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

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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.

WASHINGTON, DC

WHEN: February 2 and March 5 at 9:00 a.m.

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC

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Presidential Documents

Title 3—

The President

Executive Order 12831 of January 15, 1993

Additional Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3 of the United States Code, in view of United Nations Security Council Resolutions No. 757 of May 30, 1992, and No. 787 of November 16, 1992, and in order to take additional steps with respect to the actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the national emergency described and declared in Executive Order No. 12808 and expanded in Executive Order No. 12810,

I, GEORGE BUSH, President of the United States of America, hereby order:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order:

(a) Any transaction within the United States or by a United States person related to the transshipment of commodities or products through the Federal Republic of Yugoslavia (Serbia and Montenegro); and

(b) Any transaction within the United States or by a United States person relating to any vessel in which a majority or controlling interest is held by a person or entity in, or operating from, the Federal Republic of Yugoslavia (Serbia and Montenegro) regardless of the flag under which the vessel sails.

Sec. 2. Any vessel in which a majority or controlling interest is held by a person or entity in, or operating from, the Federal Republic of Yugoslavia (Serbia and Montenegro) shall be considered as a vessel of the Federal Republic of Yugoslavia (Serbia and Montenegro) regardless of the flag under which the vessel sails.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purpose of this order. Such actions may include prohibiting or regulating trade and financial transactions involving any areas of the territory of the former Socialist Federal Republic of Yugoslavia as to which there is inadequate assurance that such transactions will not be diverted to the benefit of the Federal Republic of Yugoslavia (Serbia and Montenegro). The Secretary of the Treasury may redelegate the authority set forth in this order to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

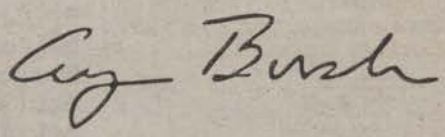
Sec. 4. Section 3(i) of Executive Order No. 12810 is hereby revoked.

Sec. 5. The definitions contained in Section 5 of Executive Order No. 12810 apply to the terms used in this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order is effective immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register.**



THE WHITE HOUSE,
January 15, 1993.

[FR Doc. 93–1587
Filed 1–15–93; 4:26 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 58, No. 12
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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.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection and Official Weighing Services

AGENCY: Federal Grain Inspection Service.

ACTION: Interim rule; postponement of effective date.

SUMMARY: The Federal Grain Inspection Service (FGIS) is postponing indefinitely the February 1, 1993, fee increases for Official Inspection and Official Weighing Services. The interim rule was published in the January 8, 1993, **Federal Register** (58 FR 3213). The postponement of the effective date is to provide additional opportunity to review the fee increases as published in the **Federal Register.**

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0624, South Building, P.O. Box 96454, Washington, DC, 20090–6454; telephone (202) 720–0920, FAX (202) 720–4628.

SUPPLEMENTARY INFORMATION: FGIS published in the January 8, 1993, **Federal Register** (58 FR 3213), an interim rule with request for comment, increasing its fees (effective February 1, 1993) by 3.7 percent for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The change was intended to cover, as nearly as practicable, the FGIS operating costs, including related supervisory and administrative costs. The change did not include an increase in fees for administration and supervision of Official Agencies or for inspection and weighing services in Canada.

This action postpones indefinitely the February 1, 1993, effective date of the interim rule published in the **Federal Register** on January 8, 1993 (58 FR 8213). The postponement of the effective date will provide additional opportunity to review the fee increases as published in the **Federal Register.** The interim rule provided that comments were to be submitted on or before March 3, 1993, and this date remains unchanged.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: January 13, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93–1248 Filed 1–19–93; 8:45 am]

BILLING CODE 3410–EN–M

Agricultural Marketing Service

7 CFR Parts 1001, 1004, 1124

[DA–92–40]

Milk in the New England, Middle Atlantic, and Pacific Northwest Marketing Areas; Determination of Equivalent Nonfat Dry Milk Price Series

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Determination of equivalent price series.

SUMMARY: This action determines two equivalent nonfat dry milk (NDM) price series to be used in computing Class III–A milk prices under the New England, Middle Atlantic, and Pacific Northwest milk orders. The New England and Middle Atlantic orders use the Central States Extra Grade Nonfat Dry Milk price series in the Class III–A price computation. The Pacific Northwest order uses the Western States Grade A Nonfat Dry Milk price series in the Class III–A price computation. The Department has announced that effective January 4, 1993, nonfat dry milk prices will be reported on a different basis for each region. Rather than reporting separate prices for Extra Grade and Grade A NDM, prices will be reported on a combined basis. Under this determination, the new combined Central States NDM price series will be used under the New England and Middle Atlantic orders and the new combined Western States NDM price series will be used under the Pacific Northwest order in the computation of Class III–A prices.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable provisions of the orders, as amended, regulating the handling of milk in the New England (part 1001), Middle Atlantic (part 1004), and Pacific Northwest (part 1124) marketing areas, it is hereby found and determined that:

(1) Each of the aforementioned three orders provides for a Class III–A classification and pricing of skim milk and butterfat used to produce nonfat dry milk. The Class III–A price formula is based in part on the f.o.b. plant monthly prices of nonfat dry milk. The New England and Middle Atlantic orders use the Central States price series for Extra Grade nonfat dry milk. The Pacific Northwest order uses the Western States price series for Grade A nonfat dry milk. These price series are reported by the Department in Dairy Market News.

(2) The December 11, 1992, issue of Dairy Market News contains notices that effective January 4, 1993, NDM prices for the Central States and Western States regions will be reported on a different basis. Rather than reporting separate prices in each region for Extra Grade and Grade A NDM, prices will be reported in each region on a combined basis. Thus, the separate price series for Extra Grade NDM and for Grade A NDM will be discontinued and will not be available for the use in computing Class III–A prices.

(3) The three orders provide that if for any reason a price or pricing constituent required by the order for computing class prices or for other purposes is not available as prescribed in the order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

(4) The intent of a NDM price series in the Class III–A price formula is to reflect a representative wholesale market value of NDM each month in the monthly class price computation for milk used to make NDM.

(5) The reason the Department will be reporting only a single NDM price series

in each region is that the declining production of certain grades of NDM has resulted in the lack of representative NDM prices to report.

(6) The new price series for NDM in each region will be based on available wholesale prices of NDM in the respective regions and will be representative of NDM values in each region. The two new price series will properly serve the intent of the NDM price series in the Class III–A price Computations.

(7) Therefore, the new Central States NDM price series is determined to be equivalent to the Central States Extra Grade NDM price series and the new Western States NDM price series is determined to be equivalent to the Western States Grade A NDM price series for purposes of computing the Class III–A prices under the orders.

(8) Notice of proposed rulemaking, public procedure thereon and 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The NDM price series reporting changes were effective January 4, 1993. The orders require that the Class III–A price for January milk deliveries be announced on or before February 5, 1993, and be based on NDM prices during January 1993.

(b) This determination is necessary to have an appropriate NDM price series under each of the orders for the January 1993 Class III–A prices and subsequent monthly price announcements until the orders are amended.

(c) This determination does not require persons affected substantial or extensive preparation prior to the effective date.

(d) This action is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the respective marketing areas.

Therefore, good cause exists for making this determination effective on January 4, 1993.

List of Subjects in 7 CFR Parts 1001, 1004, and 1124

Milk marketing orders.

The authority citation for 7 CFR parts 1001, 1004, and 1124 continues to read as follows:

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

Dated: January 13, 1993.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–1245 Filed 1–19–93; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–133–AD; Amendment 39–8454; AD 93–01–01]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model DHC–7 series airplanes, that requires a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. This amendment is prompted by a report of a takeoff procedure that was completed with an inadvertent flap setting of 0 degrees. The actions specified by this AD are intended to prevent a takeoff with an incorrect flap indication of 25 degrees when the flaps are retracted, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane.

DATES: Effective February 25, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Model DHC–7 series airplanes was published in the **Federal Register** on August 17, 1992 (57 FR 36928). That action proposed to require a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary.

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

One commenter states that the compliance time of 60 days for accomplishing the one-time inspection may be excessive. The commenter considers that the proposed compliance time will expose the affected airplanes, passengers, and flight crew to an increased risk of the addressed unsafe condition. The FAA does not concur with the need for a shorter compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the normal maintenance schedules for the majority of the affected fleet. The proposed compliance time of 60 days was determined to be appropriate in consideration of the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required modification parts. In addition, the FAA determined that the probability of the occurrence of the unsafe condition is sufficiently low to warrant a compliance time of 60 days.

One commenter requests that the proposal be amended to include a provision to alert flight crews of potentially inaccurate flap indications. The commenter notes that this could be accomplished by either adding a placard on the instrument panel, or by incorporating the warning in the FAA-approved Airplane Flight Manual (AFM). The FAA does not concur. The FAA has determined that the affected airplanes already have a flap trailing edge caution light, which serves to warn the flight crew that the flap position indication does not agree with actual flap position. The FAA has determined that this warning is sufficient to alert the flight crew to verify the actual flap position prior to takeoff.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 50 airplanes of U.S. registry will be affected by this

AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,500, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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 airworthiness directive:

93-01-01. De Havilland, Inc.: Amendment 39-8454. Docket 92-NM-133-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 3 and subsequent, having Modification No. 7/2093 installed, except airplanes fitted with Customer Special Installation 78358 (flap indication rework); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a takeoff with an incorrect flap indication, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, in accordance with paragraph III. of de Havilland Alert Service Bulletin S.B. A7-27-86, dated December 19, 1991. If any discrepancies are detected, prior to further flight, modify the assembly in accordance with the service bulletin.

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

(d) The inspection and modification shall be done in accordance with de Havilland Alert Service Bulletin S.B. A7-27-86, dated December 19, 1991. 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 de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 25, 1993.

Issued in Renton, Washington, on December 21, 1992.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-1355 Filed 1-19-93; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 92-NM-236-AD; Amendment 39-8467; AD 93-01-13]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes. This action requires a visual inspection to detect chafing, scratches, and dents on the fuel line between the main wing tank and the collector tank, and replacement of the fuel line, if necessary; and an inspection to ensure that the clearances between the fuel line and the landing gear parts are within the specified limit, and corrective action, if necessary. This amendment is prompted by reports of chafed and dented fuel feed lines between the main wing tanks and the collector tanks, which was caused by interference between the fuel line and the main landing gear uplock actuator and associated piping. The actions specified in this AD are intended to prevent uncontrolled fuel leakage into the wheel well.

DATES: Effective February 5, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 5, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-236-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 series airplanes. The RLD advises that during a recent flight check, an operator of a Model F27 series airplane found a fuel leak in a rear fuel feed line between the main wing tank and the collector tank. Further investigation revealed that the fuel line between these two tanks was chafed and dented due to interference between the fuel line and the main landing gear uplock actuator and associated piping. Inspections of this operator's fleet revealed six additional cases of chafed fuel lines in the left- and right-hand nacelles. This condition, if not corrected, could result in uncontrolled fuel leakage into the wheel well.

Fokker has issued Service Bulletin F27/28–61, dated September 3, 1992, that describes procedures for a visual inspection to detect chafing, scratches, and dents on the fuel line between the main wing tank and the collector tank, and replacement of the fuel line, if necessary; and an inspection to ensure that the clearances between the fuel line and the landing gear parts during retraction and in the uplock position are within the specified limit, and corrective action, if necessary. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92–102, Issue 2, dated October 23, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent uncontrolled fuel leakage into the wheel well. This AD requires a visual inspection to detect chafing, scratches, and dents on the fuel line between the main wing tank and the collector tank, and replacement of the fuel line, if necessary; and an inspection to ensure that the clearances between the fuel line and the landing gear parts are within the specified limit, and corrective action, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD 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–NM–236–AD." The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from 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 airworthiness directive:

93–01–13. Fokker: Amendment 39–8467. Docket 92–NM–236–AD.

Applicability: Model F27 series airplanes; except Model F27 Mark 050 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontrolled fuel leakage into the wheel well, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to detect chafing, scratches, or dents on the fuel lines on the left- and right-hand nacelles, in accordance with part 1 of the

Service Bulletin F27/28–61, dated September 3, 1992.

(b) If no chafing, scratches, or dents are found during the inspection required by paragraph (a) of this AD, the fuel line may remain installed. However, within 100 hours time-in-service after the effective date of this AD, perform a visual inspection for clearances between the fuel line and the landing gear parts, in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–61, dated September 3, 1992; and accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If the clearance between the fuel line and the landing gear parts is less than 0.25 inch, prior to further flight, adjust the landing gear components to achieve a minimum clearance of 0.25 inch, in accordance with the service bulletin.

(2) If the clearance between the fuel line and the landing gear parts is 0.25 inch or greater, no further action is required by this AD.

(c) If any chafing or scratches are found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish both paragraphs (c)(1) and (c)(2) of this AD:

(1) Measure the damage depth and accomplish either paragraph (c)(1)(i), (c)(1)(ii,) or (c)(1)(iii) of this AD, as applicable.

(i) If the depth of chafing or scratch damage is equal to or greater than 0.009 inch, prior to further flight, replace the damaged fuel line, in accordance with Chapter 28–00–00 of the Airplane Maintenance Manual.

(ii) If the depth of chafing or scratch damage is 0.004 inch or more, but less than 0.009 inch, re-inspect the damaged fuel line in accordance with paragraph (a) of this AD thereafter at intervals not to exceed 10 hours time-in-service; and replace the damaged fuel line within 50 hours time-in-service after the effective date of this AD, in accordance with Chapter 28–00–00 of the Airplane Maintenance Manual.

(iii) If the depth of chafing or scratch damage is less than 0.004 inch, the fuel line may remain in place.

(2) Perform a visual inspection for clearances between the fuel line and the landing gear parts, in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–61, dated September 3, 1992, and accomplish either paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable.

(i) If the clearance between the fuel line and the landing gear parts is less than 0.25 inch, prior to further flight, adjust the landing gear components to achieve a minimum clearance of 0.25 inch, in accordance with the service bulletin.

(ii) If the clearance between the fuel line and the landing gear parts is 0.25 inch or greater, no further action is required by this AD.

(d) If any dent is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish both paragraphs (d)(1) and (d)(2) of this AD:

(1) Measure the damage depth and accomplish either paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) If the depth of the dent is equal to or greater than 0.1 inch, prior to further flight, replace the dented fuel line, in accordance with Chapter 28–00–00 of the Airplane Maintenance Manual.

(ii) If the depth of the dent is less than 0.1 inch, the fuel line may remain installed.

(2) Perform a visual inspection for clearances between the fuel line and the landing gear parts, in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–61, dated September 3, 1992; and accomplish either paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable.

(i) If the clearance between the fuel line and the landing gear parts is less than 0.25 inch, prior to further flight, adjust the landing gear components to achieve a minimum clearance of 0.25 inch, in accordance with the service bulletin.

(ii) If the clearance between the fuel line and the landing gear parts is 0.25 inch or greater, no further action is required by this AD.

(e) 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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

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

(f) 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.

(g) The inspections, replacement, and adjustment shall be done in accordance with Fokker Service Bulletin F27/28–61, dated September 3, 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 5, 1993.

Issued in Renton, Washington, on January 11, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1359 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–NM–105–AD; Amendment 39–8453; AD 92–27–18]

Airworthiness Directives; McDonnell Douglas Model DC–10 and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 and KC–10 (military) series airplanes, that requires visual inspection of the left and right main landing gear (MLG) pistons to detect inward buckling, and replacement of the MLG piston, if necessary. This amendment also requires either modification or replacement of the rebound check valve. This amendment is prompted by several incidents of MLG piston failure. The actions specified by this AD are intended to prevent failure of the MLG piston and subsequent reduced controllability of the airplane during landing.

DATES: Effective February 25, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–121L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to McDonnell Douglas Model

DC–10 and KC–10 (military) series airplanes was published in the Federal Register on August 27, 1992 (57 FR 38801). That action proposed to require visual inspection of the left and right main landing gear (MLG) pistons to detect inward buckling, and replacement of the MLG piston, if necessary. That action also proposed to require either modification or replacement of the rebound check valve.

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

One commenter supports the rule as proposed.

One commenter requests that the applicability statement of the AD be revised to delete McDonnell Douglas Model DC–10–30 and –40 series airplanes. The commenter notes that none of the reported incidents of MLG piston failure have occurred on Model DC–10–30 or –40 series airplanes. Additionally, the commenter notes that pistons on Model DC–10–30 and –40 series airplanes have a thicker wall than those on the Model DC–10–10 and –15 series airplanes; therefore, the commenter considers that the thicker wall provides Model DC–10–30 and –40 series airplanes with a greater margin of safety. The FAA does not concur. The manufacturer has conducted an analysis to simulate failure of the MLG rebound check valve on Model DC–10–30 and –40 series airplanes. This analysis revealed that the pistons installed on Model DC–10–30 and –40 series airplanes are at risk for developing excessive rebound chamber pressures. The FAA has concurred with the manufacturer's analysis and has determined that these airplanes are subject to the addressed unsafe condition. To remove them from the applicability statement of this AD would be inappropriate.

The same commenter requests that the compliance time for inspecting, reworking, and replacing the rebound check valve be extended from the proposed 5 years to 7 years for Model DC–10–30 and –40 series airplanes in order to coincide with regular maintenance schedules. This commenter notes that the normal interval for MLG overhaul for airplanes in its fleet is 20,000 landings. Based on this commenter's average utilization rate, the average number of years between MLG overhauls is 7 years. Accomplishment of the inspection and modification of the MLG piston during regularly scheduled gear overhaul would minimize the cost and workload impact on this commenter. The FAA does not concur with the commenter's request to extend the compliance time. The FAA has determined that the compliance time, as proposed, provides ample time within which affected operators can schedule time for a maintenance base visit. It also represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspection, rework, and replacement without compromising safety. Maintenance schedules vary from operator to operator; therefore, an extension of the compliance time to accommodate one operator's schedule would not necessarily ensure that the modification would be accomplished within the regular maintenance schedules of all of the affected operators.

