(6) to preserve the exempt status of employees in cases where inadvertent deductions were made from pay for absences of less than a day when leave was exhausted, the affected employees were reimbursed for such deductions, and the employer promised to comply in the future.[6]

In contrast, other courts determined that the exemption was inapplicable under the "salary basis" requirement solely because a public entity's pay system required docking of pay when leave was not available. Some courts held that employees under such a pay system calling for deductions to be made when the employee is absent and has no leave are not paid "on a salary basis" even if no such deductions have in fact occurred.[7]

Such judicial interpretations and accompanying confusion were exposing governmental employers to potentially enormous and generally unexpected back wage liabilities for many employees who would clearly be exempt but for the treatment of leave and the docking of pay for partial-day absences when leave was unavailable. Following the denial of certiorari (January 1991) and petition for rehearing (March 1991) in Abshire, representatives of State and local governments, including the National League of Cities, the United States Conference of Mayors, and the League of California Cities, presented their ugent concerns to the Department arising from the flood of lawsuits being filed by public employees and requested prompt action by the Department to address the matter in light of the anticipated effects of post-Abshire litigation.

These State and local government representatives indicated that, without immediate action by the Department of Labor to revise the regulations for State and local governments, the potential liabilities for affected governmental entities would become devastating. They expressed concern over the fundamental inequity of courts granting windfall awards of across-the-board retroactive overtime payments to public employees who never had any actual deductions made in their salaries, along with employees who rarely had such deductions, but all of whom would be entitled to substantial back pay under Abshire simply because their salaries were theoretically "subject to" the possibility of docking.[8] They asserted that this resultant windfall was not required by, and that Abshire was an extreme interpretation of, DOL's regulations. They stated their belief that § 541.118(a)(6) allows public employers to make occasional deductions in the salary of individual employees without defeating the salary basis for all employees, so long as the deductions are not significant in relation to the total compensation paid all similarly classified exempt employees; moreover, that the exemption would be lost for an individual employee if the deductions in pay are regular and recurring vis-a-vis that individual employee; that in the event of occasional deductions, a public employer should be permitted to pay overtime to the affected employees who have been docked for the specific work periods in which the deductions were made without losing the exemption for employees whose pay was not docked or for the docked employees in pay periods in which no docking took place; and, that in the event of regular and recurring deductions, the exemption should be denied to the affected employee only, in all workweeks it is claimed, including those weeks when no deductions are made. They supported their views by noting prior Wage and Hour opinion letters which they asserted stated that occasional docking of salary by a public employer, after exhaustion of available leave, would only result in a loss of the exemption for the employee whose pay was docked, and only then for the period (i.e., workweek) in which the deduction occurred (citing opinion letters of the Wage and Hour Administrator dated January 15, 1986 ((reprinted in Fair Labor Standards Handbook For States, Local Governments & Schools, supra, p. 69)); January 17, 1986 ((unpublished)) ((which states that "[w]here an occasional deduction that is not permitted by § 541.118 is made from the salary of an otherwise exempt employee, the exemption would be lost in that workweek when the deduction was made.")); and July 17, 1987 ((reprinted in Fair Labor Standards Handbook For States, Local Governments & Schools, supra, p. 159)) ((discussing "losing the exemption for that week" and noting "[i]t is our opinion that, although the employee would be considered a nonexempt employee during those weeks when paid on an hourly rate basis, it would not affect the employee's exempt status in other weeks when the employee is paid on a salary basis.")).) Some courts, they observed, had adopted positions consistent with their interpretations and, in fact, had relied upon the cited opinion letters in deciding that the exemption was still available to public employers operating such leave "systems" that reduced the pay of employees for absences of less than a day.[9]

F. The Department's September 1991 Rulemaking

Because of concerns that the unexpected liabilities threatened to seriously impair the fiscal integrity of many State and local governmental agencies, and would disrupt widespread, long-standing pay practices that had been designed to serve the public trust, the Department undertook separate rulemaking on the specific issue of application of the "salary basis"

[4] See, e.g., *Atlanta Professional Firefighters Union* v. *Atlanta*, 920 F. 2d 800 (11th Cir. 1991); *Harris* v. *District of Columbia*, 709 F. Supp. 238 (D.D.C. 1989).

[5] See, *D.C. Nurses Assn.* v. *District of Columbia*, 29 WH Cases 868 (D.D.C. 1988).

[6] See, e.g., *Hartman* v. *Arlington County, Va.*, 720 F. Supp. 1227 (E.D. Va. 1989), aff'd, 903 F. 2d 290 (4th Cir. 1990); *Fire Fighters Local 2141* v. *City of Alexandria, Va.*, 720 F. Supp. 1230 (E.D. Va. 1989), aff'd, 912 F. 2d 463 (4th Cir. 1990); *Harkins* v. *City of Chesapeake*, 29 WH Cases 1399 (E.D. Va. 1988); *Chadwick* v. *City of Norfolk, Va.*, 29 WH Cases 1407 (E.D. Va. 1988); and *Sarver* v. *City of Roanoke, Va.*, 29 WH Cases 1442 (W.D. Va. 1989).

[7] See, e.g., *Abshire* v. *County of Kern*, 908 F. 2d 483 (9th Cir. 1990), cert. denied, 111 S.Ct. 785 (1991), rehearing denied, 111 S.Ct. 1341 (1991); *Banks* v. *City of North Little Rock*, 708 F. Supp. 1023 (E.D. Ark. 1988); *D'Camera* v. *District of Columbia*, 693 F. Supp. 1208 (D.D.C. 1988); *Hawks* v. *City of Newport News, Va.*, 707 F. Supp. 212 (E.D. Va. 1988); *Harrison* v. *District of Columbia*, 30 WH Cases 557 (D.D.C. 1991).

[8] Mayor David Dinkins of New York City described the situation in an August 14, 1991 letter to Secretary of Labor Lynn Martin as follows:

The City of New York, along with many other jurisdictions, faces serious fiscal problems. To meet those problems we have already cut services and laid off thousands of employees. The layoff of State and local government employees has been cited by the staff of the Federal Reserve Board as a reason for the continuing weakness in the economy. To exacerbate those fiscal problems and those layoffs to pay overtime to management employees because of the application to the public sector of a regulation designed for the private sector would be contrary to the public interest.

[9] See, e.g., *DC Nurses Assn.* v. *District of Columbia, supra*, 29 W.H. Cases at 869 n. 1; *Fire Fighters Local 2141* v. *City of Alexandria, VA., supra*, 720 F. Supp. at 1232; *Harris* v. *District of Columbia, supra*, 709 F. Supp. at 241.

rule to public sector employees, while continuing its overall review of the full range of issues under 29 CFR part 541 raised by the public comments submitted on its ANPR of November 19, 1985 (50 FR 47696). Recognizing the special circumstances of public sector employment, under which employees are paid pursuant to pay systems established according to principles of public accountability, and in light of the potentially enormous, unforeseen liability which could threaten the governments' fiscal integrity as a result of retroactive overtime payments to public employees considered exempt by their employers, the Department proceeded with rulemaking on an expedited basis, finding good cause to waive the normal requirement for prior notice and comment.

The Department published an Interim Final Rule (IFR) on September 6, 1991 (56 FR 45824), inviting public comments for 30 days, modifying the "salary basis" rules affecting eligibility for exemption under section 13(a)(1) of FLSA for employees in the public sector only. The Department issued the IFR to allow State and local governments to continue their public-accountability pay systems without incurring liability for overtime pay under FLSA to employees who would otherwise be exempt from the overtime pay requirements. A new § 541.5d was added to the regulations to provide that an otherwise exempt public sector employee who is paid according to a pay system that requires the use of paid leave for partial-day absences for personal reasons or due to illness or injury and, when leave is not used or is exhausted, reduces the employee's pay for such absences of less than one full work-day, will not be disqualified from exemption due to such pay system. The rule also provided that the exemption would not be defeated by deductions from salary caused by budget-required furloughs that are not regular and recurring, except in the workweek in which a deduction occurs. The Department left all other aspects of the salary test unchanged, as well as the duties and responsibilities tests of the exemption, as applied to employees in the public sector.

The Department also published a Notice of Proposed Rulemaking (NPRM) on the same day (56 FR 45828; September 6, 1991), inviting public comment for 30 days on a separate proposal at 29 CFR 541.118(a)(6)(ii) to allow public sector employers with pay systems as specified in the IFR, under which past deductions were made in the pay of otherwise exempt public employees for absences of less than one work-day for personal reasons or due to sickness or injury, to reimburse the employees for those deductions that occurred before the IFR went into effect and thereby restore the employees' eligibility for exemption. The regulatory proposal also provided that the "salary basis" component of the exemption would not be disallowed under such pay systems where no actual deductions were made before the IFR went into effect. Upon review of the comments submitted on the NPRM, the Department is withdrawing the proposal from further consideration and it will not be implemented as a final rule. See, published elsewhere in today's **Federal Register**, a document that withdraws this NPRM. The Department will be proposing a legislative remedy to address such retroactive liability.

In response to a request from representatives of labor organizations affiliated with the AFL–CIO and its Public Employee Department, on October 4, 1991, the Department extended the public comment period for an additional 30 days on both the IFR and the NPRM (see 56 FR 50256; 56 FR 50302), and the period for public comment closed on November 6, 1991.

The Department received a total of 398 comments during the comment period, generally as follows:

—229 in favor, from governmental entities, associations or individuals (23 States or State agencies and other entities (e.g., university, etc.); 124 cities (or agencies thereof); 46 counties (or agencies thereof); 29 associations of governments (e.g., National League of Cities, U.S. Conference of Mayors, National Association of Counties, etc.); and 7 others including law firms;

—169 opposed, from employees, unions and associations, law firms, or individuals (137 employees, including 114 individuals who are employee-plaintiffs in a lawsuit pending against the City of New York); 25 employee associations/unions; and 7 others, including law firms.

In addition, in response to the President's directive to Federal agencies to involve the public and other interested parties in evaluating existing regulations and programs to identify initiatives that would eliminate unnecessary regulatory burdens or otherwise promote economic growth, the Department published a Request for Information in the **Federal Register** on February 24, 1992 (57 FR 6301), requesting public input on the Department's current regulations and those under consideration in terms of identifying burdens placed on the economy, inhibitions to growth, and the benefits achieved by the regulations. Representatives of the governments of thirty States, the District of Columbia, Salt Lake City, Utah, Personnel Administrators of Texas Senior Colleges and Universities, the International Personnel Management Association, and the National Association of State Personnel Executives responded to this Notice offering views on the effect of Regulations, 29 CFR part 541, on the public sector, stating that lawsuits were resulting in windfall back wage payments as a result of technical violations of the "salary basis" test, and suggesting other areas of difficulty under the duties and responsibilities tests for exemption as an "administrative" employee under § 541.2. Several comments were also received suggesting revisions or review of other aspects of Regulations, 29 CFR part 541, including its application to the private sector. Some private sector commenters have suggested that modern compensation practices, especially those adopted to provide increased flexibility in the workplace and to reduce artificial distinctions among classes of employees, have made the salary basis test anachronistic. The Department is currently reviewing these comments, as well as those received in response to the 1985 ANPR, in order to determine what further rulemaking proceedings may be appropriate with regard to these and the other issues raised.

With regard to the public sector, which is the subject of this rulemaking, it is clear to the Department, after review of all of the comments, that certain aspects of the "salary basis" test for distinguishing exempt from nonexempt employees did not serve their intended purpose when applied to the public sector, as aspects of the "salary basis" requirement are unduly restrictive when applied in the public sector. In the Department's view, these aspects are not valid indicators of the *bona fides* of a claimed exemption under section 13(a)(1) in the public sector where every employee may theoretically be subject to potential docking for partial-day absences. State and local governments were thus being inappropriately deprived of the opportunity to apply the section 13(a)(1) exemption to their employees who would otherwise be properly exempt. For these reasons, the Department is of the view that public sector pay systems have to be analyzed differently from private sector pay systems.

The major comments received on the current rulemaking are summarized below, together with a discussion of the

significant changes that have been made in the final regulatory text in response to the comments received. A number of comments were submitted that focused on issues in the regulations on which the Department had not proposed changes or invited public comment, which the Department will not be addressing at this time. However, to the extent appropriate, the Department will consider these views in the context of its overall review of the full range of issues being considered in connection with the Department's November 1985 ANPR and February 1992 Request for Information.

III. Summary of Major Comments

As a preliminary matter, one law firm (Fisher & Phillips) commented that the narrative discussion in the preamble to the IFR (at p. 45824 of the September 6, 1991, **Federal Register**) incorrectly stated the requirements of the salary test in the exemptions discussed in part 541 when it suggested that "[c]ompensation must be greater than the amount specified in the regulations, and must be 'on a salary basis.' " The comment is correct. Under the regulations, compensation must be ". . . at a rate of not less than . . ." the amounts specified in the regulations.

Comment: Clarify the applicability of the remaining elements of the "salary basis" test.

Several commenters (American Federation of Teachers (AFT); International Association of Fire Fighters (IAFF); United Auto Workers (UAW)) commented that it was not clear that public employers continued to remain subject to all other aspects of the "salary basis" test in the regulations, stating that some public employers have attempted to argue in pending lawsuits that the Department's interim final rule completely eliminated all aspects of the "salary basis" test in the public sector.

The Department's interim final rule did not eliminate altogether the "salary basis" test in the public sector. A public sector employer must still be able to demonstrate that a claimed exempt employee satisfies all other aspects of the "salary basis" requirements for exemption. The interim final rule states specifically that to be exempt under the new exception an employee must be one "* * * who otherwise meets the requirements of § 541.118 * * *," the regulation which defines payment on a salary basis. The new § 541.5d added to the regulations provides that an otherwise exempt public sector employee would not be disqualified from exemption "* * * on the basis that * * *" the employee is paid according to public pay systems that require the use of paid leave and, when leave is not used or is exhausted, reduce employees' pay for absences of less than one full work-day for personal reasons or due to illness or injury. The rule also provided that eligibility for exemption would not be defeated by deductions from salary caused by budget-required furloughs that are not regular and recurring, except in the workweek in which a deduction occurs. Only partial-day deductions from pay when leave was not used or was exhausted and furlough-required deductions were addressed by the interim final rule. All other aspects of the salary test were left unchanged for the public sector, as these commenters pointed out.

Comment: The method used by the Department of Labor to consider and issue the rules was unfair and improper.

A number of commenters affiliated with the AFL–CIO (American Federation of State, County and Municipal Employees (AFSCME); AFT; American Postal Workers Union (APWU); IAFF; Laborer's International Union of North America (LIUNA); Los Angeles County Professional Peace Officers Association; and Service Employees International Union (SEIU)) suggested that the Department of Labor had issued the rules after sudden extensive involvement with employer groups and with no advance notice to representatives of employees who might be affected. Several objected to what they perceived as the Department of Labor acting at the request of a select group of employers without independent investigation or consultation with other affected parties, and without prior notice and comment pursuant to normal rulemaking procedures.