Several commenters request an extension of the compliance time for accomplishing the inspection and modification of the MLG piston from the proposed 2 years to 2.5 years for Model DC–10–10 and –15 series airplanes. These commenters note that to require that the proposed requirements be accomplished within the proposed compliance time would disrupt current MLG maintenance programs and would necessitate that the required actions be accomplished on an unscheduled basis; this would place an unwarranted financial burden on operators and would disrupt not only regularly scheduled maintenance but operation schedules, as well. In addition, one of these commenters notes that it began including the rebound check valve modification in its regular MLG maintenance program at the time of the issuance of McDonnell Douglas DC–10 Service Bulletin 32–227, dated January 21, 1991; to mandate the proposed compliance time would require this operator to revise its current maintenance program schedule that already addresses the requirements of the proposed AD.

Another commenter requests an extension of the compliance time for accomplishing the inspection and modification of the MLG piston from the proposed 2 years to 5 years for Model DC–10–10 and –15 series airplanes. This commenter notes that its fleet has not experienced an occurrence of the subject unsafe condition during 20 years of operating Model DC–10's. This commenter also considers that requiring the modification within the proposed compliance time would impose an unwarranted financial and maintenance burden on this commenter's operations.

The FAA concurs that the compliance time for the inspection and modification requirements for these airplanes can be extended somewhat. Extending the compliance time by 6 additional months will not adversely affect safety, and will allow the modification to be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. Paragraph (a) of the final rule has been revised to specify a compliance time of 30 months. However, the FAA does not concur to extend the compliance time to 5 years. The FAA has determined that Model DC–10–10 and –15 series airplanes (on which the MLG piston has not been previously modified in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, dated January 21, 1991) are especially susceptible to piston buckling failures caused by excessive rebound chamber pressures. Because of this risk, the FAA has determined that the incorporation of the new design rebound check valve on these airplanes must be expedited in order to ensure an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 423 McDonnell Douglas Model DC–10 and KC–10 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 195 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,205 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $299,325, or $1,535 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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 airworthiness directive:

92-27-18. McDonnell Douglas: Amendment 39-8453. Docket 92-NM-105-AD.

Applicability: Model DC-10-10, -15, -30, -40, and KC-10 (Military) series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) piston and subsequent reduced controllability of the airplane during landing, accomplish the following:

(a) For Model DC-10-10 and DC-10-15 series airplanes that have not been modified in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, dated January 21, 1991: Within 30 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Conduct a visual inspection of the right and left MLG pistons to detect inward buckling. If inward buckling of the MLG piston is detected, prior to further flight, replace the MLG piston in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(2) Determine if the rebound check valve previously has been replaced in accordance with McDonnell Douglas Service Bulletin 32-60, Revision 3, dated August 7, 1974; or Revision 4, dated November 6, 1974; or Revision 5, dated May 1, 1975; or Revision 6, dated June 20, 1975; (hereafter referred to as "SB 32-60").

(i) If the rebound check valve has not been replaced in accordance with SB 32-60: Within 30 months after the effective date of this AD, replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(ii) If the rebound check valve has been replaced in accordance with SB 32-60: Within 30 months after the effective date of this AD, rework or replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(b) For Model DC-10-10 and DC-10-15 series airplanes that have been modified in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, dated January 21, 1991; and for all Model DC-10-30 and DC-10-40 and KC-10 (military) series airplanes: Within five years after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD:

(1) Conduct a visual inspection of the right and left MLG pistons to detect inward buckling, in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992. If inward buckling of the MLG piston is detected, prior to further flight, replace the MLG piston in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(2) Determine if the rebound check valve previously has been replaced in accordance with SB 32-60.

(i) If the rebound check valve has not been replaced in accordance with SB 32-60: Within five years after the effective date of this AD, replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(ii) If the rebound check valve has been replaced in accordance with SB 32-60: Within five years after the effective date of this AD, rework or replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(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.

(e) The inspection, rework, and replacement shall be done in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 25, 1993.

Issued in Renton, Washington, on December 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-1358 Filed 1-19-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 91-NM-98-AD; Amendment 39-8452; AD 92-27-17]

Airworthiness Directives; Short Brothers, PLC, Model SD3-30 and SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3-30 and SD3-60 series airplanes, that requires locking the left and right low pressure (LP) levers in the open position using securing wires, and revising the Airplane Flight Manual (AFM). This amendment is prompted by reports that the LP lever, instead of the crossfeed lever, had been shut. The actions specified by this AD are intended to prevent inadvertent engine shutdown.

DATES: Effective February 25, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Shorts Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket,

1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Short Brothers, PLC, Model SD3–30 and SD3–60 series airplanes was published in the **Federal Register** on June 14, 1991 (56 FR 27468). That action proposed to require locking the left and right low pressure (LP) levers in the open position using securing wires, and revising the Airplane Flight Manual (AFM).

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

Two commenters request a design change for the levers of the left and right low pressure fuel shut-off valves, in order to provide a tactile indication of which valve lever is grasped, so that the LP levers will feel significantly different from the fuel crossfeed valve lever. The AD proposes to use securing wire to lock the levers of the left and right low pressure fuel shut-off valves to the open position to prevent inadvertent closure; however, the commenters maintain that under certain circumstances, a crew member might mistakenly overcome the resistance of the securing wire and inadvertently close the wrong valve. The FAA does not concur. The FAA considers that securing wire is the best solution available to quickly implement corrective action and that the securing wires will provide adequate deterrence to preclude unintentional usage. However, the FAA will encourage the manufacturer to develop a modification kit which will change the design of the low pressure fuel shut-off valve levers to allow for tactile discrimination of valve levers. Once such a modification is developed and approved, the FAA may consider further rulemaking.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,800, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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 airworthiness directive:

92–27–17. Short Brothers, PLC: Amendment 39–8452. Docket 91–NM–98–AD.

Applicability: All Model SD3–30 and SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent engine shutdown, accomplish the following:

(a) Within 120 days after the effective date of this AD, lock the left and right low pressure (LP) levers in the open position using securing wires, in accordance with Shorts Service Bulletins SD330–28–35 (for Model SD3–30 series airplanes) or SD360–28–20 (for Model SD3–60 series airplanes), both dated February 22, 1991; as applicable.

(b) Within 120 days after the effective date of this AD, following accomplishment of the modification required by paragraph (a) of this AD, revise the Limitations Sections of the FAA-approved Airplane Flight Manual (AFM) by inserting the following amendments, as applicable:

(1) For Model SD3–30 series airplanes:
SBH3.3 Amendment p/16,
SBH3.6 Amendment p/12

(2) For Model SD3–60 series airplanes:
SB4.3 Amendment p/19,
SB4.6 Amendment p/12,
SB4.8 Amendment p/14

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(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.

(e) The locking requirement shall be done in accordance with Shorts Service Bulletin SD330–28–35, dated February 22, 1991, and Shorts Service Bulletin SD360–28–20, dated February 22, 1991. The revisions to the Airplane Flight Manual (AFM) shall be done in accordance with the following list of AFM Amendment Documents and related effective pages:

AFM amendment document number	Page No.	Section No.
SBH3.3 Amendment p/16	5, 6	3
	7, 42	4
SBH3.6 Amendment p/12	5, 6	3
	7, 48	4
SB4.3 Amendment p/19	5, 6	3
	7, 50	4
SB4.6 Amendment p/12	5, 6	3
	7, 50	4
SB4.8 Amendment p/14	5, 6	3
	7, 50	4

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 Shorts Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 25, 1993.

Issued in Renton, Washington, on December 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1357 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203b

RIN 2700–AA80

Security Programs; Arrest Authority and Use of Force by NASA Security Force Personnel

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends agency regulations on security programs to comply with the changes identified by the General Counsel and the Inspector General and approved by Attorney General William P. Barr. This regulation implements section 304(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2456a), by establishing guidelines for the exercise of arrest authority and for the exercise of physical force, including deadly force, in conjunction with such arrest authority.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Hagen, 202–358–2312.

SUPPLEMENTARY INFORMATION: On February 11, 1992, NASA published its final rule, 14 CFR part 1203b, "Security Programs; Arrest Authority and Use of Force by NASA Security Force Personnel," in the **Federal Register** (57 FR 4926). This amendment changes paragraph 1203b(a)(3) concerning the issue of weapons being aimed to disable, and makes administrative, editorial changes to paragraphs 1203b.107(c)(1) and 1203b.108(d)(2).

NASA has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203b

Security programs, Arrest authority, Use of force.

PART 1203B—SECURITY PROGRAMS; ARREST AUTHORITY AND USE OF FORCE BY NASA SECURITY FORCE PERSONNEL

For reasons set forth in the Preamble, 14 CFR part 1203b is amended as follows:

1. The authority citation for 14 CFR part 1203b continues to read as follows:

Authority: Sec. 304(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2456a).

2. Section 1203b.107 is amended by revising paragraphs (a)(3) and (c)(1) to read as follows:

§ 1203b.107 Use of firearms.

* * * * *

(a) * * *

(3) Shoot to stop.

* * * * *

(c) * * *

(1) The incident shall be reported to the Installation Chief of Security who, in turn, will report it to the NASA Security Office as expeditiously as possible, with as many details supplied as are available.

(3) Section 1203(b).108 is amended by revising paragraph (d)(2) to read as follows:

§ 1203b.108 Management oversight.

* * * * *

(d) * * *

(2) Require security force officers exercising arrest authority to requalify semiannually with their assigned firearms; and

* * * * *

Dated: January 6, 1993.

Daniel S. Goldin,

Administrator.

[FR Doc. 93–1211 Filed 1–19–93; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8470]

RIN 1545–AR21

Intercompany Transfer Pricing Regulations Under Section 482

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. The Tax Reform Act of 1986 amended section 482. These regulations provide guidance implementing the amendment.

EFFECTIVE DATE: April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sim Seo of the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL–0401–88) (202–622–3840, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1369. The estimated annual burden per respondent/recordkeeper varies from .5 hours to 10 hours, depending on individual circumstances, with an estimated average 5.25 hours.

These estimates are approximations. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble in the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains temporary regulations amending the Income Tax Regulations (26 CFR part 1) under section 482 of the Internal Revenue Code. Section 482 was amended by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2561, *et seq.* Proposed regulations under section 482 were issued on January 30, 1992 (INTL–0372–88; INTL–0401–88, 57 FR 3571).

Need for Temporary Regulations

The provisions contained in this Treasury decision are needed immediately to provide guidance to the public with respect to intercompany transfer pricing under section 482. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b) of title 5 of the United States Code.

Explanation of Provisions

Introduction

The Tax Reform Act of 1986 (the Act) amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The legislative history of the Act states that the change was intended to assure that the division of income between related parties reasonably reflects the economic activities that each undertakes. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–637. The legislative history also expresses concern that insufficiently stringent standards had been used in determining whether an uncontrolled transfer is comparable to a controlled transfer. The legislative history specifically notes concern about the improper use of comparables with regard to "high-profit" potential intangibles, noting that it is especially difficult to obtain realistic comparables with respect to such intangibles because they seldom if ever are transferred to unrelated parties. See H.R. Rep. 99–426, 99th Cong., 1st Sess. (1985) at 424.

The White Paper

The Conference Committee report on the Act recommended that the Internal Revenue Service (the Service) conduct a comprehensive study of transfer pricing and consider whether regulations under section 482 should be "modified in any respect." In response, the Treasury Department and the Service issued a study of intercompany pricing (Notice 88–123, 1988–2 C.B. 458) on October 18, 1988 (the White Paper). Although the White Paper primarily addressed transfers of intangible property, it also addressed the application of section 482 to other types of transactions.

The White Paper proposed two approaches for determining an arm's length charge for intangible property in light of the commensurate with income standard. The first was a pricing approach that relied on two types of comparable transactions: the exact comparable method and the inexact comparable method. The second approach was an income-based approach that included two methods: the basic arm's length return method (the BALRM) and BALRM with profit split. The BALRM generally allocated income to the parties to a controlled transaction by assigning industry average returns to the assets and functions that the parties devoted to the business activity connected with the controlled transaction. In cases involving the exploitation of so-called "high-profit" intangibles, any residual profit would be divided among the parties on the basis of an estimate of the relative values of the intangibles that each contributed to the activity.

Many comments on the White Paper criticized the BALRM, arguing that the information needed to apply it generally would be unavailable, would be unfair to corporations whose returns vary considerably from the average, and would allocate too much income to U.S. entities. The Service also was urged to assign a greater role to inexact comparables and to reconsider the use of safe harbor rules.

The Proposed Regulations

In response to the comments received on the White Paper, the Internal Revenue Service issued proposed regulations under section 482 on January 30, 1992 (INTL–0372–88; INTL–0401–88, 57 FR 3571) (the proposed regulations). The proposed regulations proposed four major changes in the current regulations under section 482: That the scope and purpose of the regulations be modified to reflect the legislative changes to section 482; that new rules with respect to intangible property transfers be implemented; that the rules with respect to tangible property transfers be modified; and that detailed new cost-sharing regulations be introduced. The most significant change to the tangible and intangible property rules was the introduction of a new pricing method known as the comparable profit interval.

As part of the recommended changes to the scope and purpose of the regulations, the proposed regulations included a statement that a broad principle to be applied in all cases was whether uncontrolled taxpayers exercising sound business judgment would have agreed to the same terms in the same circumstances. In particular, the proposed regulations provided that so-called "round-trip" transactions (an integrated series of controlled transactions in which intangible property is licensed to an affiliate and the affiliate uses the intangible to produce tangible property for sale back to the licensor or another affiliate) be analyzed together.

The existing regulations (§ 1.482–2(d)) contain two approaches for determining an arm's length consideration for intangible property. The preferred approach is based on the comparable uncontrolled price method set forth in the tangible property rules, and the second is based on an analysis of twelve factors. The proposed regulations recommended that these rules be replaced with three new methods: The matching transaction method (the MTM), the comparable adjustable transaction method (the CATM), and the comparable profits method (the CPM).

A controlled transaction would satisfy the MTM if there was an uncontrolled transfer of the same intangible under the same, or substantially similar, economic conditions and contractual terms. This standard represented a tightening of the standards of comparability under the analog to the comparable uncontrolled price method of the existing regulations.

A controlled transaction would satisfy the CATM if there was an uncontrolled transfer of the same or a similar intangible under "adjustable" circumstances. Adjustments to the contractual terms and economic circumstances would be allowed if the effect of any differences could be determined with reasonable accuracy. In addition, the result of the controlled transaction was subject to verification by application of the Comparable Profit Interval (the CPI).

Under the CPM, the operating income resulting from the consideration charged in a controlled transaction (reported operating income) was compared with the reported operating incomes of similar uncontrolled taxpayers. The consideration charged in the controlled transaction would be considered arm's length if the taxpayer's reported operating income fell within the "comparable profits interval" (CPI).

The CPI was constructed in steps. First, "profit level indicators" (*e.g.*, rate of return on assets) for uncontrolled taxpayers in the applicable business classification of the controlled taxpayer were determined and applied to the controlled taxpayer's financial data for a period of three years to compute constructive operating incomes (COIs)

for the controlled taxpayer. The COIs that tended to converge comprised the CPI. If a taxpayer's actual results fell outside the CPI, the taxpayer generally was subject to adjustment to a point within the CPI known as the "most appropriate point." Relatively little guidance was provided with respect to determining the constructive operating incomes that converged to form the CPI and to determining the most appropriate point.

Unless one of three narrow exceptions applied, the proposed regulations implemented the commensurate with income standard of the Act by providing that these three methods could be applied to adjust the consideration charged for an intangible in the year of examination despite the fact that the same consideration may have been determined to be arm's length for an earlier taxable year.

The proposed regulations also modified the rules with respect to transfers of tangible property (§ 1.482–2(e)). The principal change was to require that results obtained from the application of the resale price method, the cost-plus method and so-called fourth methods fall within the CPI. This change was made in order to eliminate the need to allocate the value of an item of tangible property between its tangible and intangible components when such property contained elements of both types of property.

Finally, the proposed regulations altered the priority of methods under both the tangible and intangible property rules. While preserving a fixed priority of methods, the proposed regulations stated that it was not necessary to disprove the applicability of a method before applying a lower-priority method. Either the Service or the taxpayer could, however, subsequently establish that a higher-priority method applied and thereby override the results obtained under the lower-priority method.

The Service received numerous comments on the proposed regulations. In addition to receiving helpful comments from a large number of taxpayers and industry or professional groups, the Service received constructive comments from several tax treaty partners, both from individual countries and through such international fora as the Organization for Economic Cooperation and Development.

Commenters criticized several aspects of the proposed regulations. Many criticized the requirement that the results obtained under all methods except for exact comparable fall within the CPI, based on the view that such a requirement would elevate the CPM to equal or greater priority than the more traditional transaction-based methods such as the resale price method. Many commenters felt that elevating CPM to such a high level of priority was inconsistent with the arm's length standard. Other commenters criticized the very tight standards of comparability under the MTM, the narrow scope of the exceptions to the periodic adjustment rule, the degree of knowledge imputed to taxpayers under the sound business judgment rule, the relationship between the tangible and intangible property rules, the lack of guidance with respect to determining convergence and the most appropriate point under the CPM, and the failure to provide a safe harbor. Commenters generally praised the introduction of a range of acceptable results and the use of multi-year averages under the CPI, as well as the relaxation of the strict priority of methods under the existing regulations. Further description of the comments received is set forth in the discussion below.