During the spring and early summer of 1991, following the decision of the Ninth Circuit in *Abshire* and the Supreme Court's January 1991 denial of *certiorari* and March 1991 denial of petition for rehearing, the Department received numerous communications requesting immediate attention to and resolution of the public sector issues relating to the "salary basis" test. The Department met and consulted with public employers and their representatives concerning these matters. The Department also met with representatives of the AFL–CIO and affiliated unions concerning these issues, both before the regulations were published in the **Federal Register** and after the regulations were published, but before the close of the initial public comment period. Furthermore, in response to a specific request made by the AFL–CIO and affiliated unions during the latter meeting, the Department agreed to extend the public comment period to allow additional time for the submission of views from the public. The implication that the Department has been one-sided or purposely excluded important interests in its efforts to try to resolve this matter with its regulations is, in the Department's view, unfounded.

As stated in the preamble to the interim final rule (56 FR 45825), the Secretary found good cause to implement the interim final rule without prior notice and comment, on the basis that delay in implementing a corrective rule pending comment would be contrary to the public interest. The Department had determined, in the aftermath of *Abshire* and the diverging judicial interpretations and confusion that developed, that it was necessary and appropriate to proceed to immediate rulemaking and simultaneously invite comments for consideration in the preparation of any final rule which would be determined to be appropriate based on the public comment received.

It had become apparent to the Department, as a result of court decisions in private litigation and the communications it received, that the previously existing rules and enforcement policy were inadequate for effectuating the statutory exemption in the public sector. The availability of the exemption to public employers was increasingly sharply limited, contrary to the expressed intent of Congress in the 1974 Amendments. Public sector employers were accordingly being confronted with unexpected liabilities in very substantial amounts for employees considered exempt by their employers, and who assertedly would have been exempt but for the public accountability pay systems established well before extension of the Act to public sector employees. Because such awards could threaten State and local governments' fiscal integrity, the Department determined it was appropriate to change the "salary basis" rule on an *interim* basis so as to forestall additional liability while comments were received and considered in the process of developing and promulgating any final rule.

The Department is aware that district courts in California, in private actions to which the Department was not a party, have found the interim final rule to be invalid on the basis that the Department failed to comply with the notice and comment procedures of the Administrative Procedure Act.[10] These

[10] *SEIU* v. *County of San Diego*, 784 F. Supp. 1503 (S.C. Cal. 1992); *Alex* v. *State of California*, 30 WH Cases 1353 (E.D. Cal. 1992); *Morsch* v. *City of Los Angeles*, No. CV 91-0401 JGD (C.D. Cal., May 4, 1992).

courts reached their decisions without the benefit of evidence from or briefing by the Department, and apparently without full consideration of the facts underlying the Secretary's determination that the situation was so serious as to require interim action while comments were sought thereon. The Department continues to believe that good cause existed for issuing an interim regulation without prior notice and comment. In any event, the Department has given full, fair and open-minded attention to all of the comments it received, treating the interim final rule for these purposes as a proposal, and has fully complied with the requirements of the Administrative Procedure Act in the promulgation of this final rule.

Comment: It is inappropriate to apply the section 13(a)(1) exemption for public sector employers differently than for private sector employers.

A number of commenters (AFT; Carrol, Burdick & McDonough on behalf of the California Department of Forestry Employees Association (Local 2881 IAFF); Brenda J. Carter, Esq.; Davis, Reno & Courtney on behalf of the Engineers and Architects Association, Los Angeles, CA; IAFF; International Union of Police Associations; LIUNA; National Association of Police Organizations; SEIU; and Zwerdling, Paul, Leibig, Kahn & Thompson) suggested that there is no basis for the Department to distinguish between the private and public sectors under the section 13(a)(1) exemption. Some of these commenters pointed to the 1985 FLSA Amendments as clear evidence that the lack of attention to this issue by Congress in those Amendments reflected a specific Congressional intent not to distinguish between these two types of employment for purposes of applying section 13(a)(1) of the Act. Another commenter (Council of Engineers and Scientists Organizations) stated that the 1974 FLSA Amendments demonstrate that Congress intended to extend the same, equal protection to employees in the public and private sectors. One other commenter (AFSCME) suggested that the Department could have encouraged public employers to alter their policies concerning deductions of less than a day or that less drastic remedial measures could have been taken, such as altering the regulations to require that an actual deduction of pay occur before the exemption is lost.

The regulations defining the section 13(a)(1) exemption, largely in their present form, were adopted long before Congress extended the rights and protections of the FLSA to employees in the public sector.[11] Thus, the practice of docking public employees' pay for partial-day absences when paid leave was not available was not initially a concern in the administration of section 13(a)(1) of the FLSA.

Significantly, the existing regulatory requirements were adopted following public hearings in the 1940's and 1950's, which included evidence from witnesses showing that *bona fide* executive, administrative, and professional employees in the industries at that time subject to the FLSA were almost universally paid on a salary basis. These fact-based inquiries, conducted before the public sector became subject to the FLSA, did not include an examination of prevailing governmental pay practices. The historical record based on contemporaneous evidence also indicated that employees who did not meet the salary test generally also did not meet the other requirements of the exemption.[12] The opposite is true with respect to the Department's current rulemaking, which was intended to address prevailing public sector pay systems operating under statute, ordinance, regulation, or other established public policy requiring all employees, including otherwise-exempt managers and executives, to use accrued leave time or incur a reduction in pay for any absences from work.

When FLSA coverage was extended to include public sector employees, separate provisions were not added to the regulations to define the section 13(a)(1) exemption in a manner that would distinguish public from private sector employment.

However, it is clear from a plain reading of FLSA's legislative history in 1974 (quoted in section II.B. above) that Congress intended for the section 13(a)(1) exemption to be available for public sector employees. Congress presumably was unaware that, because many public sector compensation systems preclude payment for hours not worked, these systems would, solely for that reason, be found to fail to meet the regulatory "salary basis" component of the exemption. In light of the public accountability principles prevalent in public sector pay systems, the regulatory requirements adopted before Congress extended FLSA coverage to State and local governments simply could not operate in a manner that effectively distinguished exempt from non-exempt public employees. The regulations were thus out of harmony with the intent of the statute because State and local governments could not practically avail themselves of the exemption intended by Congress, and thus were inappropriate as applied in the public sector.

The fact that public sector employers had pay systems that prevent them from paying employees for part-day absences when paid leave is not available, and thus could invalidate the exemption for all employees "subject to" such pay systems under the principles set forth in *Abshire*, was not generally recognized to be the problem it is today when the 1985 Amendments were enacted. The 1985 legislation's silence on this issue is not indicative, in the Department's view, of an intent to make the section 13(a)(1) exemption unavailable to public sector employers because of the nature of their pay systems.

Congress expressly authorized the Secretary of Labor to prescribe the requirements for exemption under section 13(a)(1) of the Act when it provided that "* * * such terms are defined and delimited from time to time by regulations of the Secretary * * *." Had Congress felt that the Department should not be free to revisit and revise its regulations in the future based on its enforcement experiences, it would have amended the statute to remove the Secretary's discretion to "* * * define[] and delimit[] from time to time by regulations * * *." The Congress has not made such a change throughout the history of the Act despite the numerous opportunities by the Congress over the years to amend section 13(a)(1).