Provisions of the Temporary Regulations

Section 1.482–1T

The scope and purpose provisions have been reorganized to make clear that the arm's length standard is the guiding principle for all allocations under section 482, and to provide additional guidance for determining comparability under the arm's length standard. Section 1.482–1T(a)(1) reaffirms that the purpose of section 482 is to ensure that taxpayers clearly reflect their income by placing a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the controlled taxpayer's true taxable income. Section 1.482–1T(a)(2) authorizes the district director to allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income among a group of controlled taxpayers when they have not reflected their true taxable income. Section 482–1T(a)(3) provides, as do the current regulations, that only the district director may apply the provisions of section 482, but clarifies that this restriction does not limit the taxpayer's ability to report its true taxable income. It has been asserted in the past that taxpayers were not permitted to report results that differed from transactional results in order to reflect an arm's length result on the tax return. A taxpayer's ability to report results that differ from its transactional results may be limited, however, by section 1059A.

Section 1.482–1T(b) summarizes several key principles that guide the application of section 482. These principles are summarized in this portion of the regulation because they are relevant under subsequent provisions. More specific guidance is provided under such subsequent provisions.

Section 1.482–1T(b)(1) reaffirms that in determining a taxpayer's true taxable income, the standard to be applied is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer (the arm's length standard). In this respect the regulations are consistent with the current regulations and reflect many comments on the proposed regulations, which stressed the importance of adhering to the arm's length standard. The arm's length standard is satisfied if the results of controlled transactions are consistent with the results that would have been realized had uncontrolled taxpayers engaged in a comparable transaction under comparable circumstances. Guidance for determining comparability of an uncontrolled transaction is provided in § 1.482–1T(c), discussed below.

Section 1.482–1T(b)(2) provides rules for determining the method or methods that will be applied in a particular case to test whether transactions between controlled taxpayers are at arm's length. First, § 1.482–1T(b)(2)(ii) provides that for some transactions it may be necessary to apply different methods to related transactions where such transactions are most reasonably tested on a separate basis (such as services and property).

Second, § 1.482–1T(b)(2)(iii)(A) provides a "best method rule" for selecting the method to be applied to test the arm's length character of a controlled transaction. In response to comments, the strict priority of methods in the proposed and current regulations has been abandoned. Rather, a much more flexible approach has been adopted. While the problems with a strict priority of methods are acknowledged, the drawbacks of such rigidity must be balanced against the need to provide some guidance as to which methods are most appropriate for particular cases. The best method rule attempts to achieve this balance by recognizing that the method that provides the most accurate determination of an arm's length result will vary depending upon the facts and circumstances of the transaction under review. In considering which method provides the best measure of an arm's length result, factors to be considered include the completeness and accuracy of the available data, the degree of

comparability between controlled and uncontrolled transactions, and the extent of adjustments necessary to apply the method. While the best method rule provides that any available method may be employed to determine an arm's length result without first disproving the applicability of other methods, if it subsequently is demonstrated that under the facts and circumstances another method provides a more accurate determination, the district director must apply such method. Further guidance concerning the circumstances under which particular methods may apply is provided under the provisions describing each method.

In addition, § 1.482–1T(b)(2)(iii)(B) provides for the application of the best method rule when two or more methods produce inconsistent results. If the best method rule does not clearly indicate the preferred method, this paragraph provides that an additional factor to be considered in selecting a method is whether any of the competing methods produce results that are consistent with results obtained under another appropriate method. A similar analysis applies when two or more applications of the same method produce different results.

Section 1.482–1T(c) provides general guidance for determining comparability. General guidance on comparability is provided in this portion of the regulation because the factors set forth in this section are applicable under all the methods. Section 1.482–1T(c)(1)(i) provides that under all methods an arm's length result generally is estimated based on data derived from comparable uncontrolled taxpayers. In determining whether controlled and uncontrolled taxpayers are comparable, functions, risks, contractual terms, economic conditions, and property or services normally must be compared.

Section 1.482–1T(c)(1)(ii) provides that the relative importance of these factors depends on the method applied, because some methods emphasize product comparability, others emphasize functional comparability, and others emphasize broad similarity in terms of products and functions while comparing financial returns.

Section 1.482–1T(c)(2)(i) provides that for two transactions to be comparable, they do not need to be identical, but only must be sufficiently similar that the uncontrolled transaction provides a reasonable and reliable benchmark for estimating an arm's length result. When there are differences between uncontrolled and controlled transactions, § 1.482–1T(c)(2)(ii) permits a reasonable number of adjustments to account for differences between the transactions if they have a definite and reasonably ascertainable effect on the result. If such adjustments cannot be made (either because of a lack of data or the extent of the adjustments renders them unduly speculative), the uncontrolled transaction normally cannot serve as a comparable transaction. Finally, § 1.482–1T(c)(2)(iii) emphasizes that these general standards of comparability are subject to modification under each method.

Section 1.482–1T(c)(3) describes the factors for determining comparability in more detail. The first factor discussed is functions. A functional analysis compares the activities performed by the parties to two transactions. For two transactions to be comparable, the parties normally should perform the same functions with respect to the transactions. A list of functions that normally must be considered is provided.

The second factor that must be considered is risk. For two transactions to be comparable, the risks borne by the parties to each transaction should be similar. Allocation of risk is potentially subject to manipulation by controlled taxpayers, who may purport to allocate risk inconsistently with the substance of their transactions. Accordingly, § 1.482–1T(c)(3)(ii)(B) provides that with respect to adequately documented risk (as described in § 1.482–1T(c)(3)(ii)(C)), the allocation will be subject to review under the following factors: whether the risks assumed are commensurate with the potential economic benefit from the controlled transaction; whether the controlled taxpayer's capacity to absorb losses attributable to the risk is proportionate to the risk; and whether the controlled taxpayer is engaged in the active conduct of a trade or business to which the risk relates and exercises control over the activities that influence the amount of income or loss to be realized from the controlled transaction. These factors are intended to ensure that a controlled taxpayer only will be considered to have assumed a risk in cases where the economic substance of the transaction is consistent with the assumption of such risk. Section 1.482–1T(c)(3)(ii)(C) provides that, with the exception of routine risks (such as those assigned by operation of the Uniform Commercial Code), the district director may disregard a purported allocation of risk unless the taxpayer executed documentation substantiating the asserted allocation of risk, before the result of the risk was known or reasonably knowable, and the actual conduct of the taxpayers was consistent with such allocation. Finally, § 1.482–1T(c)(3)(ii)(D) provides that risks must be allocated consistently from year to year, so that, for example, a risk that causes a taxpayer to earn a below average return in the early years of an activity will tend to cause above average returns in subsequent years for the same taxpayer. It would not be consistent with the arm's length standard for a party to bear a risk when that risk is most likely to cause losses, and then not to derive the subsequent returns attributable to the assumption of the risk in the preceding years.

The third factor is contractual terms. For two transactions to be comparable, the contractual terms that would affect the prices charged should be comparable.

Fourth, § 1.482–1T(c)(3)(iv) provides that the economic conditions surrounding the two transactions also should be similar. Among the economic conditions that must be considered are the realistic alternatives to the actual transactions that were available to the parties. The treatment of alternatives is addressed in more detail in § 1.482–1T(d)(2)(ii), which is discussed below.

Fifth, § 1.482–1T(c)(3)(v) provides that various degrees of similarity between the products or services that are the subject of the controlled and uncontrolled transactions are required under the various methods, and more specific guidance is provided under those methods.

Section 1.482–1T(c)(4) describes special circumstances that require analysis in addition to that described in § 1.482–1T(c)(3) to determine comparability. First, § 1.482–1T(c)(4)(i) provides that in certain cases the arm's length charge may, for a limited time, differ from that charged in an otherwise comparable uncontrolled transaction because the parties in the controlled transaction have agreed to a market penetration strategy. Next, § 1.482–1T(c)(4)(ii)(A) provides rules for making allocations when the controlled taxpayers operate in different geographic markets than the uncontrolled taxpayers. Adjustments reflecting the effect of such differences may be made to the extent information permitting such adjustments is available, and if not, then information from uncontrolled taxpayers operating in the most similar market for which information is available must be used. Finally, in cases where the controlled taxpayer realizes "location savings" from operating in a low-cost jurisdiction and the uncontrolled taxpayers do not realize such savings, § 1.482–1T(c)(4)(ii)(B) provides that the adjustments to make the two transactions comparable must reflect the allocation of location savings that would

occur between unrelated parties, taking into account competitive conditions in the low-cost market; the effect of such competition may be that all or a portion of the location savings might inure to the benefit of the other party to the controlled transaction.

Sections 1.482–1T(c)(4) (iii) and (iv) relates to isolated transactions and mineral transactions, respectively, and are consistent with guidance provided in the current regulations.

Section 1.482–1T(d) describes the scope of review under section 482. Consistent with the current regulations, this section provides that a section 482 allocation may be made whenever the taxable income of a controlled taxpayer differs from what it would have been had the controlled taxpayer been dealing at arms length with an uncontrolled party. More specifically, § 1.482–1T(d)(1)(i) provides that the district director is not limited to cases in which the taxpayer intentionally distorted its taxable income, and § 1.482–1T(d)(1)(ii) provides that the district director may make an allocation even if the ultimate income anticipated (by any party to the controlled transaction) from a series of transactions is not realized. Sections 1.842–1T(d)(1)(iii) and (iv) relate to the interactions between section 482 and the nonrecognition and consolidated returns provisions, respectively, and are consistent with guidance set forth in the current regulations.

Section 1.482–1T(d)(2) provides several limitations on adjustments. Section 1.482–1T(d)(2)(i)(A) provides that no allocation will be made when the controlled taxpayer's results fall within a range of arm's length results (the "arm's length range") derived from two or more applications of the same pricing method to different uncontrolled comparables. This rule responds to comments that were received with respect to the CPM under the proposed regulations, in which many commenters approved of the recognition of a range of arm's length results rather than a single arm's length price. It was felt that requiring a single precise result was inconsistent with the fact that the various methods were not always precise measures of an arm's length result, and ignored the economic fact that there often will be more than one arm's length price. The temporary regulations therefore extend the use of a range to all methods. To form a part of the range, however, each application of the applicable pricing method must independently satisfy the criteria for the application of that method and the general comparability standards under § 1.482–1T(c)(2). With the exception of the comparable profit method, there is no limitation on the extent of the range, although a wide range may suggest that insufficient adjustments have been made for differences between the controlled and uncontrolled transactions.

Section 1.482–1T(d)(2)(i)(C) provides that results falling outside the arm's length range may be adjusted to any point in the range, and ordinarily will be adjusted to the midpoint of the range. Section 1.482–1T(d)(2)(i)(D) states that the district director may properly propose an allocation based on a single comparable uncontrolled price. However, if the taxpayer subsequently demonstrates that its results are within a range established by additional comparable transactions, then no allocation will be made.

Section 1.482–1T(d)(2)(ii) provides that it is not necessary for the district director to determine whether the method that a taxpayer employs to determine the amounts charged in its controlled transactions correspond to the method that the taxpayer might have used in uncontrolled transactions. The only relevant consideration is whether the results of those transactions is arm's length, as determined under one of the prescribed methods.

Section 1.482–1T(d)(3) provides guidelines for allocations under section 482. Section 1.482–1T(d)(3)(i) provides that multiple transactions (generally within the same product grouping) may be aggregated for purposes of determining an arm's length result when they are so interrelated that it is necessary to view them as a whole. Section 1.482–1T(d)(3)(ii) provides that the terms of contractual arrangements will be respected as long as the parties' conduct is consistent with such terms. In addition, when no written agreement exists, but the conduct of taxpayers is consistent with an agreement in substance, the district director may conclude that if such parties were unrelated they would have executed an agreement, and therefore may give effect to such an agreement in determining an arm's length result. This section responds to comments indicating that the proposed regulations gave the district director too much latitude to disregard the existence of contracts between controlled taxpayers, by clarifying that such contracts will only be disregarded when the parties themselves do not in economic substance adhere to their terms.

Section 1.482–1T(d)(3)(iii) provides that the district director ordinarily will evaluate controlled transactions based on the structure of the actual transaction, and will not treat the transaction as if it were structured differently. The district director, may, however, consider the alternatives that were available to the taxpayer in determining whether the terms of the controlled transaction would be acceptable to an uncontrolled taxpayer faced with alternatives similar to those that the controlled taxpayer faced.

This analysis is central to the arm's length standard and the traditional notion of comparability. For example, under the comparable uncontrolled price method, the objective is to identify an alternative price at which the taxpayer could have conducted the controlled transaction. This section merely broadens this traditional analysis by permitting examination of other alternatives when the controlled taxpayer has the option of internally obtaining the goods or services that it obtained in the controlled transaction. In such a case, an otherwise acceptable comparable transaction may not provide a reliable measure of an arm's length result if the controlled taxpayer could have obtained the object of the controlled transaction more cheaply by obtaining it from internal sources. This approach duplicates the analysis that an uncontrolled taxpayer would employ in considering whether to obtain a product from an unrelated party or to produce the product itself, and the amount that it would be willing to pay an unrelated supplier of that product. This section responds to comments on the provisions of the proposed regulations indicating that the district director was authorized to impose his own judgment on taxpayers after the fact and to restructure transactions based on perfect *ex post* knowledge of the results of a series of transactions. This provision significantly limits the ability of the district director to examine alternative, generally limiting such authority to permit examination of alternatives only for the purpose of determining an arm's length price.

Section 1.482–1T(d)(3)(iv) provides that the district director will ordinarily evaluate the results of controlled transactions based on data from uncontrolled taxpayers attributable to the same period as the controlled transactions. The district director may, however, use data from different years under certain specified conditions. Data from multiple years also may be relevant for purposes of certain enumerated provisions. If data from other years is employed, such data should be compared to the controlled taxpayer's results from the same years. Section 1.482–1T(d)(3)(iv)(C) provides that the district director may examine results from other years to determine

whether the same economic conditions that caused the uncontrolled taxpayer's result also caused the controlled taxpayer's result. For example, in cases where a controlled taxpayer realizes a loss from a controlled transaction, the taxpayer may seek to demonstrate that the loss is within the arm's length range, based upon losses realized by comparable uncontrolled taxpayers. The district director may consider data from other taxable years to determine whether the same conditions that caused the controlled taxpayer's loss also had a similar effect on the uncontrolled taxpayers. If the controlled taxpayer consistently realized losses from year to year, and the uncontrolled taxpayers with losses on average are profitable over a period of years, then the transactions may not be considered to be sufficiently comparable.

Section 1.482–1T(d)(3)(v) permits evaluation of product lines and statistical groupings in a manner analogous to that permitted under the current regulations.

Section 1.482–1T(e) provides procedural rules with respect to collateral adjustments arising as a result of a section 482 allocation. Such adjustments include compensating, correlative and conforming adjustments.

Section 1.482–1T(e)(2) defines a compensating adjustment as an adjustment made to reflect an arrangement between controlled taxpayers for reimbursement or other payments. The arrangement will be given effect if it is written, it provides for adjustments as necessary to ensure that the controlled transactions produce arm's length results, and the adjustments are made before the filing of the controlled taxpayer's timely U.S. income tax return. The adjustment accrues to the recipient as of the earlier of the date of payment or the last day of the taxable year to which it relates. Finally, § 1.482–1T(e)(2)(iii) provides an anti-abuse rule.

Section 1.482–1T(e)(3) provides guidance on correlative adjustments that is generally consistent with the guidance set forth in the current regulations.

Section 1.482–1T(e)(4), relating to conforming adjustments, provides that the Commissioner may provide revenue procedures under which the district director may permit adjustments to conform a taxpayer's accounts to an adjustment under section 482.

Section 1.482–1T(e)(5) provides rules relating to setoffs that are similar to those provided in the current regulations.

In response to many comments requesting that a safe harbor be included in the regulations, § 1.482–1T(f)(1) provides a safe harbor under section 482. A safe harbor has been provided for taxpayers that have relatively small levels of controlled transactions. While taxpayers electing this safe harbor would face a much reduced compliance burden, some taxpayers may find that the results they achieve under the safe harbor are somewhat less favorable than they could have achieved if they did not elect the safe harbor, and others might achieve a more favorable result, reflecting the consequences of a less flexible but more certain rule.

This provision provides that an electing controlled taxpayer will not be subject to an adjustment under section 482 if its taxable income is determined in accordance with published measures of profitability, and the taxpayer complies with various procedural rules. To be eligible for the safe harbor, either the U.S. party or the foreign counterpart to a cross border controlled transaction must have less than $10 million in gross receipts for the year at issue. For this purpose, all U.S. affiliates must be aggregated with the U.S. controlled taxpayer, and all foreign affiliates that also engage in cross border transactions with the U.S. controlled taxpayer must be aggregated. The definition of an eligible taxpayer does not include the U.S. branch of a foreign corporation. It was felt that relatively few taxpayers would benefit from the inclusion of a branch rule, and that the additional complexity entailed in including branches in the definition was not justified. The election to apply the safe harbor may only be revoked with the consent of the Commissioner, and § 1.482–1T(f)(1)(iv)(C) provides that the election will not apply for any year in which the eligible taxpayer test is not met, but that the election will be effective if the taxpayer meets the test in a succeeding year, subject to an anti-abuse rule.

Section 1.482–1T(f)(2), relating to foreign legal restrictions, is reserved.

Section 1.482–1T(f)(3) provides a coordination rule between sections 936 and 482. It provides that in the case of a controlled taxpayer that has made a cost sharing election under section 936(h), the amount of the cost sharing payment required under section 936 will not be less than that required under the section 482 regulations, and further that such payment may not be computed under the provisions of § 1.482–2T(d)(4).

Section 1.482–1T(g) defines ten terms that are employed in the regulations.

An important term used under several methods is "non-routine intangible." This term has not been defined because it has not been possible to formulate an acceptably precise definition. In general, this term means intangible property that is central to the conduct of a business activity and without which the business activity could not be conducted. It normally would be expected that such property is unique or nearly unique, that its use or application is very valuable, and that there consequently would not be examples of substantially similar transactions between unrelated parties. Examples of such an intangible would be a composition of matter patent for a pharmaceutical, or a manufacturing intangible without which a particular product could not be produced. The term would not include intangible property that is a normal result of conducting a business, such as manufacturing economies resulting from protracted manufacturing operations, or intangible property for which there may be acceptable substitutes available in the marketplace at a comparable price.

Section 1.482–2T(d)

Section 1.482–2T(d) provides that guidance with respect to transfers of property is set forth in §§ 1.482–3T through 1.482–5T.

Section 1.482–3T

Section 1.482–3T provides rules with respect to the transfer of tangible property. Five methods are provided: The comparable uncontrolled price method; the resale price method; the cost plus method; the comparable profits method; and other methods. In addition, a sixth method based on profit splits is proposed in the accompanying notice of proposed rulemaking.

Section 1.482–3T(b) describes the comparable uncontrolled price (CUP) method. It is generally similar to the CUP method under the current regulations. For purposes of the best method rule, a result obtained under the CUP method generally will provide the most accurate measure of an arm's length result. Section 1.482–3T(b)(2) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. The property transferred and the underlying circumstances of the two transactions must be substantially the same. This requirement is met if any minor differences can be reflected by a reasonable number of adjustments that have a definite and reasonably ascertainable effect on the amount charged. If there are material differences between the transactions, this method cannot be applied based on the

uncontrolled transaction. Although the text of this rule differs somewhat from its counterpart under the final regulations, the changes were intended to be clarifications of the current standard rather than substantive changes.

Section 1.482–3T(c) describes the resale price method. It is generally similar to the resale price method under the current regulations. In response to comments, the results achieved under the resale price method are not subject to a mandatory check under CPI. For purposes of the best method rule, the resale price method ordinarily will provide an accurate measure of an arm's length result if the controlled taxpayer performs a distribution function and does not add substantial value to the goods that are distributed. Section 1.482–3T(c)(3) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. The controlled and uncontrolled transactions should involve distribution of products within the same broad product categories. Adjustments may be made to account for the differences enumerated in § 1.482–1T(c)(3) between the transactions, but only if such differences have a definite and reasonably ascertainable effect on gross profit.

Section 1.482–3T(d) describes the cost plus method. It is generally similar to the cost plus method under the current regulations. As with the resale price method, the results obtained under the cost plus method are not subject to a mandatory check under the CPI. For purposes of the best method rule, the cost plus method ordinarily will provide an accurate measure of an arm's length result if the controlled taxpayer manufactures or assembles goods that are sold to related parties. Section 1.482–3T(d)(3) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. The controlled and uncontrolled transactions should involve production of products within the same broad product categories or within the same industry. Adjustments may be made to account for the differences enumerated in § 1.482–1T(c)(2) between the transactions, but only if such differences have a definite and reasonably ascertainable effect on gross profit. Section 1.482–3T(d)(3)(iv) provides that in determining an appropriate markup percentage, accounting reclassifications may be required to ensure consistent treatment of the elements that enter into the computation of the production price.

Section 1.482–3T(e) provides that when none of the other enumerated methods can reasonably be applied, any other reasonable method may be used. A taxpayer may employ another method only if such method is disclosed on the taxpayer's U.S. income tax return and the taxpayer prepared contemporaneous documentation supporting the method adopted. Such documentation must explain why the method selected provides the most accurate measure of an arm's length price. The taxpayer must furnish such documentation to the district director within 30 days of a written request for such documentation. Section 1.482–3T(e)(3) provides that application of a method under § 1.482–3T(e) does not in itself satisfy the reasonable cause and good faith exception from the application of penalties under section 6662(e) or 6664(c).

Section 1.482–3T(f) provides rules coordinating the application of the tangible property rules with the rules governing transfers of intangible property.

Section 1.482–4T

Section 1.482–4T provides rules with respect to the transfer of intangible property. Three methods are provided: the comparable uncontrolled transactions method; the comparable profits method; and other methods. In addition, the proposed profit split method would apply with respect to transfers of intangibles.

Section 1.482–4T(b) provides a definition of intangible property that is similar to that provided in the proposed regulations.

Section 1.482–4T(c) describes the comparable uncontrolled transactions (CUT) method. Unlike the proposed regulations, which included two comparable transaction methods, only one such method is provided. Comments on the proposed regulations asserted that the scope of the first such method (the MTM) was too narrow, and further that the CPI should not be a mandatory check on the results obtained under the second method (the CATM). In response to these comments, the MTM and the CATM have been combined into a single method, and the results obtained under this method are not subject to mandatory check under the CPI. The removal of this check is offset by incorporating a reference to profit potential in the definition of comparability, reflecting Congressional concern that royalty rates for "high-profit" intangibles could "be set on the basis of industry norms for transfers of much less profitable items." General Explanation of the Tax Reform Act of 1986, H.R. 3838, Public Law 99–514 (May 4, 1987) at 1014. For purposes of the best method rule, a result obtained under the CUT method generally will provide the most accurate measure of an arm's length result. Section 1.482–4T(c)(2) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. In addition to the factors enumerated in § 1.482–1T(c)(3), the property transferred in the two transactions must be from the same class of intangible property, relate to the same class of products or services, and have substantially the same profit potential. In addition, § 1.482–4T(c)(2)(B) requires that the underlying circumstances of the two transactions must be sufficiently similar that any differences can be reflected by a reasonable number of adjustments that have a definite and reasonably ascertainable effect on the amount charged. These circumstances are similar to the factors listed in the final regulations. Section 1.482–2(d)(2)(iii).

Section 1.482–4T(d) provides that when none of the other enumerated methods can reasonably be applied, any other reasonable method may be used. A taxpayer may employ another method only if such method is disclosed on the taxpayer's U.S. income tax return, the taxpayer prepared contemporaneous documentation supporting the method adopted, explaining why the other enumerated methods cannot be applied, and explaining why the method selected provides the most accurate measure of an arm's length price, and the taxpayer furnishes such documentation to the district director within 30 days of a written request for such documentation. Section 1.482–4T(d)(3) provides that application of a method under § 1.482–4T(d) does not in itself satisfy the reasonable cause and good faith exception from the application of penalties under section 6662(e) or 6664(c).

Section 1.482–4T(e) provides special rules for the transfer of intangible property. Section 1.482 4T(e)(1) provides that the form of the consideration for a transfer of intangible property must be consistent with that which would be adopted by unrelated parties under comparable circumstances, and that consideration normally should be in the form of a royalty.

Section 1.482–4T(e)(2)(i) provides that if an intangible is transferred for a period in excess of one year, the consideration charged is generally subject to annual adjustment to ensure that it is commensurate with the income attributable to the intangible. This provision is required by the 1986 amendment to section 482.

Section 1.482–4T(e)(2)(ii) sets forth two exceptions from this rule. In response to comments on the proposed regulations that indicated that the scope of the exceptions in the proposed regulations was too narrow, the scope of the exceptions from periodic adjustments has been broadened. The first exception provides that no periodic adjustment will be made if certain specified conditions are met, including that the controlled taxpayers entered into a written license agreement with a comparable term to an actual license agreement between uncontrolled taxpayers, the consideration charged was an arm's length amount under the CUT method for the first year in which substantial royalties were required to be paid under the agreement, the comparable license agreement generally did not permit changes to the royalty, and the aggregate profits earned by the controlled transferee from the exploitation of the intangible fall within a range of the profits that were anticipated when the license agreement was executed. The second exception is generally similar, except that it applies if the consideration was determined to be arm's length under any method other than the CUT method.

Section 1.482–4T(e)(3) provides rules for identifying the controlled party that is considered the developer of an item of intangible property that are similar to the rules set forth in the proposed regulations.

Section 1.482–4T(e)(4) clarifies that the arm's length consideration for an intangible is not limited to the prevailing rates in an industry or the rates paid in any uncontrolled transactions that do not meet the requirements of the CUT method. This provision was included to clarify that arm's length consideration in a controlled transaction, particularly for non-routine intangibles that are not ordinarily transferred between uncontrolled taxpayers, may not be limited by the amount of consideration identified in uncontrolled transactions.

Section 1.482–4T(e)(5), relating to lump sum payments, is reserved.

Section 1.482–5T

Section 1.482–5T describes the comparable profits method. The comparable profits method relies on the general principle that similarly situated taxpayers will tend to earn similar returns over a reasonable period of time. In broad outline this method is similar to the comparable profits method set forth under the proposed regulations. Although this method is included in the methods available under both §§ 1.482–3T (tangible property) and 1.482–4T (intangible property), in response to comments it no longer provides a mandatory check on the results obtained under other methods. This method generally will provide an accurate measure of an arm's length result unless the tested party uses a valuable, non-routine intangible that is either (1) acquired from uncontrolled taxpayers, and the tested party assumes significant risks and possesses the right to significant economic benefits from the use of the intangible, or (2) is self-developed. The comparable profits method generally will not provide an accurate measure of an arm's length result in cases involving non-routine self-developed intangibles or many intangibles that were acquired from third parties because it will be difficult, if not impossible, to locate uncontrolled taxpayers that also possess comparable intangible property, and the comparable profits method could understate the income properly attributable to such assets.

Section 1.482–5T(b) provides that the tested party generally will be the controlled taxpayer that performs the simplest and therefore most easily compared operations. In the case of the license of intangible property, this party normally will be the licensee. Generally the comparable profits method will be applied separately to each industry segment (as defined under the section 6038A regulations). In addition, the comparable profits method only is applied after taking into account all other adjustments under section 482.

Section 1.482–5T(c) provides that the standard of comparability required to apply this method is not as strict as under other methods. Some diversity between the transactions, products and functions of the controlled and uncontrolled taxpayers is acceptable. The degree of comparability achieved will, however, affect the reliability of the results, and the size of the arm's length range, as discussed below.

Section 1.482–5T(c)(2) describes a number of adjustments that should be (but are not required to be) made with respect to the comparable parties. Such adjustments are made only to the extent that they have a definite and reasonably ascertainable effect on operating profits. Accounting reclassifications also may be made to ensure that various items are measured consistently.

Section 1.482–5T(d)(i) provides that a result will be an arm's length result if it falls within the range of constructive operating profits, based on a single profit level indicator, derived from comparable parties. As under the comparable profits method of the proposed regulations, constructive operating profit is calculated by measuring profit level indicators of uncontrolled taxpayers, and applying those indicators to the financial data of the tested party to measure an arm's length result for the tested party.

Unlike the other methods, § 1.4825T(d)(ii) provides that the arm's length range can be determined in two ways, depending on the degree of comparability between the tested party and the uncontrolled taxpayers and the adjustments that were made to account for any differences. If the adjustments described in § 1.4825T(c)(2) have been made, the arm's length range will include all the results obtained, as with the other methods. If, however, the specified adjustments are not made, the range will be limited to either the interquartile range, or the range determined by some other statistically valid method. In the latter case the comparable profits method cannot be used if there are less than four comparable parties.

Section 1.482–5T(e) describes the profit level indicators that may be used under the comparable profits method. They include two types of measures: The rate of return on capital employed and financial ratios. Financial ratios include the ratio of operating profit to sales and the ratio of grass profit to operating expenses. Finally, § 1.482–5T(e)(3) provides that other reliable measures may be employed.

Section 1.482–5T(f) sets forth a number of definitions that are relevant for purposes of the comparable profits method.

Section 1.482–6T

Section 1.482–6T, which deals with the profit split method, is reserved under these temporary regulations. However, the provisions of the profit split method are proposed in the accompanying notice of proposed rulemaking.

Advance Pricing Agreements

Based on the Service's experience to date with the advance pricing agreement program, as well as favorable comments received in response to the proposed regulations, the principle of advance pricing agreements continues to be an integral component of the Service's

overall section 482 compliance effort. The Service may execute an advance pricing agreement addressing the prospective application of section 482 to any transaction between or among members of a controlled group. Such agreements may also address any collateral income tax consequences related to such transactions. Where an advance pricing agreement is in effect, an allocation under section 482 is permitted only to the extent provided in the agreement. The procedures for obtaining an advance pricing agreement are contained in Revenue Procedure 91–22, 1991–1 C.B. 526.

Special Analyses

It has been determined that these regulations 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, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

Personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.481–1 Through 1.483–2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "§ 1.482–2" and adding new citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.482–1T also issued under 26 U.S.C. 482 and 936. Section 1.482–2T also issued under 26 U.S.C. 482. Section 1.482–3T also issued under 26 U.S.C. 482. Section 1.482–4T also issued under 26 U.S.C. 482. Section 1.482–5T also issued under 26 U.S.C. 482. Section 1.482–2A also issued under 26 U.S.C. 482.

§§ 1.482–1 and 1.482–2 [Redesignated as §§ 1.482–1A and 1.482–2A]

Par. 1a. Sections 1.482–1 and 1.482–2 are redesignated § 1.482–1A and § 1.482–2A and an undesignated centerheading preceding § 1.482–1A is added to read as follows:

Regulations Applicable for Taxable Years Beginning on or Before April 21, 1993

Par. 2. Sections 1.482–0T through 1.482–7T are added to read as follows:

§ 1.482–0T Outline of regulations under section 482.

This section lists the major headings for § 1.482–1T through § 1.482–5T.

§ 1.482–1T Allocation of income and deductions among taxpayers

(a) In general.
(1) Purpose and scope.
(2) Authority to make allocations.
(3) Taxpayer's use of section 482.
(b) Arm's length standard.
(1) In general.
(2) Arm's length methods.
(i) Methods.
(ii) Selection of category of method applicable to transaction.
(iii) Choice of method.
(A) Best method rule.
(B) Multiple methods.
(C) Examples.
(c) Comparability.
(1) In general.
(i) Basic factors to be evaluated.
(ii) Basic types of comparables.
(2) Standard of comparability.
(i) In general.
(ii) Comparability adjustments.
(iii) Example.
(iv) Standards of comparability under specific methods.
(3) Factors for determining comparability.
(i) Functional analysis.
(ii) Analysis of risks.
(A) In general.
(B) Determination of party that bears risk and income commensurate with risk.
(C) Documentation of risks assumed.
(D) Consistent allocation of risk.
(E) Examples.
(iii) Contractual terms.
(iv) Economic conditions.
(v) Property or services.
(4) Special circumstances.
(i) Market share strategy.
(ii) Different geographic markets.
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(B) Example.
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§ 1.482–2T Determination of taxable income in specific situations

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§ 1.482–4T Methods to determine taxable income in connection with a transfer of intangible property

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§ 1.482–6T Profit split method. [Reserved].
§ 1.482–7T Cost sharing. [Reserved]

§ 1.482–1T Allocation of income and deductions among taxpayers

(a) *In general*—(1) *Purpose and scope.* The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions, and to prevent the avoidance of taxes with respect to such transactions. Section 482 places a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer in a manner that reasonably reflects the relative economic activity undertaken by each taxpayer. This § 1.482–1T sets forth general principles and guidelines to be followed under section 482. Section 1.482–2T provides rules for the determination of the true taxable income of controlled taxpayers in specific situations, including controlled transactions involving loans or advances, services, and property. Sections 1.482–3T through 1.482–5T elaborate on the rules that apply to controlled transactions involving property.

(2) *Authority to make allocations.* If a controlled taxpayer has not reported its true taxable income, the district director may make allocations between or among the members of a controlled group. In such cases, the district director may allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income (referred to as "allocations"). The appropriate allocation may take the form of an increase or decrease in any relevant amount.

(3) *Taxpayer's use of section 482.* Section 482 grants no right to a controlled taxpayer to apply the provisions of section 482 at will or to compel the district director to apply such provisions. However, section 482 does not limit a taxpayer's ability to report its true taxable income with respect to its controlled transactions. A controlled taxpayer may report the results of its controlled transactions based upon prices different from those actually charged if necessary to reflect an arm's length result. If reported results differ from transactional results recorded in the regular books and records of the taxpayer, such difference must be accounted for in accordance with the provisions of § 1.482–1T(e)(2) (regarding compensating adjustments). A taxpayer that fails to report its true taxable income with respect to its controlled transactions may be subject to penalties under section 6662(e) and other applicable sections.

(b) *Arm's length standard*—(1) *In general.* In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer. A controlled transaction meets the arm's length standard if the results of that transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in a comparable transaction under comparable circumstances. Thus, for purposes of section 482, the "arm's length result" of a controlled transaction is the amount of consideration that would have been charged or paid (or the profits that would have been earned) in comparable transactions between uncontrolled taxpayers. The comparability of controlled and uncontrolled transactions must be determined under the provisions of paragraph (c) of this section.

(2) *Arm's length methods*—(i) *Methods.* Sections 1.482–2T through 1.482–6T provide specific methods to be used by the district director to test whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length results.

(ii) *Selection of category of method applicable to transaction.* The methods listed in § 1.482–2T apply to different types of transactions (*i.e.*, transfers of property, services, loans or advances, and rentals). Accordingly, the district director must select the appropriate method or methods applicable to

controlled transactions, and may apply different methods to related transactions where such transactions are most reasonably tested on a separate basis. For example, where services are provided in connection with the transfer of property, the district director may find it appropriate to separately apply the methods applicable to services and property in order to determine an arm's length result. In addition, other applicable provisions of the Code may affect the characterization of a transaction, and therefore affect the methods applicable under section 482. For example, section 483 may characterize a portion of certain deferred payments as interest income.