Furthermore, the regulations promulgated immediately after enactment of the FLSA to implement section 13(a)(1) of the Act contained a section entitled "Petition for amendment of regulations" which provided, in part, that:

> [I]n determining * * * future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

This provision has remained a part of the regulations throughout their history. See 29 CFR 541.6 (1991). The Department has always had authority under these regulations to consider separate treatment of the public sector.

In light of the court decisions and representations by affected parties, the Department has determined that strictly

[11] The general requirement that an exempt employee be paid "on a salary basis" has been an integral part of the regulations since 1940, and 29 CFR 541.118 ("salary basis") has remained essentially unchanged since revisions were last made in 1954.

[12] See, e.g., Proposed revision of Regulations, Part 541, under the Fair Labor Standards Act, Report and Recommendations (U.S. Department of Labor, Wage and Hour and Public Contracts Divisions, Washington, D.C., March 3, 1958), p.2.

applying all aspects of the salary basis rule to the public sector under section 13(a)(1) has produced results that do not effectuate the intended purposes of the Act. The Department considers it inconsistent with Congressional intent and inappropriate that the exemption be denied in the public sector to virtually all employees solely because their pay is subject to deduction for partial day absences where paid leave is not used, pursuant to pay systems that were established according to principles of public accountability, and, in some cases, imposed by law, ordinance or regulation, even before Congress extended the Act's coverage to the public sector. As a result, the Department has determined that these specific elements of the "salary basis" test are not valid indicators in the public sector of the bona fides of a claimed exemption under section 13(a)(1), and the revisions herein are necessary in order to give effect to the staturtory exemption in the public sector as intended by Congress under the 1974 Amendments.

It is important to note that public pay systems, in many cases, are the result of requirements in State constitutions and statutes, civil service systems, city charters and ordinances, or regulations. Even if it were procedurally possible to change personnel policies through amendments to constitutions and charters and the repeal of all applicable laws and ordinances, it appears to the Department that the changes in public policy and tradition required for governments to conform to the Department's salary basis requirements, as interpreted by the Abshire court, are not consistent with the public accountability principles supported and required by the public. Thus, with respect to AFSCME's suggestion that the regulations could have been revised to require an actual deduction in pay for the exemption to be lost, principles of public accountability embodied in the need to be accountable to the taxpayers for the expenditure of public funds only for hours actually worked require that the exemption criteria for the public sector take into account the fact that the pay systems at issue reduce pay for partial-day absences when leave is exhausted. As initially expressed in the preamble of the IFR, the Department's understanding that public sector employers necessarily must be held to a higher standard of accountability regarding the use of public funds in paying public employees was confirmed by the comments received during the rulemaking process. Consequently, to limit the rule to disallowing exemption in those workweeks that pay is reduced for absences not covered by available paid leave, as suggested, would simply not be responsive and would result in a rule that remains inadequate for appropriately distinguishing exempt from non-exempt employees in the public sector.

Comment: Rules should address additional compensation paid by public employers, not just deductions from compensation.

Three commenters (City of Fort Worth, TX; Law Department, Salt Lake City, UT; and Spencer Fane Britt & Browne) noted that some courts have viewed additional pay and benefits computed on an hourly basis as evidence that an hourly rate was paid in lieu of a salary—i.e., compensation at straight-time hourly rates for overtime hours worked; compensatory time-off of one hour of each overtime hour worked (i.e., hour-for-hour). These commenters stated that an exempt employee should be able to receive such additional compensation, including compensatory time, without defeating the salary basis test of the exemption.

Exempt employees may receive additional compensation in addition to a guaranteed salary without defeating the salary basis in accord with § 541.118(b), entitled "Minimum guarantee plus extras," which was not open for comment during the present rulemaking affecting the public sector.

The Department expects to address this issue as appropriate in proposed revisions of Part 541 at a later date.

The new § 541.5d modifies the "salary basis" test only by providing that an otherwise-exempt public sector employee under certain circumstances would not be disqualified from exemption where a deduction is taken from the employee's pay for part-day absences. The change was proposed because of public sector employers' inability, because of principles of public accountability, to avoid not paying their employees for hours not worked, thereby necessitating deductions for such part-day absences. Principles of public accountability do not provide a basis for making a special public sector rule for additional compensation paid.

Comment: The "salary basis" test should be deleted for public sector employees.

Four commenters (City of Bellingham, WA; County of Fairfax, VA; Florida League of Cities; and Law Department, Salt Lake City, UT) suggested that the "salary basis" test should be deleted altogether, or made inapplicable as in Senate Bill S. 1670 (Seymour, CA), 102nd Cong., 1st Sess., or replaced with a minimum salary level, increased from present levels, above which the "salary basis" test would not apply.

The Department's IFR was narrowly drafted in response to a demonstrated need to specifically address the particular fact that the existing "salary basis" test in the regulations produced inappropriate results when applied to public sector compensation systems which, based on principles of public accountability, reduce pay for partial-day absences for personal reasons or due to sickness or injury when leave is not used. All other requirements of the salary test were left unchanged as applied to employees in the public sector. Sufficient justification has not been shown in the comments to warrant eliminating altogether the "salary basis" requirement or making it inapplicable to public sector employees paid above some minimum "upset" salary level.

Comment: Revise the regulations to reflect differences in the nature of public sector jobs.

Several commenters (CA Department of Personnel Administration; International Personnel Management Association; National Association of State Personnel Executives; and University of California) suggested that the concept that public sector employment differs significantly from that of the private sector should be expanded to the duties and responsibilities tests, noting in particular the "administrative" employee exemption in § 541.2 and perceived difficulties in applying "production work" concepts to the modern work place typical of today's government employees. One commenter (Human Relations Department, Chatham County, GA) suggested the Department pursue an entirely separate set of regulations for the public sector. These comments do not address the "salary basis" subject matter of the current rulemaking and will have to be dealt with at a later date when revisions to § 541.2 are considered and proposed for public comment.

Comment: Permit more deference to be given to collective bargaining agreements under the FLSA.

Two commenters (Florida League of Cities; Law Department, Salt Lake City, UT) suggested that the Department of Labor should defer to the agreement of the parties to collective bargaining agreements in addressing situations that are covered by such agreements, for example: in areas such as the treatment of court appearance time (as overtime); a negotiated non-compensable 15-minute line-up time; and use of beepers, take-home vehicles, and "K-9" dogs. The suggestions are not within the

purview of the subject matter of the current rulemaking. They would also be inconsistent with the long-standing principle under the FLSA that employees cannot waive their rights to statutory benefits enacted to effectuate a legislative policy.[13]

Comment: § 541.118(a)(5) regarding deductions for penalties imposed for infractions of safety rules of major significance should be broadened to include disciplinary suspensions of public sector employees.

Several commenters (Arnstein & Lehr on behalf of the City of Naperville, IL; County Attorney, Fulton County, GA; Fisher & Phillips) stated that disciplinary situations are unique in the public sector, particularly in organizations like police departments, or different from those of the private sector because public employers have less freedom to terminate employees absent extraordinary circumstances and thus must use disciplinary suspensions without pay to rehabilitate or control behavior; that public employers have virtually no other penalty options; and that suspension for a full week, which can be done without jeopardizing exempt status, is rarely imposed because of its severity. One commenter (County Attorney, Dade County, FL) suggested that disciplinary systems promulgated by statute, ordinance, administrative order, standard procedure, or collective bargaining should be treated in the same manner as the new regulation treats deductions for partial-day absences. One commenter (Fisher & Phillips) noted that such disciplinary systems were in place at the time of the Garcia decision and are premised on the concept that public employers should be accountable to the taxpayers for the conduct of public employees. Another commenter (City of Norfolk, VA) stated that failure to allow disciplinary deductions in the case of exempt employees could result in inconsistent application of discipline among exempt and non-exempt employees.

In the Department's judgment, the comments have not suggested a sufficient basis for distinguishing between the public and private sectors with respect to any recommended change in the rule. Although contrary assertions were made, the comments failed to demonstrate that public employers are significantly more restricted in the availability of options with respect to employee discipline than private employers. Although public employee terminations may require compliance with procedures designed to protect employee rights, termination for disciplinary reasons is not generally unavailable. In addition, other remedies for disciplinary infractions, such as official reprimands, demotions, and reassignment or restriction of duties, are generally available and used in the public sector.

Section 541.118(a)(5) was not open for comment during the present rulemaking. However, the Department expects to consider this issue as appropriate in proposed revisions of Part 541 at a later date.

Comment: Clarify or delete the terms "regular and recurring" in § 541.5d(b) concerning deductions due to budget-required furloughs.

Two commenters (County Attorney, Fulton County, GA; University of California) urged that the phrase "regular and recurring" be deleted to make clear that deductions due to any budget-required furloughs not affect exempt status, or that the phrase be defined in a manner that permits monthly furlough days to be considered not "regular and recurring." Another (AFT) questioned whether "regular and recurring" would mean annually; or, every six months?

The intent of this provision was to permit State and local governments facing severe financial difficulties which may require laying off employees to make decisions concerning how best to address such situations, including through use of furloughs, without having to also anticipate additional adverse financial consequences which would only aggravate their financial distress from a later determination under the Department's regulations that the furloughed employees became non-exempt and entitled to additional retroactive overtime pay simply because of deductions made due to the budget-required furloughs. We have determined from our reexamination of the regulatory language in light of the comments received that the reference to "regular and recurring" should be deleted as suggested. A public sector employer should not be penalized by the decision to spread individual furlough days out over an extended period so as to lessen the severity of the adverse financial impact on employees, in contrast to the potentially harsher result of being required to impose a single longer-term furlough of at least one week at one time. Appropriate modifications have accordingly been made in the final rule.

Comment: The term "budget-required furlough" in § 541.5d(b) should be defined.

Two commenters suggested clarification of the term "budget-required furlough." One (AFT) questioned whether the term envisioned deductions in circumstances where a legislature passes a budget but the chief executive, at odds with the legislature, vetoes the budget and lays off or furloughs employees. Another (IAFF) recommended that the term pertain only to a budget crisis in which all employees suffer pay reductions because of across-the-board furloughs.

The Washington, DC, Office of the Governor of the State of California considered the term problematic because it implies that an employer must justify that a furlough is indeed "required," and suggested instead use of the term "budget-related."

It is possible that in the absence of a rule allowing for otherwise-exempt public sector employees to be furloughed without losing their exempt status in other, non-furlough workweeks, the burdens of any budget-required furloughs could fall disproportionately on non-exempt employees of the governmental entity facing the budget shortfall because exempt employees could not be furloughed without invalidating their salaried basis of pay under § 541.118(a)(1). The intent of the rule was to permit public sector employers facing financial difficulties from budget shortfalls so severe that they must furlough employees in order to avoid lay-offs and/or an illegal deficit to be empowered to make appropriate decisions on how best to implement furloughs without risking additional retroactive overtime liabilities and even higher potential deficits because of the furloughs. If insufficient funds exist to pay even base salaries, there would certainly be no funds available to pay additional unanticipated, retroactive, across-the-board overtime payments to otherwise-exempt employees.

Thus, in response to the comments received, furloughs resulting from the chief executive vetoing the budget passed by the legislature would be considered within the intended scope of the term "budget-required." Moreover, the Department does not intend to limit the rule solely to across-the-board furloughs or place other unwarranted restrictions on the decisionmaking authority of public employers in operating furloughs. For example, if the furlough provision was limited only to furloughs generally affecting all employees, a State or local government would be precluded from designating certain employees as exempt from all or part of the furlough and required to

[13] See, e.g., *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697 (1945); *Barrentine* v. *Arkansas Best Freight Systems, Inc.*, 450 U.S. 728 (1981).

report for duty during the furlough period, on grounds they are essential to the continued operation of the government's functions or the orderly suspension of these functions.

The Department did not intend that the term "budget-required" would necessitate a factual determination in each case that there were no other means available other than a furlough to avoid a budgetary deficit. On the other hand, the Department does not intend for the provisions of § 541.5d(b) to permit a public employer to make deductions from exempt employees' pay for any reasons other than an official furlough of employees and, therefore, does not believe it is appropriate to use the term "budget-related" as suggested. Accordingly, the Department does not believe, after carefully considering the comments received, that further substantive changes are required in the rule in this regard.

Comment: Clarify the meaning of the phrase "workweek in which such deductions occurred" in § 541.5d(b).

One commenter questioned during which workweek a furloughed employee was to be treated as non-exempt—the week the furlough day was taken, the week the reduced pay check is received, or one of the weeks for which the pay check represents the employee's compensation? The exemption is lost in the workweek in which the furlough day is taken and for which the employee's pay is accordingly reduced. The language has been clarified in the final rule.

Comment: Clarify that all improper deductions result in loss of the exemption only for the particular employee docked and only in the workweek of the improper deductions.

One commenter (City of Chicago) suggested, in effect, that the new rule relating to furloughs be extended to any and all improper deductions so that the exemption would be lost only in the week(s) in which deduction(s) occur. Depending on the circumstances surrounding the impermissible deductions actually made, the suggested clarification would not be consistent with the existing provisions at § 541.118(a)(6) which hold that the effect of making a deduction which is not permitted will depend upon the facts in the particular case. The Department considers the suggested change to be a significant departure from long-standing policy that is not substantiated by comment. Nor has any basis been presented to give special treatment in this regard to the public sector. It has, therefore, not been adopted in the final rule.

Comment: Include situations where the employee does not have permission to use available leave credits.

One commenter (Director of the Budget, State of New York) made the observation that negotiated agreements often require employees to obtain the employer's approval to be absent from work and be eligible to apply leave credit to be paid for the absence. Apparently, if the absence is unauthorized under such agreements, the employee is denied the use of leave credits and pay is reduced.

If advance approval of an absence is required under the terms of the employer's leave policy and is not sought or is sought and denied in a particular instance, leave availability for such employee is no different than when leave has been "exhausted." The commenter's recommendation that language be added to address this condition has been adopted, and the final regulation has been clarified in this regard.

Comment: The reference to "Federal, State or local government employee" should be replaced by "public agency employee."

One commenter suggested that use of the term "public agency employee" would be more consistent with the statutory language used by Congress when coverage was extended to the public sector (29 U.S.C. 203 (d) and (e)(2)). The Department agrees that use of a uniform term is appropriate, and the suggestion has been adopted in the final rule.

Comment: Allow deductions for periods of illness or injury of one or more workdays regardless of whether there is a leave plan.

One commenter expressed concern that some small public employers have no sick-leave plans, and, thus, would not be able to deduct for absences of one or more days for illness or injury under § 541.118(a)(3) without losing eligibility for the exemption, or would have to adopt a minimal plan to satisfy the test for *bona fide* plan, policy or practice in order to permit such deductions without losing such eligibility. This problem arises for the public employer whose pay system requires deductions for any time not worked, but which does not have any kind of plan for compensating employees for lost time due to sickness or injury and which is located in a State that does not require a disability insurance plan. According to opinions issued over the years by the Wage and Hour Administrator, the plan that an employer would have to adopt to preserve exempt status for its employees can be simple and need not be particularly generous, so long as it is impartially allocated to the affected employees. In this regard, there is no requirement in § 541.118(a)(3) for any specific amount of leave to be stated under such plans, thus allowing considerable flexibility under the regulations.