(iii) *Choice of method*—(A) *Best method rule.* The arm's length result of a controlled transaction must be determined under the method that provides the most accurate measure of an arm's length result under the facts and circumstances of the transaction under review. The factors to be considered in selecting a method include the completeness and accuracy of the data used to apply each method, the degree of comparability between controlled and uncontrolled transactions, and the number, magnitude, and accuracy of the adjustments required to apply each method. An arm's length result may be determined under any of the available methods without first establishing the inapplicability of any other method. If additional evidence becomes available permitting the application of another method that is more accurate, the district director will apply such method to determine an arm's length result. Additional guidance concerning the circumstances under which particular methods may be applicable is provided under the description of each method in §§ 1.482–2T through 1.482–6T. The rule of this paragraph (b)(2)(iii)(A) is hereinafter referred to as the "best method rule."

(B) *Multiple methods.* If two or more methods produce inconsistent results, the best method rule will be applied to select the method that provides the most accurate determination of an arm's length result under the facts and circumstances, without establishing a priority or presumption of correctness to any one method. If the best method rule does not clearly indicate which method should be preferred, and additional factor that may be taken into account in selecting a method is whether any of the competing methods produce results that are consistent with the results obtained under another appropriate method. Further, in choosing between two or more applications of the same method that produce different results, the fact that another method produces results that are consistent with one or more of the competing applications may be taken into account.

(C) *Examples.* The following examples illustrate this paragraph (b)(2)(iii).

Example 1. (i) Manuco manufactures televisions that it sells to Sub, its wholly owned distributor. Sub resells the televisions to unrelated retailers. To test whether the price Sub paid to Manuco is at arm's length, the district director uses data from Unco, an uncontrolled distributor, to apply the resale price method. Numerous substantial adjustments are made to Unco's gross profit margin to reflect differences between the controlled and uncontrolled transactions. This application of the resale price method indicates that the price Sub paid Manuco for the televisions was not an arm's length price.

(ii) Sub, however, provides to the district director data regarding an uncontrolled transaction that, with a small number of minor adjustments, permits the district director to apply the comparable uncontrolled price method, and indicates that the price Sub paid Manuco was an arm's length price.

(iii) Because it requires fewer and smaller adjustments in this situation, the comparable uncontrolled price method provides the most accurate measure of the arm's length price. Therefore, pursuant to the best method rule of paragraph (b)(2)(iii)(A) of this section the district director uses the comparable uncontrolled price method to determine that the price Sub paid to Manuco is an arm's length price.

Example 2. Markco, a foreign distributor, and Manuco, a U.S. manufacturer, are members of the same group of controlled taxpayers. In 1994, Markco buys radios from Manuco for $10 per unit. In 1996, during an audit for the 1994 taxable year, Manuco presents the district director with information showing that an uncontrolled distributor in similar uncontrolled transactions also bought radios for $10, but several adjustments are required to apply the comparable uncontrolled price method. On the other hand, information derived from other uncontrolled transactions indicates under the resale price method that the arm's length price for the controlled transaction between Markco and Manuco is $15. In addition, application of the comparable profit method provides a range of constructive operating profits that is consistent with the $15 price. The consistency of the results from the application of the resale price method with the results from the application of the comparable profits method may be taken into account in selecting which method to use to test whether the $10 paid by Markco to Manuco is an arm's length price.

Example 3. To determine whether the price paid by controlled taxpayer, Corp, to its wholly owned subsidiary for a product was at arm's length, the district director applies the comparable uncontrolled price method to data from three different uncontrolled transactions, UT1, UT2, and UT3. These three applications of the comparable uncontrolled price method produce different results. To determine whether the three applications of the comparable uncontrolled price method are within the arm's length range as provided in § 1.482–1T(d)(2)(i), the district director applies a second method. The results of UT1 and UT3 under the comparable uncontrolled price method are consistent with the results obtained from the application of the second method. The application of the second method, however, produces results that deviate from the results obtained from the application of the comparable uncontrolled price method with respect to UT2. The consistency of the results from UT1 and UT3 with the application of the second method may be taken into account by the district director in determining the arm's length price for the transaction under review.

(c) *Comparability*—(1) *In general*—(i) *Basic factors to be evaluated.* The arm's length character of a controlled transaction is tested by comparing the results of that transaction with the results of uncontrolled taxpayers engaged in comparable transactions under comparable circumstances. For this purpose, the comparability of transactions and circumstances must be evaluated using the following factors, which are further described in paragraph (c)(3) of this section—

(A) Functions;

(B) Risks;

(C) Contractual terms;

(D) Economic conditions; and

(E) Property or services.

(ii) *Basic types of comparables.* The relative importance of any one of the factors listed may depend upon the pricing method being applied. In particular, some methods focus primarily upon an analysis of whether the controlled and uncontrolled transactions involve the same or similar property or service (product comparables). See, for example, the comparable uncontrolled price method under § 1.482–3T(b), and the comparable uncontrolled transaction method under § 1.482–4T(c). Other methods focus primarily upon an analysis of whether the controlled and uncontrolled taxpayers undertake the same or similar functions, employ similar resources, and bear similar risks (functional comparables). See, for example, the resale price and cost plus methods under § 1.482–3T(c) and (d). Finally, other methods determine an arm's length result by ascribing a similar return on capital to taxpayers that are broadly similar in terms of products and functions. See, for example, the comparable profits method under § 1.482–5T. While the terms product comparables and functional comparables describe the primary focus of various methods, each method

ordinarily requires analysis of all of the factors that affect comparability under that method. In particular, the analysis of functions and risks will be essential to the application of any method. Thus, for example, two transactions involving identical products may not be sufficiently comparable for purposes of the comparable uncontrolled price method if the relevant functions, risks, or other factors described in paragraph (c)(3) of this section are different.

(2) *Standard of comparability*—(i) *In general.* For two transactions to be considered comparable, an uncontrolled transaction need not be identical or exactly comparable to the controlled transaction, but must be sufficiently similar that it provides a reasonable and reliable benchmark for determining whether the controlled transaction led to an arm's length result.

(ii) *Comparability adjustments.* Where necessary, a reasonable number of adjustments may be made to the results of an uncontrolled transaction to account for material differences between the controlled and uncontrolled transactions if such differences have a definite and reasonably ascertainable effect on prices or profits. Such adjustments should be based on commercial practices, economic principles, or statistical analyses, as applied to the available data. If the differences can be reflected by such adjustments, then the price, profit, or margin of the uncontrolled transaction, as adjusted, constitutes the arm's length result for the controlled transaction.

(iii) *Example.* The following example illustrates paragraph (c)(2)(ii) of this section.

Example. (i) FS manufactures product XX and sells that product to its parent corporation, P. FS also sells product XX to uncontrolled taxpayers at a price of $100 per unit. Except for the volume of each transaction, the sales to P and to uncontrolled taxpayers take place under substantially the same economic conditions and contractual terms. In uncontrolled transactions, FS offers a 2% discount for quantities of 20 per order, and a 5% discount for quantities of 100 per order. If P purchases product XX in quantities of 60 per order, it may be assumed that the arm's length price to P would be $100, less a discount of 3.5%.

(ii) If P purchases product XX in quantities of 1,000 per order, in the absence of further information about uncontrolled transactions at similar order quantities, a volume discount greater than 5% can be assumed only on the basis of proper economic and statistical analysis, not necessarily a linear extrapolation from the 2% and 5% catalog discounts applicable to sales of 20 and 100 units, respectively.

(iv) *Standards of comparability under specific methods.* The general standards of comparability provided in this paragraph (c)(2) are subject to modification under the specific provisions of certain applicable methods. For example, the provisions of § 1.482–3T(b) impose stricter limitations on the adjustments that are permitted for purposes of the comparable uncontrolled price method. Further, in connection with each of the methods, §§ 1.482–T through 1.482–5T provide more detailed guidance concerning the factors described in paragraph (c)(3) of this section.

(3) *Factors for determining comparability.* The following factors must be considered in determining whether two transactions are comparable. In addition, in certain cases involving special circumstances, the rules under paragraph (c)(4) of this section must be considered.

(i) *Functional analysis.* The determination of whether controlled and uncontrolled transactions are comparable requires a comparison of the functions performed by the controlled and uncontrolled taxpayers. This comparison is based upon a functional analysis, which identifies and compares the economically significant activities actually undertaken or to be undertaken by the taxpayers in both controlled and uncontrolled transactions. A functional analysis is not a pricing method and does not itself determine the arm's length result for the controlled transaction under review. Functions that may need to be accounted for in determining the comparability of two transactions include research and development; product design and engineering; manufacturing or process engineering; product fabrication, extraction, and assembly; purchasing and materials management; marketing and distribution functions including inventory management, warranty administration, and advertising and marketing activities; transportation and warehousing; and managerial, legal, accounting and finance, credit and collection, training, and personnel management services.

(ii) *Analysis of risk*—(A) *In general.* The determination of whether controlled and uncontrolled transactions are comparable requires a comparison of the risks borne in each transaction. This comparison ordinarily consists of a two-step analysis. First, the district director must determine which controlled taxpayer bears the risks associated with the transaction, which includes a consideration of whether the income earned by that controlled taxpayer over a reasonable period of time is commensurate with the risk assumed. Second, the district director must determine whether the risks borne by the controlled taxpayer are comparable to those borne by the uncontrolled taxpayer. Risks that ordinarily must be considered include market risks including fluctuations in cost, demand, pricing, and inventory levels; risks associated with the success or failure of research and development activities; financial risks including fluctuations in foreign currency rates of exchange and interest rates; credit and collection risks; product liability risks; and general business risks related to the ownership of property, plant, and equipment.

(B) *Determination of party that bears risk and income commensurate with risk.* In determining the extent to which a controlled taxpayer actually bears a risk and in determining whether the income earned by the controlled taxpayer over a reasonable period of time is commensurate with the risk assumed, the district director will evaluate the economic substance of the controlled transactions. In particular, the district director will determine whether—

(*1*) The controlled taxpayer has a reasonable opportunity to realize an economic benefit that is commensurate with the risks assumed, and that would cause a similarly-situated uncontrolled taxpayer to bear the risk that the controlled taxpayer assumed;

(*2*) The risks that the controlled taxpayer assumed are proportionate to its financial capacity to fund losses that may be expected to occur as a result of the assumption of such risk; and

(*3*) The controlled taxpayer is engaged in the active conduct of a trade or business to which the risk at issue relates, and carries out substantial managerial and operational control over the principal business activities that directly influence the amount of income or loss to be realized. See § 1.367(a)–2T(b)(2) and (b)(3).

(C) *Documentation of risks assumed.* Notwithstanding paragraph (c)(3)(ii)(B) of this section, the district director may disregard a controlled taxpayer's nominal assumption of a risk unless documentation reflecting the allocation of risks among the controlled taxpayers was executed before the result of such risk was known or reasonably knowable by any such taxpayer, and the actual conduct of the controlled taxpayer is consistent with such documentation. However, this rule does not apply to routine risks that are assumed by a controlled taxpayer under normal commercial practices. Thus, for example, where the risk of loss during shipment is assigned under the Uniform Commercial Code, separate

documentation of the allocation of such risk would not be necessary.

(D) *Consistent allocation of risk.* Because parties dealing at arm's length bear risks to obtain the potential for greater returns over a reasonable period of time, the allocation of risks among uncontrolled taxpayers is ordinarily consistent over such a period. Thus, risks must also be allocated consistently among controlled taxpayers over such a period, and not reallocated from year to year in response to changes in market conditions without a corresponding change in the transfer price. Thus, for example, a controlled taxpayer that experiences losses as the result of its assumption of market risk during a market downturn, would ordinarily be expected to receive greater returns during other periods.

(E) *Examples.* The following examples illustrate this paragraph (c)(3)(ii).

Example 1. FD, the wholly-owned foreign distributor of USM, a U.S. manufacturer, buys Widgets from its parent under a written five-year contract that was entered into before any transaction between the two parties. FD has adequate financial capacity to fund losses that may be expected to occur as a result of the transaction. Widgets are a new product in the market in which FD operates. Under the terms of the contract, FD must buy 20,000 units of widgets at $5 per unit for each of the five years of the contract, and FD must finance any marketing strategies to introduce Widgets to the foreign market. In Years 1, 2, and 3, a total of only 10,000 Widgets were sold by FD to unrelated parties at $11 per Widget. However, FD, as required by the contract, bought 20,000 units each year. In Year 4, the demand for Widgets rose dramatically. FD was able to sell its entire inventory of Widgets at $25 per Widget. Because the allocation of the market risks borne by FD was documented in a written agreement entered into before the result of the risk was known or reasonably knowable, and the conduct of FD was consistent with the economic substance of the contract, FD will be deemed to bear the market risk.

Example 2. The facts are the same as in *Example 1*, except that in Year 1 FD has only $100,000 in total capital, including loans. In the subsequent years USM does not make any further capital contributions to FD, and FD is unable to obtain any capital through loans from an unrelated party. However, each year, USM continues to send 20,000 Widgets to FD and permits FD to finance the purchase through an extension of credit. Because FD does not have the financial capacity in Years 1 and 2 to finance the market risk, FD does not in substance bear the risk.

Example 3. A wholly-owned foreign subsidiary of a U.S. parent corporation manufactures a product to the design and specifications of the parent. Substantially all of the subsidiary's output is sold to the parent, and the parent substantially controls the time and volume of the subsidiary's production schedules in order to coordinate the subsidiary's output with the parent's own production and sales requirements. The subsidiary does not bear any market risk associated with products sold to the parent. Because the parent regularly purchases substantially all of the subsidiary's output, the result would be the same whether or not there is a written contract between the parent and subsidiary that expressly provides for the parent's purchase of the subsidiary's output. Sub is, however, entitled to a return on other risks it may bear, such as general business risks.

Example 4. S, a Country X corporation, manufactures small motors that it sells to P, its U.S. parent. P incorporates the motors into various products that P manufactures and sells to uncontrolled customers located in the United States. The contract price of the motors sold to P is expressed in Country X currency. Thus, P documents that it assumes all of the currency risk associated with fluctuations in the exchange rate between the U.S. dollar and the Country X currency in connection with the motor sales. In determining whether the price charged for the motors is arm's length, the district director will consider whether P bears that risk in substance, and whether P's income over a reasonable period of time is commensurate with the risk assumed. For this purpose the district director will not ordinarily determine whether an uncontrolled purchaser of the motors would have been willing to assume the same foreign currency risk, but rather will determine what price an uncontrolled purchaser would have been willing to pay for the motors assuming it had, in fact, assumed the currency risk actually borne by P.

(iii) *Contractual terms.* The determination of whether the controlled and uncontrolled transactions are comparable requires a comparison of the significant contractual terms that could affect the prices that would be charged or paid, or the profit that would be earned in the two transactions. These terms include the form of consideration charged or paid; payment terms or related financing arrangements; the volume of products purchased or sold; warranty obligations; rights to updates, revisions, or modifications; the duration of relevant contracts and related termination or renegotiation rights; and collateral transactions or ongoing business relationships between the buyer and the seller, including arrangements for the provision of ancillary or subsidiary services. If the time for payment of the amount charged in a controlled transaction differs from the time for payment of the amount charged in an uncontrolled transaction, the payment term in the controlled transaction should be adjusted to reflect the payment term of the uncontrolled transaction, even if no interest would be allocated or imputed under § 1.482–2(a) or other applicable provisions of the Internal Revenue Code or regulations.

(iv) *Economic conditions.* The determination of whether the controlled and uncontrolled transactions are comparable requires a comparison of the significant economic factors that could affect the prices that would be charged or paid, or the profit that would be earned in the two transactions. These factors include—

(A) The alternatives realistically available to a buyer and seller, respectively;

(B) The similarity of geographic markets;

(C) The relative size of each market, the extent of the overall economic development in each market;

(D) The level of the market;

(E) The relevant market shares for the products, properties, or services transferred or provided;

(F) The location-specific costs of the factors of production and distribution; and

(G) The extent of competition in each market with regard to the property or services under review.

(v) *Property or services.* The determination of whether controlled and uncontrolled transactions are comparable requires a comparison of the property or services transferred in the transactions. With respect to transfers of tangible or intangible property, the degree of similarity required will vary depending upon the method applied. For guidance concerning the specific standard of comparability applicable to transfers of tangible and intangible property, see §§ 1.482–3T through 1.482–5T.

(4) *Special circumstances*—(i) *Market share strategy.* In certain circumstances, the price for a controlled transfer of property may, for a limited time, be other than the amount charged in an otherwise comparable uncontrolled transaction because the controlled transfer is subject to a pricing strategy that is undertaken to enter new markets, to increase a product's share of an existing market, or to meet competition in an existing market (market share strategy). A controlled transaction may be priced in such a manner only if it can be shown that such price would have been charged in an uncontrolled transaction under comparable circumstances, determined under the factors of paragraph (c)(3) of this section, including in particular the analysis of risk under paragraph (c)(3)(ii) of this section. The following additional conditions must also be met—

(A) The controlled taxpayer is engaged in business strategies reasonably likely to achieve the intended results (*e.g.*, the distributor makes corresponding reductions in the resale price to uncontrolled purchasers;

the distributor engages in substantially greater sales promotion activities with respect to the product involved in the controlled transfer than with respect to other products);

(B) The market share strategy is reasonably likely to result in future profits for the controlled taxpayer that reflect an appropriate return on the costs incurred to implement it;

(C) The market share strategy, the related costs and expected returns, and any agreement between the controlled taxpayers to share the related costs are documented before the strategy is implemented; and

(D) The market share strategy is pursued for a period of time that is reasonable taking into consideration the industry and product in question.

(ii) *Different geographic markets*—(A) *In general.* Uncontrolled comparables ordinarily should be derived from the same geographic market in which the controlled taxpayer operates, since there may be significant differences in the relevant costs and the applicable resale price in different markets. If information from the same market is not available, an uncontrolled comparable derived from a different geographic market may be considered if adjustments are made to account for differences between the two markets. If information permitting such adjustments is not available, then information derived from uncontrolled taxpayers located in the most similar location for which reliable data is available may be used, but use of such information may affect the accuracy of the method applied for purposes of the best method rule. For this purpose, a "geographic market" is any geographic area in which the market conditions for the relevant product or service are substantially the same, and may include multiple countries, depending on the market conditions.

(B) *Example.* The following example illustrates paragraph (c)(4)(ii)(A) of this section.

Example. Manuco, a wholly-owned foreign subsidiary of P, a U.S. corporation, manufactures products in Country Z for sale to P. Information on uncontrolled taxpayers performing comparable functions under comparable circumstances in the same geographic market is not available. Since reliable data from uncontrolled manufacturers in the same geographic market is unavailable, adjusted data from uncontrolled manufacturers in other markets may be considered. In this case, comparable uncontrolled manufacturers are found in the United States. Accordingly, data from the comparable U.S. uncontrolled manufacturers, as adjusted to account for differences between the U.S. and Country Z's geographic market, is used to test the arm's length price paid by P to Manuco

(C) *Location savings.* If an uncontrolled taxpayer operates in a different geographic market than the controlled taxpayer, adjustments may be necessary to account for significant differences in costs attributable to the geographic locations. These adjustments must be based on the effect such differences may have on the consideration charged or paid in the controlled transfer given the relative competitive positions of buyers and sellers in each location. Thus, the fact that production is less costly in the taxpayer's geographic market ordinarily justifies additional profits only where the location savings would increase the profits of uncontrolled taxpayers operating at arm's length, given the competitive positions of buyers and sellers in that market.

(D) *Example.* The following example illustrates paragraph (c)(4)(ii)(C) of this section.

Example. Couture, a U.S. apparel design corporation, contracts with Sewco, its wholly owned Country Y subsidiary, to manufacture its clothes. Costs of production in Country Y are significantly lower than the costs of manufacturing in the United States. Although clothes with the Couture label sell for a premium price, the actual production of the clothes does not require significant specialized knowledge, and could be performed by several apparel-production firms comparable to Sewco in similar geographic markets. Thus, the fact that production is less costly in Country Y will not, in and of itself, justify additional profits derived from lower costs of manufacturing in Country Y inuring to Sewco, because of the competitive effects attributable to the other producers in similar geographic markets capable of performing the same functions at the same low costs.

(iii) *Isolated transactions.* Isolated transactions between uncontrolled taxpayers, and transactions arranged primarily for the purpose of establishing an arm's length result with respect to a controlled transaction, ordinarily will not constitute comparable transactions for purposes of this section. In the case of tangible property, uncontrolled transactions should ordinarily be significant in number and amount, and should occur in the ordinary course of business in order to be considered comparable uncontrolled transactions for purposes of section 482.

(iv) *Mineral transactions.* The price for a mineral product that is sold at the stage at which mining or extraction ends will be determined under the provisions of §§ 1.613–3 and 1.613–4.

(d) *Scope of review*—(1) *In general.* The authority to determine true taxable income extends to any case in which either by inadvertence or design the taxable income, in whole or in part, of a controlled taxpayer is other than it would have been had the taxpayer, in the conduct of its affairs, been dealing at arm's length with an uncontrolled taxpayer.

(i) *Intent to evade or avoid tax not a prerequisite.* In making allocations under section 482, the district director is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits, or allowances.

(ii) *Realization of income not a prerequisite*—(A) *In general.* The district director may make an allocation under section 482 even if the ultimate income anticipated from a series of transactions has not been or is never realized. For example, if one member of a controlled group sells a product at less than an arm's length price to a second member of the group in one taxable year and the second member resells the product to an unrelated party in the next taxable year, the district director may make an appreciate allocation to reflect an arm's length price for the sale of the product in the first taxable year, even though the second member of the group had not realized any gross income from the resale of the product in the first year. Similarly, if one member of a group lends money to a second member of the group in a taxable year, the district director may make an appropriate allocation to reflect an arm's length charge for interest during such taxable year even if the second member does not realize income during such year. Finally, even if two controlled taxpayers realize an overall loss that is attributable to a particular controlled transaction, an allocation under section 482 is not precluded.

(B) The following example illustrates this paragraph (d)(1)(ii).

Example. Sub is a U.S. subsidiary of Parent, a foreign corporation. Parent manufactures product X and sells it to Sub. Sub functions as a distributor of product X to unrelated customers in the United States. The fact that P may incur a loss on the manufacture and sale of product X does not by itself establish that Sub, dealing with P at arm's length, also would incur a loss. An independent distributor acting at arm's length with its supplier would in many circumstances be expected to earn a profit without regard to the level of profit earned by the supplier.

(iii) *Nonrecognition provisions may not bar allocation.* When necessary to prevent the avoidance of taxes or to clearly reflect income, the district director may make an allocation under section 482 with respect to transactions

that otherwise qualify for nonrecognition of gain or loss under applicable provisions of the Internal Revenue Code (such as section 351 or 1031).

(iv) *Consolidated returns.* Section 482 and the regulations under that section apply to all controlled taxpayers, whether the controlled taxpayer files a separate or consolidated U.S. tax return. If a controlled taxpayer files a separate return, its true separate taxable income will be determined. If a controlled taxpayer is a party to a consolidated return, the true consolidated taxable income of the affiliated group and the true separate taxable income of the controlled taxpayer must be determined consistently with the principles of a consolidated return.

(2) *Limitations on allocations*—(i) *No allocation where results are within arm's length range*—(A) *In general.* Uncontrolled taxpayers that engage in comparable transactions under comparable circumstances do not always achieve identical results. Taken together, their differing results, each of which is an arm's length result, will establish a range of arm's length results (arm's length range). Thus, an arm's length result of a controlled transaction is not necessarily a single amount, and a result from a controlled transaction will not be subject to allocation under section 482 if it falls within the arm's length range established by two or more uncontrolled comparables.

(B) *Determination of arm's length range.* The arm's length range is determined by applying a single pricing method using two or more uncontrolled comparables, each of which independently establishes an arm's length result under the comparability analysis of paragraph (c) of this section and the provisions of the applicable method. The arm's length range may not be determined by applying two or more methods with respect to the controlled transaction under review. Although the size of an arm's length range will depend upon the facts and circumstances of each case, an unusually wide range may suggest that there are material differences among the uncontrolled comparables that have not been adequately taken into account, and for which adjustments may be required. For guidance concerning the computation of the arm's length range on the basis of multiple year data, see paragraph (d)(3)(v) of this section. For additional guidance concerning the determination of an arm's length range under the comparable profits method, see § 1.482–5T(d).

(C) *Adjustment where taxpayer's results are outside arm's length range.* If the results of a controlled transaction fall outside the arm's length range, the district director may make allocations that adjust the controlled taxpayer's result to any point within the arm's length range. Such adjustment ordinarily will be to the mid-point of the range.

(D) *Arm's length range not prerequisite to allocation.* The rules of this paragraph (d)(2)(i) do not require that the district director establish an arm's length range prior to making an allocation under section 482. Thus, for example, the district director may properly propose an allocation on the basis of a single comparable uncontrolled price that establishes an arm's length result under the provisions of paragraph (c) of this section and § 1.482–3T (b). However, if the taxpayer subsequently demonstrates that its results are within the range established by additional comparable uncontrolled prices that independently establish an arm's length result, then no allocation will be made.

(E) *Examples.* The principles of this paragraph (d)(2)(i) are illustrated by the following examples. In each example, P and S are members of the same group of controlled taxpayers.

Example 1. P, a U.S. corporation, manufactures product X and sells it to S, which acts as P's exclusive distributor of product X in Country M. The district director applies the resale price method to determine whether the transfer price for product X charged by P to S is at arm's length. The district director determines that the transactions of uncontrolled distributors A, B, and C are comparable, under the provisions of §§ 1.482–1T(c) and 1.482–3T(c)(3), to the controlled transaction between P and S. After making appropriate adjustments in accordance with §§ 1.482–1T(c)(2) and 1.482–3T(c)(3)(ii), the gross profit margins for A, B, and C are 8%, 10%, and 12%, respectively; S's gross profit margin is 9.5%. A range of 8% to 12% gross profit margins is not an unusually wide range given the norms of the industry involved. Therefore, because S's gross profit margin is within the range of gross profit margins earned by a group of uncontrolled comparable distributors, the transfer price charged by P for product X is an arm's length price, and no reallocation under this section is necessary.

Example 2. The facts are the same as in *Example 1*, except that S's gross profit margin is 15%. Since this result is not within the arm's length range, the district director allocates income from S to P in order to decrease S's gross profit margin to an amount that is within the arm's length range. Such adjustment would ordinarily be to the mid-point of the arm's length range, or 10%.

(ii) *Allocations apply to results, not methods.* In determining whether the result of a controlled transaction is arm's length, it is not necessary for the district director to determine whether the method or procedure that a controlled taxpayer employs to set the terms for its controlled transactions corresponds to the method or procedure that might have been used by a taxpayer dealing at arm's length with an uncontrolled taxpayer.

(iii) *Example.* The following example illustrates paragraph (d)(2)(ii) of this section.

Example. (i) FS is a foreign subsidiary of P, a U.S. corporation. P manufactures and sells household appliances. FS operates as P's exclusive distributor in Europe. P annually establishes the price for each of its appliances sold to FS as part of its annual budgeting, production allocation and scheduling, and performance evaluation processes. FS's aggregate gross margin earned in its distribution business is 18%.

(ii) ED is an uncontrolled European distributor of competing household appliances. After adjusting for minor differences in the level of inventory, volume of sales, and warranty programs conducted by FS and ED, ED's aggregate gross margin is also 18%. Thus, the district director may conclude that the aggregate prices charged by P for its appliances sold to FS are arm's length, without determining whether the budgeting, production, and performance evaluation processes of P are similar to such processes used by ED. In addition, the district director does not need to consider whether P and FS have treated inventory and warranty in the same manner as these factors have been treated by ED and its uncontrolled suppliers, since the results of the controlled transactions are the same as the results of the comparable uncontrolled transactions.

(3) *Rules relating to allocations under section 482.* In determining the extent to which an allocation should be made to reflect the true taxable income of a controlled taxpayer, the district director shall take into consideration the following rules.

(i) *Aggregation of transactions*—(A) *In general.* The district director may consider the combined effect of two or more separate transactions (whether before, during, or after the taxable year under review), where such transactions, taken as a whole, are so interrelated that consideration of multiple transactions is necessary to determine the arm's length consideration for the controlled transactions. Generally, transactions will be aggregated only when they involve related products or services, as defined in § 1.6038A–3(c)(7)(vii).

(B) *Examples.* The following examples illustrate this paragraph (d)(3)(i). In each example, P, S1, S2, and S3 are members of the same group of controlled taxpayers.

Example 1. P enters into a license agreement with S1 that permits S1 to use a proprietary manufacturing process and to sell

the output from this process throughout a specified region. S1 uses the manufacturing process and sells its output to S2, which in turn resells the output to uncontrolled parties in the specified region. In testing the arm's length character of the royalty paid by S1 to P, the district director may consider the arm's length character of the transfer prices charged by S1 to S2 and the aggregate profits earned by S1 and S2 from the use of the manufacturing process and the sale to uncontrolled parties of the products produced by S1.

Example 2. S1, S2, and S3 are Country Z subsidiaries of U.S. manufacturer P. S1 is the exclusive Country Z distributor of computers manufactured by P. S2 provides marketing services in connection with sales of P computers in Country Z, and in this regard uses significant marketing intangibles provided by P. S3 administers the warranty program with respect to P computers in Country Z, including maintenance and repair services. In testing the arm's length character of the transfer price paid by S1 to P, of the fees paid by S2 to P for the use of P marketing intangibles, and of the service fees earned by S2 and S3, the district director may consider the combined effects of these separate transactions because they are so interrelated that they are most reasonably analyzed on an aggregate basis.

Example 3. The facts are the same as in *Example 2*. In addition, U1, U2, and U3 are uncontrolled taxpayers that carry out functions comparable to those of S1, S2, and S3, respectively, with respect to computers produced by unrelated manufacturers. R1, R2, and R3 are a controlled group of taxpayers (unrelated to the P controlled group) that also carry out functions comparable to those of S1, S2, and S3 with respect to computers produced by their common parent. Prices charged to uncontrolled customers of the R group differ from the prices charged to customers of U1, U2, and U3. In determining whether the transactions of U1, U2, and U3, or the transactions of R1, R2, and R3 may be reliable uncontrolled comparables, the district director may determine that the interrelated R group transactions are more reliable than the wholly independent transactions of U1, U2, and U3, given the interrelationship of the P group transactions.

Example 4. P enters into a license agreement with S1 that permits S1 to use a propriety process for manufacturing product X and to sell product X to uncontrolled parties throughout a specified region. P also sells to S1 product Y which is manufactured by P in the United States, and which is unrelated to product X. Product Y is resold by S1 to uncontrolled parties in the specified region. In testing the arm's length character of the royalty paid by S1 to P for the use of the manufacturing process for product X, and the transfer prices charged for unrelated product Y, the district director ordinarily would not consider the combined effects of these separate and unrelated transactions.

(ii) *Contractual arrangements.* The district director will ordinarily respect the terms of contractual arrangements between controlled taxpayers if such terms are consistent with the economic substance of the underlying transactions and the actual conduct of the parties. If the conduct of controlled taxpayers is inconsistent with their contractual arrangements, the district director may disregard such arrangements and instead give appropriate consideration to the actual conduct of the taxpayers. Similarly, where the regular and continuing conduct of controlled taxpayers is consistent with an agreement in substance, the district director may disregard the absence of a written document setting forth the terms of such an agreement. For example, when a controlled taxpayer that produces tangible property regularly sells substantially all its output to another member of its controlled group, in determining the producer's true taxable income, the district director may determine from the course of conduct of the controlled parties that the producer does not bear the risk that the buyer will fail to purchase its output, even if there is no written contract that expressly requires the buyer to do so. See *Example 3* of paragraph (c)(3)(ii)(E) of this section.

(iii) *Allocation based on taxpayer's actual transactions.* Except where a controlled transaction lacks economic substance, the district director will test the arm's length character of the results of a taxpayer's transaction as actually structured by the taxpayer, and ordinarily will not treat the transaction as if it has been structured in a different manner. Pursuant to the comparability analysis of § 1.482–1T(c)(3), however, the district director may consider the alternatives available to the taxpayer in determining whether the terms of the controlled transaction would be acceptable to an uncontrolled taxpayer faced with the same alternatives and operating under comparable circumstances. In such cases the district director may adjust the consideration charged in the controlled transaction based on the cost of an alternative, but will not restructure the transaction as if the alternative had been adopted by the taxpayer.

(iv) *Example.* The following example illustrates paragraph (d)(3)(iii) of this section.

Example. P and S are controlled taxpayers. P enters into a license agreement with S that permits S to use a proprietary process for manufacturing product X. Using its sales and marketing employees, S sells product X to related and unrelated customers outside the United States. If the license agreement between P and S has economic substance, the district director ordinarily will not restructure the taxpayer's transaction to treat P as if it had elected to exploit directly the manufacturing process. However, the fact that P could have manufactured product X may be taken into account as an alternative, under § 1.482–1T(c)(3)(iv), in determining the arm's length consideration for the controlled transaction. For an example of such an analysis, see § 1.482–4T(c)(2)(iv).

(v) *Multiple year data*—(A) *In general.* When testing the arm's length character of a controlled transaction, the district director will ordinarily compare the results of the controlled transaction under review with the actual prices charged or paid, or the actual profit earned, in uncontrolled transactions in the same year as the taxable year of the controlled taxpayer that is under review. Where appropriate, however, the district director may consider information about the uncontrolled comparables or the controlled taxpayer for one or more years before or after the year under review. Where data of uncontrolled comparables from multiple years is used, data from the controlled taxpayer for the same years ordinarily must be considered. However, if such data is not available, reliable data from other years, as adjusted under paragraph (c)(2)(ii) of this section, may be used. Where data from multiple years is considered, it may be appropriate to compare the controlled taxpayer's average results over the multi-year period with the average results of the uncontrolled comparables over the same period. See *Example 4* of § 1.482–1T(d)(3)(v)(D).

(B) *Circumstances warranting consideration of multiple year data.* Circumstances that may warrant consideration of information from multiple years include the unavailability of adequate and reliable data for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, or the effects of life cycles of the product or intangible being examined. Information from one or more years before or after the taxable year under review must ordinarily be considered for purposes of applying the provisions of § 1.482–1T(c)(3)(ii) (analysis of risk), § 1.482–1T(c)(4)(i) (market share strategy), § 1.482–1T(d)(2)(i) (arm's length range), § 1.482–4T(e)(2) (periodic adjustments), and § 1.482–5T (comparable profits method).

(C) *Comparable effect over comparable period.* The district director may review data from multiple years to determine whether the same economic conditions that caused the controlled taxpayer's results had a comparable effect over a comparable period of time on the uncontrolled comparables that establish the arm's length range. For example, where a controlled taxpayer

that realizes a loss with respect to a controlled transaction seeks to demonstrate that the loss is within the arm's length range, the district director may take into account data from taxable years other than the taxable year of the transaction to determine whether the same economic conditions that resulted in the controlled taxpayer's loss had a comparable effect over a comparable period of time on the uncontrolled comparables. The rule of this paragraph (d)(3)(v)(C) is illustrated by *Example 3* of paragraph (d)(3)(v)(D) of this section.