Comment: The phrase "* * * established by statute, ordinance, regulation or public policy * * *" should be deleted or clarified.

Several commenters (Epstein Becker & Green; New York City Housing Authority; San Francisco Redevelopment Agency; Washington, DC, Office of the Governor of the State of California) questioned the intended meaning of this phrase and recommended that it be either clarified or deleted. One of these commenters suggested that many State and local governments may not have pay systems established by statute, etc., and that the courts may narrowly interpret the term "public policy." Other commenters (AFT; IAFF) expressed a belief that the undefined term will be applied too broadly and generate litigation. One commenter suggested that the regulation incorporate the explanation of "public policy" contained in the preamble to the IFR, i.e., that it encompasses any practice or policy derived from principles of public accountability. The National League of Cities suggested that the addition of the term "or practice" would more fully reflect public pay systems. One comment expressed concern that the phraseology would be under-inclusive, e.g., potentially might not include a negotiated memorandum of understanding or written internal operating procedures. This commenter suggested replacing the clause with "* * * pay system established in writing or by public policy evidenced by past practice * * *" Other comments suggested that there was no need to identify the particular source of the "policy," or that there was no justifiable reason for distinguishing among the methods by which governmental entities establish their policies or practices.

The purpose of the phrase in question was to enable public sector employers to operate pay systems based on principles of public accountability without incurring unanticipated overtime liabilities to employees who would otherwise be exempt but for the practice of docking pay for partial-day absences when leave was not used. However, it is the Department's view that the relief contemplated by the rule should only be available where the policy or practice of docking pay when leave is not used is based on principles of publi : accountability, as the record

demonstrates is generally the case. Public accountability is a broad concept that forms the foundation for many governmental administrative practices, including most public sector pay systems, and is derived from the desires of taxpayers that their government be accountable to them for expenditures from the public treasuries. Public accountability embodies the concept that elected officials and public agencies are held to a higher level of responsibility under the public trust that demands effective and efficient use of public funds in order to serve the public interest. It includes the notion that the use of public funds should always be in the public interest and not for individual or private gain, including the view that public employees should not be paid for time they do not work that is not otherwise guaranteed to them under the pertinent civil service employment agreement (such as personal or sick leave), and the public interest does not tolerate wasteful and abusive excesses such as padded payrolls or "phantom" employees. In response to the comments received, the Department is clarifying in the final rule what was intended by "public policy" by substituting the phrase "policy or practice established pursuant to principles of public accountability."

Comment: Delete the phrase "* * * (because the leave has been exhausted or by the employee's choice) * * *"

One commenter stated that this phrase is under-inclusive in that it does not take into account the practice of docking an employee's pay for being absent without leave (AWOL) for less than a day. The commenter suggested deleting the phrase. This concern has been addressed in the final rule with respect to the change made regarding systems that require employees to obtain advance permission to be eligible to utilize leave to be paid for absences.

Comment: Clarify the phrase "* * * requires the employee's pay to be reduced * * *"

One commenter observed that this phrase may be interpreted to exclude a public pay system where the practice of docking pay is, to any degree, *discretionary* with the public employer. This commenter suggested that the regulations be revised to read "* * * the public employee's pay can be reduced * * *"

The regulation protects public sector employers from a finding of non-exempt status solely because their pay system requires deductions from pay when leave is not used for the reasons stated in the regulations. If a deduction from pay (or the decision not to deduct) is based purely on the employer's discretionary choice, compensation would be "subject to deduction" for a reason other than that specified in the IFR. The change suggested by the commenter would broaden the exemption to include all deduction practices, whether or not required by the pay system, and whether or not mandatory or discretionary. We do not believe that this suggestion is consistent with the underlying justification for initiating the rulemaking, i.e., that principles of public accountability require that public sector employees not be paid for hours not worked that are not otherwise covered by an entitlement under an employment agreement, such as paid leave.

Comment: Delete the clause "* * * for personal reasons or because of illness or injury * * *".

One commenter proposed that this clause be deleted because it, too, would narrow the permissible reasons for docking pay for AWOL absences of less than a day. As previously discussed, AWOL absences have been addressed in the final rule, which treats unauthorized absences in the same manner as instances where leave is not available because it has been exhausted.

Comment: Clarify the status of leave deductions.

Several commenters (AFT; the cities of Alhambra and San Jose, CA, and Norfolk, VA; SEIU; UAW) observed that the rule referred to pay deductions only and was silent on the issue of whether deductions from paid leave accounts for partial-day absences can affect the determination of salaried status. Under the terms of this regulation, deductions from either accrued leave or pay when leave is not used for the reasons stated, will not disqualify an employee from being paid "on a salary basis." It is the Department's position that an employer can require an employee to substitute paid leave for absences of less than a day without losing the exemption for that week because, in such circumstances, the employee does not experience a deduction from pay.

Executive Order 12291

This rule is not considered to be a "major rule" within the meaning of Executive Order 12291, in that, under the status quo pre-*Abshire*, most of the employees materially affected by the rule change were considered by their employers to be exempt, notwithstanding public sector pay systems under which their pay is subject to deductions for absences of less than one day. Furthermore, under the Department of Labor's enforcement policy established in January 1987, the exempt status of affected employees was not denied by the Department for such partial-day absences affecting otherwise-exempt employees. Therefore, the rule is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The Department has determined that this rulemaking will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that under the status quo pre-*Abshire*, most public employers consider otherwise-exempt employees to be exempt, notwithstanding public sector pay systems under which employees' pay is subject to potential deductions for absences of less than one day. Furthermore, under the Department of Labor's enforcement policy established January 1987, the exemption would generally not be denied by the Department to such employees.

Document Preparation

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

Accordingly, part 541 of title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, on this 14th day of August 1992.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

1. The authority citation for part 541 is revised to read as follows:

Authority: 29 U.S.C. 213; Pub. L. 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1945–53 Comp., p. 1004); Secretary's Order No. 13–71 (36 FR 8755).

2 Section 541.5d of subpart A of part 541 is revised to read as follows:

§ 541.5d Special provisions applicable to employees of public agencies.

(a) An employee of a public agency who otherwise meets the requirements of § 541.118 shall not be disqualified from exemption under §§ 541.1, 541.2, or 541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because—

(1) permission for its use has not been sought or has been sought and denied;

(2) accrued leave has been exhausted; or

(3) the employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid "on a salary basis" *except* in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

[FR Doc. 92–19878 Filed 8–18–92; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

29 CFR Part 541

Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of withdrawal of regulatory proposal.

SUMMARY: This is to advise the public that the U.S. Department of Labor is withdrawing its notice of proposed rulemaking published in the **Federal Register** on September 6, 1991 (56 FR 45828). This proposal would have allowed governmental entities to restore eligibility for exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and the rules governing payment "on a salary basis" at 29 CFR part 541, § 541.118(a)(6), for otherwise-exempt public employees subject to pay systems that provide for the use of paid leave and, when accrued leave is not used, result in deductions from pay for absences of less than one work-day. In the light of public comments and the decision of the Supreme Court in *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204 (1988), the Department has decided to withdraw the proposal and not implement it as a final rule.