(D) *Examples.* The following examples, in which S and P are controlled taxpayers, illustrate this paragraph (d)(3)(v). *Examples 1* and *4* also illustrate the principle of the arm's length range of paragraph (d)(2)(i) of this section.

Example 1. P sold product Z to S for $60 per unit in 1995. Applying one of the methods provided in § 1.482–3T to data from uncontrolled comparables for the same year establishes an arm's length range of prices for the controlled transaction from $52 to $59 per unit. Since the price charged in the controlled transaction falls outside the range, the district director would ordinarily make an allocation under section 482. However, in this case there are short-run factors that affect the results of the uncontrolled comparables (and that of the controlled transaction) that cannot be adequately accounted for by specific adjustments to the data for 1995. Therefore, the district director considers results over multiple years to account for these factors. Under these circumstances, it is appropriate to average the results of the uncontrolled comparables over the years 1993, 1994, and 1995 to determine an arm's length range. The averaged results establish an arm's length range of $56 to $58 per unit. For consistency, the results of the controlled taxpayers must also be averaged over the same years. The average price in the controlled transaction over the three years is $57. Because the controlled transfer price of product Z falls within the arm's length range, the district director makes no allocation.

Example 2. (i) P, a Country X corporation, designs and manufactures machinery in Country X. P's costs are incurred in Country X currency. S is the exclusive distributor of P's machinery in the United States. The price of the machinery sold by P to S is expressed in Country X currency. Thus, S bears all of the currency risk associated with fluctuations in the exchange rate between the U.S. dollar and the Country X currency. The prices charged by P to S for 1995 are under examination. In that year, the value of the dollar depreciated against the currency of Country X, and as a result, S's gross margin was only 8%.

(ii) UD is an uncontrolled distributor of similar machinery that performs distribution functions substantially the same as those performed by S, except that UD purchases and resells machinery in transactions where both the purchase and resale prices are denominated in U.S. dollars. Thus, UD had no currency exchange risk. UD's gross margin in 1995 was 10%. UD's average gross margin for the period 1990 to 1998 has been 12%.

(iii) In determining whether the price charged by P to S in 1995 was arm's length, the district director may consider S's average gross margin for an appropriate period before and after 1995 to determine whether S's average gross margin during the period was sufficiently greater than UD's average gross margin during the same period such that S had a reasonable opportunity to realize above normal profits commensurate with the currency risk it bore throughout the period. See § 1.482–1T(c)(3)(ii).

Example 3. P manufactures product X in Country M and sells it to S, which distributes X in the United States. S realizes losses with respect to the controlled transactions in each of five consecutive taxable years. In each of the five consecutive years a different uncontrolled comparable realized a loss with respect to comparable transactions equal to or greater than S's loss. Pursuant to paragraph (d)(3)(v)(C) of this section, the district director examines whether the uncontrolled comparables realized similar losses over a comparable period of time, and finds that each of the five comparables realized losses in only one of the five years, and their average result over the five-year period was a profit. Based on this data, the district director may conclude that the controlled taxpayer's results are not within the arm's length range over the five year period, since the economic conditions that resulted in the controlled taxpayer's loss did not have a comparable effect over a comparable period of time on the uncontrolled comparables.

Example 4. (i) P manufactures product Y and sells it to S, which acts as P's exclusive distributor of product Y in Country N. The arm's length character of the transfer price charged by P to S for the 1993 taxable year for product Y is tested using the resale price method described in § 1.482–3T(c). For the period 1992 through 1994, S had a gross profit margin for each year of 3%. A, B, C and D are uncontrolled distributors of products that compete directly with product Y in country N. A, B, C and D are uncontrolled comparables within the meaning of § 1.482–1T(g)(10), and after making appropriate adjustments in accordance with §§ 1.482–1T(c)(2) and 1.482–3T(c), the gross profit margins for A, B, C, and D are as follows:

	1992	1993	1994	Average
A	12	2	9	7.67
B	10	13	2	8.33
C	2	9	11	7.00
D	8	11	7	8.67

(ii) Based on this data, the district director may conclude that S's gross margin of 3% is not within the arm's length range, despite the fact that A's gross margin for 1993 was only 2 percent, since the economic conditions that caused S's result did not have a comparable effect over a comparable period of time on the results of A or the other uncontrolled comparables.

(vi) *Product lines and statistical techniques.* The methods described in §§ 1.482–2T through 1.482–5T are generally stated in terms of individual transactions. However, because a taxpayer may have controlled transactions involving many different products, or many separate transactions involving the same product, it may be impractical to analyze every individual transaction to determine its arm's length price. In such cases, it is permissible to determine or verify arm's length results by applying the appropriate methods to the overall results for product lines or other groupings. In addition, the district director may determine or verify the arm's length price of all transactions to a controlled taxpayer by employing sampling and other valid statistical techniques.

(e) *Collateral adjustments with respect to allocations under section 482*—(1) *In general.* The district director will take into account appropriate collateral adjustments that affect the amount or the effect of an allocation under section 482. Appropriate collateral adjustments may include compensating adjustments, correlative adjustments, conforming adjustments, and setoffs, as described in this paragraph.

(2) *Compensating adjustments*—(i) *In general.* Except as provided in paragraph (e)(2)(iii) of this section, in making an allocation under section 482, the district director will take into account the effect of an arrangement between members of the group for reimbursement or other compensating adjustments. Such an arrangement will be taken into account only if the taxpayer establishes that—

(A) The reimbursement or other compensating adjustment is made pursuant to a written agreement between the controlled taxpayers;

(B) The arrangement provides for reimbursement or compensating adjustments among members of the group, as necessary to achieve an arm's length result for the controlled transaction under review; and

(C) The adjustments are made before the taxpayer's timely filing (including extensions) of a U.S. income tax return for the taxable year of the transaction.

(ii) *Treatment of adjustments.* A compensating adjustment under this paragraph (e)(2) will be deemed to accrue to the recipient as of the earlier of the date of actual payment or the last day of the taxable year to which it relates. The adjusted results will constitute the taxable income of the taxpayer for all U.S. income tax purposes. On or before the due date (with extensions) of the taxpayer's U.S. income tax return for the taxable year of the transaction, the parties may satisfy an accrued compensating adjustment in

any appropriate manner, including cash payment or adjustment to controlled taxpayers' books and records. Appropriate adjustments to the books and records include offsets to other accounts receivable or payable, recharacterizations of dividends paid, or contributions of capital. Any such adjustment to the books and records will relate to the taxable year giving rise to the compensating adjustment. If the compensating adjustment is not satisfied in such manner by the due date (with extensions) of the taxpayer's U.S. income tax return for the taxable year of the transaction, interest will accrue on the receivable from that date. The compensating adjustment may thereafter be satisfied at any time by cash payment or adjustments to the current taxable year's books and records.

(iii) *Pattern of abuse.* The district director may refuse to take into account a compensating adjustment if the district director determines that the controlled taxpayer has engaged in a pattern of transactions designed to abuse the provisions of this paragraph (e)(2).

(iv) *Example.* The following example illustrates this paragraph (e)(2).

Example. (i) FS is a foreign subsidiary of P, a U.S. corporation. P manufactures and sells a variety of household appliances in the United States. Both P and FS are calendar year corporations. FS operates as P's exclusive distributor of appliances in Europe. FS maintains inventory of various appliances, conducts advertising campaigns on behalf of P, and administers P's warranty program in Europe. P annually establishes the transfer price for each of its appliances sold to FS as part of its annual budgeting, production allocation and scheduling, and performance evaluation processes. P and FS have a written transfer pricing agreement that provides for retroactive price adjustments to reflect actual market conditions in a taxable year. The adjustments are made pursuant to a predetermined formula that is specified in the written agreement.

(ii) For purposes of setting transfer prices for 1994 in December 1993, P estimates that FS's sales volume will be 1,000 Foreign Currency Units (FCUs) and its advertising budget will be 15 FCUs. P also estimates that the average gross margin of comparable uncontrolled distributors in 1994 will be 18%. FS's actual sales volume in 1994 turns out to be only 900 FCUs, and its actual advertising expenses were 25 FCUs. FS's actual gross margin in 1994 was 16%. Pursuant to the transfer pricing agreement and price adjustment formula, P makes a price rebate to FS in January 1995 to take account of differences between budgeted and actual results.

(iii) In July, 1995, P determines that the comparable uncontrolled distributors actually earned an average gross margin of 14% in 1994. Pursuant to the price adjustment formula, FS returns a portion of the rebate it received in January. The compensating adjustments made by P and FS in January and July 1995 will be given effect and will be deemed to have accrued as of December 31, 1994.

(3) *Correlative allocations*—(i) *In general.* When the district director makes an allocation under section 482 (referred to in this paragraph (e)(3) as the "primary" allocation), appropriate correlative allocations will also be made with respect to any other member of the group affected by the allocation. Thus, if the district director makes an allocation of income, the district director will not only increase the income of one member of the group, but correspondingly decrease the income of the other member. In addition, where appropriate, the district director may make such further correlative allocations as may be required by the initial correlative allocation.

(ii) *Manner of carrying out correlative allocation.* The district director shall furnish to the taxpayer with respect to which the primary allocation is made a written statement of the amount and nature of the correlative allocation. The correlative allocation must be reflected in the documentation of the other member of the group that is maintained for U.S. tax purposes, without regard to whether it affects the U.S. income tax liability of the other member for any open year. In some circumstances the allocation will have an immediate U.S. tax effect, by changing the taxable income computation of the other member (or the taxable income computation of a shareholder of the other member, for example, under the provisions of subpart F of the Internal Revenue Code). Alternatively, the correlative allocation may not be reflected on any U.S. tax return until a later year, for example when a dividend is paid.

(iii) *Events triggering correlative allocation.* For purposes of this paragraph (e)(3), a primary allocation will not be considered to have been made (and therefore, correlative allocations are not required to be made) until the occurrence of any of the following events with respect to the primary allocation—

(A) The date of assessment of the tax following execution by the taxpayer of a Form 870 (Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) with respect to such allocation;

(B) Acceptance of a Form 870–AD (Offer of Waiver of Restriction on Assessment and Collection of Deficiency in Tax Acceptance of Overassessment);

(C) Payment of the deficiency;

(D) Stipulation in the Tax Court of the United States; or

(E) Final determination of tax liability by offer-in-compromise, closing agreement, or final resolution (determined under the principles of section 7481) of a judicial proceeding.

(iv) *Examples.* The following examples illustrate this paragraph (e)(3). In each example, X and Y are members of the same group of controlled taxpayers and each regularly computes its income on a calendar year basis.

Example 1. (i) In 1996, Y, a U.S. corporation rents a building owned by X, also a U.S. corporation. In 1998 the district director determines that the rental charge paid by Y to X was not at arms's length and proposes to adjust X's income to reflect an arm's length rental charge. X consents to the assessment reflecting such adjustment by executing Form 870, a Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment. The assessment of the tax with respect to such adjustment is made in 1998. Thus, the primary allocation, as defined in paragraph (e)(3)(i) of this section, is considered to have been made in 1998.

(ii) The adjustment made to X's income under section 482 requires a correlative allocation with respect to Y's income. The district director notifies X in writing of the amount and nature of the adjustment made with respect to Y. Y had net operating losses in 1993, 1994, 1995, 1996, and 1997. Although a correlative adjustment will not have an effect on Y's U.S. income tax liability for 1996, an adjustment increasing Y's net operating loss for 1996 will be made for purposes of determining Y's U.S. income tax liability for 1998 or a later taxable year to which the increased net operating loss may be carried.

Example 2. (i) In 1995, X, a U.S. construction company, provided engineering services to Y, a U.S. corporation, in the construction of Y's factory. In 1997, the district director determines that the fees paid by Y to X for its services were not arm's length and proposes to make an adjustment to the income of X. X consents to an assessment reflecting such adjustment by executing Form 870. An assessment of the tax with respect to such adjustment is made in 1997. The district director notifies X in writing of the amount and nature of the adjustment to be made with respect to Y.

(ii) The fees paid by Y for X's engineering services properly constitute a capital expenditure. Y does not place the factory into service until 1998. Therefore, a correlative adjustment increasing Y's basis in the factory does not affect Y's U.S. income tax liability for 1997. However, the correlative adjustment must be made in the books and records maintained by Y for its U.S. income tax purposes and such adjustment will be taken into account in computing Y's allowable depreciation or gain or loss on a subsequent disposition of the factory.

Example 3. In 1995, X, a U.S. corporation, makes a loan to Y, its foreign subsidiary not

engaged in a U.S. trade or business. In 1997, the district director, upon determining that the interest charged on the loan was not arm's length, proposes to adjust X's income to reflect an arm's length interest rate. X consents to an assessment reflecting such allocation by executing Form 870, and an assessment of the tax with respect to the section 482 allocation is made in 1997. The district director notifies X in writing of the amount and nature of the correlative allocation to be made with respect to Y. Although the correlative adjustment does not have an effect on Y's U.S. income tax liability, the adjustment must be reflected in the documentation of Y that is maintained for U.S. tax purposes. Thus, for example, the adjustment must be reflected in the determination of the amount of Y's earnings and profits for 1995 and subsequent years, and of any other effect it may have on any person's U.S. income tax liability for any taxable year.

(4) *Adjustments to conform accounts to reflect section 482 allocations.* Pursuant to such applicable revenue procedures as may be provided by the Commissioner, the district director may permit adjustments to conform a taxpayer's accounts to reflect allocations made by the district director under section 482.

(5) *Setoffs*—(i) *In general.* When making an allocation under section 482 to determine the taxpayer's true taxable income for a taxable year, the district director will take into account any other controlled transaction in the same taxable year that is not at arm's length and that would result in a setoff against the allocation that would otherwise be made with regard to the first transaction. The district director will take into account such a setoff only if the taxpayer establishes that the other transaction was not at arm's length and the amount of the appropriate arm's length charge. If the effect of the setoff is to change the characterization or source of the income or deductions, or otherwise distort taxable income, in such a manner as to effect the U.S. tax liability of any member, allocations will be made to reflect the correct amount of each category of income or deductions. In order to establish that a setoff to the adjustments proposed by the district director is appropriate, the taxpayer must notify the district director of the basis of any claimed setoff within 30 days after the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments. For this purpose, the term arm's length refers to the amount defined in paragraph (b) of this section, without regard to the rules in § 1.482–2T under which certain charges are deemed to be equal to arm's length.

(ii) *Examples.* The following examples illustrate this paragraph (e)(5). In each example, P and S are members of the same group of controlled taxpayers.

Example 1. P renders services to S in connection with the construction of S's factory. An arm's length charge for such services, determined under § 1.482–2T(b) would be $100,000. During the same taxable year P makes available to S a machine to be used in such construction. P bills S $125,000 for the services, but does not bill for the use of the machines. No allocation will be made with respect to the excessive charge for services or the undercharge for the machine if P notifies the district director of the basis of any claimed setoff within 30 days after the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments, and can establish that the excessive charge for services was equal to an arm's length charge for the use of the machine and if the taxable income and income tax liabilities of P and S are not distorted.

Example 2. The facts are the same as in *Example 1*, except that, if P had reported $25,000 as rental income and $25,000 less service income, it would have been subject to the tax on personal holding companies. Allocations will be made to reflect the correct amounts of rental income and service income.

(f) *Special rules*—(1) *Small taxpayer safe harbor*—(i) *In general.* No allocations will be made under section 482 in the case of an eligible taxpayer that—

(A) Elects the provision of this paragraph (f)(1);

(B) Determines aggregate taxable income from all controlled transactions by applying the appropriate profit level indicator that the Commissioner provides in applicable revenue procedures; and

(C) Complies with the procedural requirements set forth in such revenue procedures.

(ii) *Eligible taxpayer.* An eligible taxpayer is a controlled taxpayer that either—

(A) Is a U.S. person with less than $10 million in sales revenue, as defined in § 1.482–5(f)(1), for the taxable year at issue; or

(B) Is a U.S. person that engages in cross-border transactions with a controlled taxpayer that is foreign (foreign controlled taxpayer) and such foreign controlled taxpayer has less than $10 million in sales revenue for the taxable year at issue. For this purpose, a cross-border controlled transaction is a controlled transaction in which property or services are transferred either to or from the United States by a controlled taxpayer.

(iii) *Aggregation.* (A) For purposes of paragraph (f)(1)(ii)(A) of this section, the sales revenue of all U.S. members of the transferee's controlled group must be aggregated.

(B) For purposes of paragraph (f)(1)(ii)(B) of this section, the sales revenue of all foreign controlled taxpayers with which the U.S. person engaged in cross-border transactions must be aggregated.

(iv) *Election to apply the appropriate profit level indicator.* (A) An eligible taxpayer elects under this paragraph (f)(1) to apply the appropriate profit level indicator by attaching to a timely filed U.S. income tax return a written statement indicating that the provisions of this paragraph (f)(1) are being elected In addition, the written statement shall contain all other information as may be required in applicable revenue procedures.

(B) An election made pursuant to this paragraph (f)(1) will apply to the taxable year in which it was made and to all subsequent taxable years. An election under this paragraph (f)(1) may be revoked only with the consent of the Commissioner.

(C) An election under this paragraph (f)(1) will not apply in any taxable year in which the controlled taxpayer is not an eligible taxpayer. The election will apply in all subsequent years in which the controlled taxpayer again qualifies as an eligible taxpayer. The election will not apply in a subsequent year, however, if the district director determines that the controlled taxpayer has engaged in a pattern of transactions designed to abuse the provisions of this paragraph (f)(1).