DATES: This withdrawal is effective August 19, 1992.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–8412 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under the FLSA, 29 U.S.C. 201 *et seq.*, unless an exemption otherwise applies, employees must be compensated at a rate not less than one and one-half times their regular rate of pay for all hours worked over 40 per week. Section 13(a)(1) of the Act, 29 U.S.C. 213(a)(1), provides a statutory exemption from this requirement, and from the requirement to pay at least the minimum wage, as well, for employees employed in a *bona fide* executive, administrative, or professional capacity, as follows:

Section 13. (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *)

The scope of the exemptions provided by section 13(a)(1) of the FLSA is defined and explained in Department of Labor regulations codified at 29 CFR part 541.

In the **Federal Register** of September 6, 1991 (56 FR 45828), the Department issued a proposed rule to provide that eligibility for the exemption under the regulatory requirement that employees be paid "on a salary basis" would not be defeated in the case of governmental entities that either: (1) Made no deductions from the pay of otherwise exempt employees for absences of less that one work-day before the effective date of new regulations promulgated at 29 CFR 541.5d, or (2) reimbursed otherwise-exempt employees for deductions from pay made for absences, for personal reasons or because of illness or injury, of less than one work-day that occurred before the effective date of § 541.5d. The proposal was intended to operate in conjunction with the Department's newly-published interim final rule applying the salary basis requirement in the public sector, published separately on September 6, 1991, 56 FR 45824, at 29 CFR 541.5d. The public comment period on both the interim final rule and the proposal closed November 6, 1991.

A total of 398 comments were received during the comment period on the interim final and the proposal from cities, counties, states, governmental associations, employees, employee unions and associations and law firms. A number of commenters suggested that the proposal was inconsistent with the decision of the Supreme Court in *Bowen.*

Upon reconsideration of the proposal in the context of the *Bowen* and subsequent case law, the Solicitor of Labor has concluded that the proposal, if promulgated as a final rule, would constitute invalid "retroactive" rulemaking. As a consequence, it is necessary to withdraw the proposal from further consideration and it will not be implemented as a final rule. Instead the Department intends to support legislative action to address this issue.

Document Preparation

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, DC, on this 14th day of August 1992.

Lynn Martin,

Secretary of Labor.

Carl M. Dominguez,

Assistant Secretary for Employment Standards.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

[FR Doc. 92–19879 Filed 8–18–92; 8:45 am]

BILLING CODE 4510–27–M

Federal Register

Wednesday
August 19, 1992

Part VIII

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Advisory Committee Meeting and Proposed Actions Under the Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 14–15, 1992. The meeting will be held at the Marriott Hotel of Bethesda, 5151 Pooks Hill Road, Bethesda, Maryland 20814, starting at approximately 9 a.m. on September 14, 1992, to adjournment at approximately 5 p.m. on September 15, 1992. The meeting will be open to the public to discuss the following proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958):

Proposed Major Actions to the NIH Guidelines;

Additions to Appendix D of the NIH Guidelines Regarding Nine Human Gene Therapy/Gene Transfer Protolcols, a new expression vector system derived from Semliki Forest Virus, and Introduction of a Gene Coding for Tetracycline Resistance into Porphyromonas gingivalis;

Other Matters To Be Considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 11, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–19928 Filed 8–18–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recombinant DNA Research; Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 14–15, 1992. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by August 25, 1992, will be reproduced and distributed to the RAC for consideration at its September 14–15, 1992, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301–496–9839

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, 301–496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Bank

In a letter dated May 14, 1992, Dr. Arthur Bank, Columbia University, New York, New York, indicated his intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Use of Human MDR Gene in Patients with Advanced Cancer.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Roth

In a letter dated March 19, 1992, Dr. Jack A. Roth, MD, Anderson Cancer Center, University of Texas, Houston, Texas, indicated his intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Clinical Protocol for Modification of Oncogene and Tumor Suppressor Gene Expression in Non-Small Cell Lung Cancer (NSCLC).

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Lotze

In a letter dated May 1, 1992, Dr. Michael T. Lotze, University of Pittsburgh, Pittsburgh, Pennsylvania, indicated his intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Gene Therapy of Cancer: A Pilot Study of IL–4 Gene Modified Antitumor vaccines.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Deisseroth

In a letter dated June 8, 1992, Dr. Albert D. Deisseroth, MD, Anderson Cancer Center, University of Texas, Houston, Texas, indicated his intention to submit a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Use of Retroviral Markers to Evaluate the Efficacy of Purging and to Discriminate Between Relapse which Arises from Systemic Disease Remaining after Preparative Therapy

Versus Relapse due to Residual Neoplastic Cells in Autologous Marrow Following Purging in Patients with Chronic Lymphocytic Leukemia (CLL).

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Walker and Blaese

In a letter dated July 20, 1992, Drs. Robert Walker and R. Michael Blaese, National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Study of the Safety and Survival of the Adoptive Transfer of Genetically Marked Syngeneic Lymphocytes in HIV Infected Identical Twins.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Schuening

In a letter dated July 17, 1992, Dr. Friedrich G. Schuening, Fred Hutchinson Cancer Research Center, Seattle, Washington, submitted three human gene transfer protocols to the Recombinant DNA Advisory Committee for formal review and approval. The titles of these protocols are: (1) Phase I/II Study of the Use of Recombinant Human Interleukin 3 (rhIL3) Stimulated Peripherial Blood Progenitor Cell Supplementation in Autologous Bone Marrow Transplanation in Patients with Breast Carcinoma or Hodgkin's Disease; (2) Evaluation of the Use of Recombinant Human G–CSF Stimulated Peripheral Blood Progenitor Cell Supplementation in Autologous Bone Marrow Transplanation in Patients with Lymphoid Malignancies, and (3) A Trial of G–CFS Stimulated Peripheral Blood Stem Cells for Engraftment in Identical Twins.

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Brenner and Mills

In a letter dated June 5, 1992, Dr. Malcolm K. Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, and Dr. Bonnie J. Mills of Baxter Healthcare Corporation, Santa Ana, California, indicated their intention to submit a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Phase II Trial of the Baxter Neuroblastoma Bone Marrow Purging System using Gene Marking to Assess Efficacy.

VIII. Addition to Appendix D of the NIH Guidelines Regarding Semliki Forest Virus/Dr. Temple

In a letter dated July 20, 1992, Dr. Gary F. Temple, Life Technologies, Inc., Gaithersburg, Maryland, is requesting permission to conduct experiments with a Semliki Forest Virus (SFV)–SQL helper expression system at Biosafety Level 2.

IX. Addition to Appendix D of the NIH Guidelines Regarding the Introduction of a Gene Coding for Tetracycline Resistance into Porphyromonas gingivalis/Dr. Progulske—Fox

In a letter dated July 1, 1992, Drs. Carolyn Keierleber and Ann Progulske-Fox of the University of Florida, Gainesville, Florida, are requesting permission to conduct experiments which involve the introduction of a gene coding for tetracycline resistance into Porphyromonas gingivalis at Biosafety Level 2.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 6, 1992.

Daryl A. Chamblee,

Acting Associate Director for Science Policy and Legislation, NIH

[FR Doc. 92–19929 Filed 8–18–92; 8:45 am]

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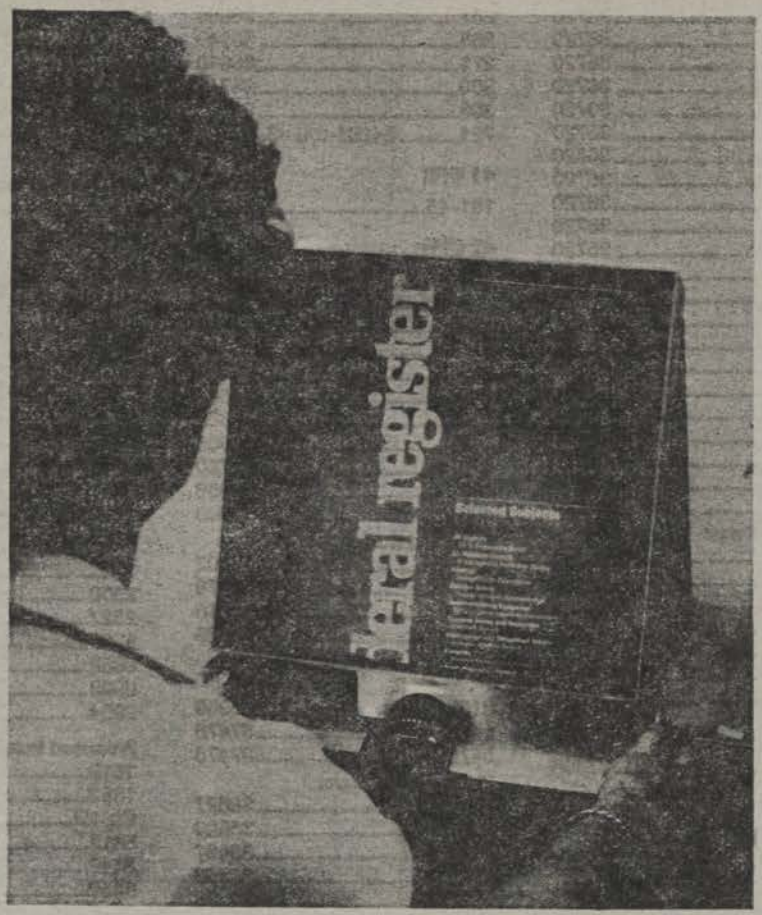
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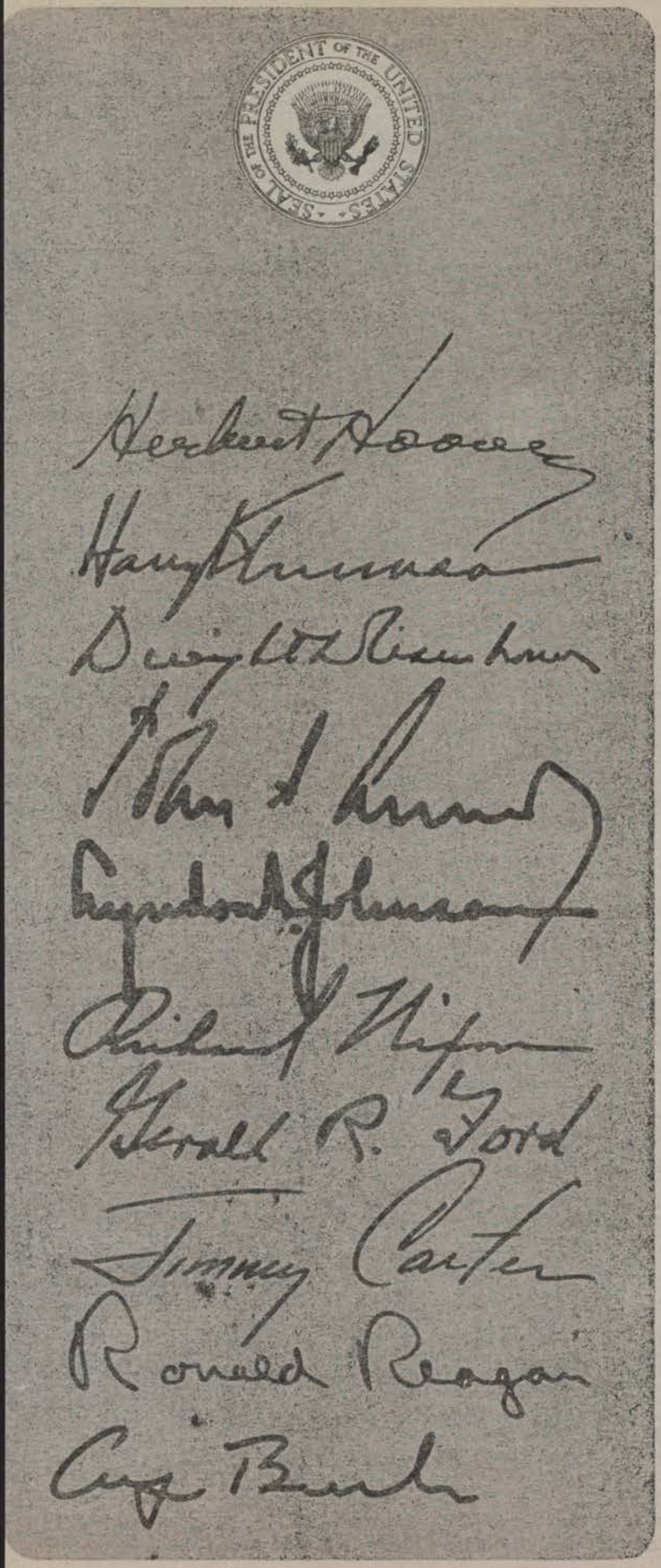
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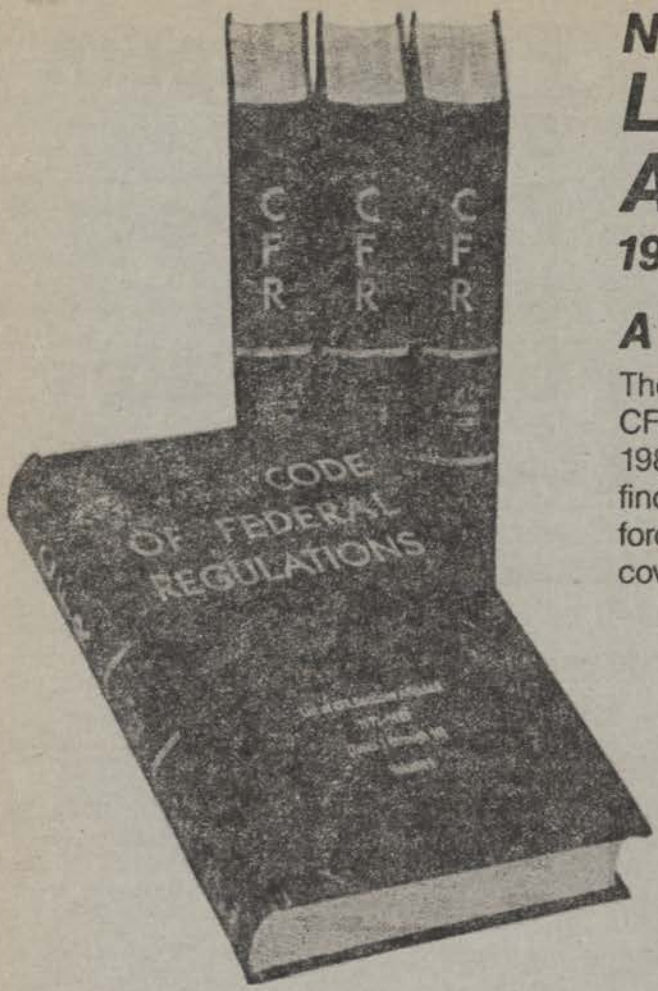
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