(2) *Effect of foreign legal restrictions.* [Reserved]

(3) *Coordination with section 936*—(i) *Cost sharing under section 936.* If a possessions corporation makes an election under section 936(h)(5)(C)(i)(I), the corporation must make a section 936 cost sharing payment that is at least equal to the payment that would be required under section 482 if the electing corporation were a foreign corporation. In determining the payment that would be required under section 482 for this purpose, the provisions of §§ 1.482–1T and 1.482–4T through 1.482–5T will be applied. The provisions of section 936(h)(5)(C)(i)(II) ("Effect of Election"—electing corporation treated as owner of intangible property) do not apply until the payment that would be required under section 482 has been determined.

(ii) *Use of terms.* A cost sharing payment, for the purposes of section 936(h)(5)(C)(i)(I), is calculated using the provisions of section 936 and the regulations thereunder and the provisions of this paragraph (f)(3). The

provisions relating to cost sharing under section 482 do not apply to payments made pursuant to an election under section 936(h)(5)(C)(i)(I). Similarly, a profit split payment, for the purposes of section 936(h)(5)(C)(ii)(I), is calculated using the provisions of section 936 and the regulations thereunder, not section 482 and the regulations thereunder.

(g) *Definitions.* The definitions set forth in paragraphs (g)(1) through (10) of this section apply to §§ 1.482–1T through 1.482–6T.

(1) *Organization* includes any organization of any kind, whether a sole proprietorship, a partnership, a trust, an estate, an association, or a corporation (as each is defined or understood in the Internal Revenue Code or the regulations thereunder), irrespective of the place of its organization, operation, or conduct of its trade or business, and regardless of whether it is a domestic or foreign organization, whether it is an exempt organization, or whether it is a member of an affiliated group that files a consolidated U.S. income tax return, or a member of an affiliated group that does not file a consolidated U.S. income tax return.

(2) *Trade* or *business* includes a trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place of operation.

(3) *Taxpayer* means any person, organization, trade or business, whether or not subject to any internal revenue tax.

(4) *Controlled* includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control that is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted as a result of the actions of two or more taxpayers acting in concert or with a common goal or purpose.

(5) *Controlled taxpayer* means any one of two or more taxpayers owned or controlled directly or indirectly by the same interests. The term *uncontrolled taxpayer* means any one of two or more taxpayers not owned or controlled directly or indirectly by the same interests.

(6) *Group, controlled group* and *group of controlled taxpayers* mean the taxpayers owned or controlled directly or indirectly by the same interests.

(7) *Transaction* means any sale, assignment, lease, license, loan, advance, contribution, or any other transfer of any interest in or a right to use any property (whether tangible or intangible, real or personal) or money, however such transaction is effected, and whether or not the terms of such transaction are formally documented. A transaction also includes the performance of any services for the benefit of, or on behalf of, another taxpayer.

(8) *Controlled transaction* or *controlled transfer* means any transaction or transfer between two or more members of the same group of controlled taxpayers. The term *uncontrolled transaction* means any transaction between two or more taxpayers that are not members of the same group of controlled taxpayers.

(9) *True taxable income* means, in the case of a controlled taxpayer, the taxable income that would have resulted had it dealt with the other member or members of the group at arm's length. It does not mean the taxable income resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement the controlled taxpayer chose to make (even though such contract, transaction, or arrangement is legally binding upon the parties thereto).

(10) *Uncontrolled comparable* means the uncontrolled transaction or uncontrolled taxpayer that is compared with a controlled transaction or taxpayer under any applicable pricing methodology. Thus, for example, when applying the comparable profits method, an uncontrolled comparable is any uncontrolled taxpayer from which data is used to establish a constructive operating profit.

(h) *Effective dates.* These regulations are generally effective for taxable years beginning after April 21, 1993. They will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986, for transfers or licenses to others. Nevertheless, they will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date. Although these regulations are generally effective for taxable years as stated, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the effective date of these regulations, the final sentence of section 482 must be applied using any reasonable method not inconsistent with the statute. The Internal Revenue Service considers a method that applies these regulations or their general principles to be a reasonable method.

§ 1.482–2T Determination of taxable income in specific situations.

(a) through (c). [Reserved]. (For further information see § 1.482–2A (a) through (c).)

(d) *Transfer of property.* For rules governing allocations under section 482 to reflect an arm's length consideration for controlled transactions involving the transfer of property, see §§ 1.482–3T through 1.482–5T.

§ 1.482–3T Methods to determine taxable income in connection with a transfer of tangible property.

(a) *In general.* The arm's length character of the amount charged in a controlled transfer of tangible property must be determined under one of the five methods listed in this paragraph (a). The five methods must be applied in accordance with the provisions of § 1.482–1T. The selection of a method for the particular transaction under review will be subject to the best method rule of § 1.482–1T(b)(2)(iii)(A). The methods are—

(1) The comparable uncontrolled price method, described in paragraph (b) of this section;

(2) The resale price method, described in paragraph (c) of this section;

(3) The cost plus method, described in paragraph (d) of this section;

(4) The comparable profits method, described in § 1.482–5T; and

(5) Other methods, described in paragraph (e) of this section.

(b) *Comparable uncontrolled price method*—(1) *In general.* Under the comparable uncontrolled price method, the arm's length price for a controlled sale of tangible property is equal to the price paid in a comparable uncontrolled transaction. For purposes of applying the best method rule of § 1.482–1T(b)(2)(iii)(A), the comparable uncontrolled price method, when it can be reasonably applied on the basis of available data, ordinarily will provide the most accurate measure of an arm's length price for the transfer of tangible property. This method relies upon a product comparable, as described in § 1.482–1T(c)(1)(ii). Factors to be considered in the application of this method include the access to relevant pricing and other financial information, and the existence of an active market, which would include contemporaneous transactions between uncontrolled taxpayers involving comparable property.

(2) *Standard of comparability*—(i) *In general.* Whether an uncontrolled

transaction is comparable to a controlled transaction must generally be determined under the standards of § 1.482–1T(c). However, for purposes of the comparable uncontrolled price method, transactions are considered comparable only if the tangible property and circumstances of the controlled transaction are substantially the same as those of the uncontrolled transaction. The tangible property and circumstances of an uncontrolled transaction will be considered substantially the same as those of a controlled transaction only if any minor differences between the transactions either have no effect on the amount charged, or can be accounted for by a reasonable number of adjustments to the uncontrolled transaction. If there are material differences between the controlled and uncontrolled transactions, other methods must be applied, such as the resale price method described in paragraph (c) of this section, the cost plus method described in paragraph (d) of this section, or the comparable profits method described in § 1.482–5T. For example, if the functions performed by the taxpayer in the controlled transaction are materially different from the functions performed in the uncontrolled transaction, the comparable uncontrolled price method cannot be applied.

(ii) *Factors for determining comparability and required adjustments.* The comparability of controlled and uncontrolled transactions, the effect of any differences between them on the amount charged, and any adjustment required under paragraph (b)(2)(i) of this section, depend upon the particular property and circumstances involved. Although all of the factors described in § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include the following—

(A) Quality of the product;

(B) Sales volume;

(C) The level of the market (*e.g.*, wholesale, retail, etc.);

(D) The geographic market in which the transaction takes place;

(E) Date of the transaction;

(F) The alternative commercial arrangements realistically available to the buyer and seller; and

(G) Intangible property associated with the sale.

(iii) *Arm's length range.* Where two or more uncontrolled transactions independently establish an arm's length price under this paragraph (b), such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(iv) *Examples.* The principles of this paragraph (b) are illustrated by the following examples. In each example, X sells the same product in both controlled and uncontrolled sales:

Example 1. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that the controlled sales price is a delivered price and the uncontrolled sales are made f.o.b. X's factory. Since differences in the contractual terms of transportation and insurance generally have a definite and reasonably ascertainable effect on price, the uncontrolled transactions are comparable for purposes of the comparable uncontrolled price method, provided the adjustments are made to the price of the uncontrollable transaction to reflect such differences.

Example 2. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that X affixes its valuable trademark to the property sold in the controlled transactions, but does not affix its trademark to the property sold in the uncontrolled transactions. Since the effects on price of such differences that are attributable to the intangible property associated with the sale of tangible property are ordinarily significant but not reasonably ascertainable, such differences would ordinarily render the uncontrolled transactions noncomparable for purposes of applying the comparable uncontrolled price method.

Example 3. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same except that X, a manufacturer of business machines, makes certain minor modifications in the physical properties of the machines to satisfy specific requirements of a customer in controlled sales, but does not make these modifications in uncontrolled sales. Since minor physical differences in the product generally have a definite and reasonably ascertainable effect on prices, such differences do not normally render the uncontrolled transactions noncomparable for purposes of applying the comparable uncontrolled price method.

Example 4. The circumstances surrounding the controlled and uncontrolled sales are substantially the same, except that, in the controlled sales, the seller bears the warranty obligations that arise upon the resale of the product. If this difference is minor and the effect of this difference on the price can be reasonably ascertained, for purposes of the comparable uncontrolled price method, the uncontrolled sales will be comparable to the controlled sales.

Example 5. The circumstances surrounding the controlled and uncontrolled sales are substantially the same, except for the fact that the volume of controlled sales is greater than the volume of uncontrolled sales. The volume of controlled sales produces a reasonably ascertainable volume discount. The price of the uncontrolled transaction, adjusted to account for the difference in volume from the controlled transaction, provides an arm's length price of the controlled transaction. See also the *Example* under § 1.482–1T(c)(2)(iii).

Example 6. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that the controlled sales are made into country A and the uncontrolled sales are made into country B. In both controlled and uncontrolled transactions, the buyer is a distributor of X's products at the wholesale market level. In this case, differences in geographic markets may result in differences in significant costs and the applicable resale price. Such differences are material and render the uncontrolled transactions noncomparable to the controlled transactions, even if the effect of any such differences could be reasonably ascertained. However, the uncontrolled sales may qualify as comparable uncontrolled transactions for purposes of applying the resale price method described in paragraph (c) of this section.

(c) *Resale price method*—(1) *In general.* The resale price method tests the arm's length character of a controlled transaction by reference to the gross profit margin realized in comparable uncontrolled transactions. The resale price method measures the value of distribution functions and is ordinarily used in cases involving the purchase and resale of tangible property where the distributor has not added substantial value to the tangible goods by physically altering the goods before resale or by the use of intangible property. For this purpose packaging, repackaging, labelling, or minor assembly do not ordinarily constitute physical alteration. This method relies upon a functional comparable, as described in § 1.482–1T(c)(1)(ii).

(2) *Determination of arm's length price*—(i) *In general.* An arm's length price is determined under the resale price method by subtracting the appropriate gross profit from the applicable resale price for the property involved in the controlled transaction under review.

(ii) *Applicable resale price.* The applicable resale price is equal to either the resale price of the particular item of property involved or the price at which contemporaneous resales of the same property are made. Where the property purchased in the controlled sale is resold to one or more related parties in a series of controlled sales before being resold in an uncontrolled sale, the applicable resale price is the price at which the property is resold to an uncontrolled party, or the price at which contemporaneous resales of the same property are made. In such case, the determination of the appropriate gross profit will take into account the functions of all members of the group participating in the series of controlled sales and final uncontrolled resale, as well as any other relevant factors described in § 1.482–1T(c)(3).

(iii) *Appropriate gross profit.* The appropriate gross profit is computed by

multiplying the applicable resale price by the appropriate gross profit margin (expressed as a percentage of total revenue derived from sales) earned in comparable uncontrolled transactions. In order to achieve comparability when calculating the appropriate gross profit margin, the elements that enter into the computation of the sales price and the cost of goods sold of the property involved in the controlled and uncontrolled transactions must be the same. Accounting reclassifications may be required to ensure consistent treatment of such items as discounts, returns and allowances, freight-in and freight-out, insurance, and packaging. Whenever possible, gross profit margins should be derived from comparable uncontrolled purchases and resales of the distributor involved in the controlled sale, because similar characteristics are more likely to be found among different resales of property made by the same distributor than among sales made by other distributors. In the absence of comparable uncontrolled transactions by the same distributor, an appropriate gross profit margin may be derived from comparable uncontrolled transactions of other distributors.

(iv) *Arm's length range.* Where two or more uncontrolled transactions independently establish an arm's length price under paragraph (c)(3) of this section, such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(3) *Standard of comparability*—(i) *In general.* The determination of whether an uncontrolled transaction is comparable to the controlled transaction will be made by applying the standards of § 1.482–1T(c). A distributor's gross profit provides compensation for the performance of distribution functions related to the product or products under review, including an operating profit in return for the distributor's investment of capital and the assumption of risks. Therefore, for purposes of the resale price method, close physical similarity of the property involved in the controlled and uncontrolled transactions is not ordinarily necessary to establish the comparability of the distributor's gross profit margin. For example, distributors of a wide variety of consumer durables might perform comparable distribution functions without regard to the specific durable goods distributed. It would ordinarily be expected, however, that the controlled and uncontrolled transactions involve the distribution of products within the same product categories. In the absence of such sales, the prevailing gross profit margins in the general industry involved may be appropriate.

(ii) *Adjustments for differences between controlled and uncontrolled transactions.* Appropriate adjustments for differences must be made to the gross profit margins earned with respect to uncontrolled transactions, pursuant to the standards of § 1.482–1T(c)(2)(ii). For this purpose, it is necessary to consider operating expenses associated with functions performed and risks assumed. If there are differences in functions performed, the effect on price of such differences is not necessarily equal to the differences in the amount of related operating expenses. Although all of the criteria of § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include—

(A) The inventory levels and turnover rates;

(B) The scope and terms of warranties provided;

(C) Sales, marketing, advertising programs and services, (including promotional programs, rebates, and co-op advertising);

(D) Sales volumes;

(E) The level of the market;

(F) Foreign currency risks; and

(G) Extensions of credit and payment terms.

(iii) *Sales agent.* Where the controlled taxpayer is comparable under the standards of comparability under paragraph (c)(3) of this section and § 1.482–1T(c) to a sales agent that does not take title to goods, the commission earned by such sales agent, expressed as a percentage of the uncontrolled sales price of the goods involved, may constitute the appropriate gross profit margin.

(4) *Examples.* The following examples illustrate this paragraph (c).

Example 1. A controlled taxpayer sells property to another member of its controlled group that resells the property in uncontrolled sales. If the applicable resale price of the property involved in the controlled sale is $100 and the appropriate gross profit margin for resales is 20%, the arm's length price of the controlled sale is $80 ($100 minus 20% x $100).

Example 2. (i) A controlled taxpayer, P, sells property to another member of its controlled group, S, which resells such property in uncontrolled sales. S's total reported cost of goods sold is $800, consisting of $600 for property purchased from P and $200 of other costs of goods sold incurred to unrelated parties. S's applicable resale price and reported gross profit are as follows:

Applicable resale price	$1000
Cost of goods sold:	
Cost of purchases from P	600
Costs incurred to unrelated parties	200
Reported gross profit	$200

(ii) The district director determines that the appropriate gross profit margin is 25%. Therefore, S's appropriate gross profit is $250 (*i.e.*, 25% of the applicable resale price of $1000). Because S is incurring costs of sales to unrelated parties, the arm's length price for property purchased from P must be determined under a two-step process. First, the appropriate gross profit ($250) is subtracted from the applicable resale price ($1000). The resulting amount ($750) is then reduced by the costs of sales incurred to unrelated parties ($200). Therefore, the arm's length price in this case equals $550 (*i.e.*, $750 minus $200).

Example 3. If X sells a product to Y in a controlled sale, Y sells the product to Z in a controlled sale, and Z sells the product in an uncontrolled sale, the applicable resale price is the price at which Z sold the product in the uncontrolled sale. The determination of the appropriate gross profit margin will take into account the functions performed by X, Y, and Z, as well as relevant factors described in § 1.482–1T(c).

Example 4. (i) S, a domestic corporation, distributes clothing that it purchases from its foreign parent corporation. S's gross profit margin is 25%. Another domestic corporation, U, distributes comparable clothing that it purchases from uncontrolled taxpayers. U's gross profit margin also is 25%. S's controlled transaction and U's uncontrolled transaction are comparable under paragraph (c)(3) of this section and no adjustment for differences in functions or circumstances is required under § 1.482–1T(c). However, U treats warranty as expenses included in cost of goods sold while S treats warranty as an operating expense. Accordingly, adjustments are required to U's gross margin to ensure accounting consistency between U and S.

(ii) U's warranty represents 10% of U's total revenue from sales. After reclassifying the expense as below-the-line expenses, U's gross profit margin is 35%. Thus, S's appropriate gross profit margin is 35%.

Example 5. P and S are members of the same controlled group. S purchases electric mixers from P and electric toasters from unrelated parties. S performs comparable functions with respect to resales of both the mixers and the toasters, except that it does not warrant the toasters, but does provide a 90-day warranty for the mixers. S normally earns a gross profit on toasters of 20% of gross selling price. The 20% gross profit on the resale of toasters must be adjusted to reflect the difference in functions (the warranty), and as adjusted, is an appropriate gross profit margin.

Example 6. (i) P manufactures Product X, an unbranded widget, and sells it to S, its wholly owned subsidiary. S acts as a distributor of Product X in country M, and sells it to uncontrolled taxpayers in that country. Uncontrolled distributors A, B, and C distribute competing products in country M. All such products are unbranded, and the resale price in country M is $100 per unit.

(ii) Based on an analysis of the functions performed and risks assumed by S and by A, B, and C and a review of their financial statements, the district director has determined the following for 1994:

	S	A	B	C
Reported gross profit ($)	18	22	14	16
Accounting reclassifications		[2]	4	1
Comparability adjustments:				
Inventory		2	[1]	
Advertising		[3]	2	1
Warranty		1	[3]	[1]
Volume			[1]	[1]
Adjusted gross profit	($)18	20	15	16

(iii) Applying the resale price method to test the arm's length character of the amount paid by P for the distribution functions performed by S, the district director determines that any gross profit between $15 and $20 will produce an arm's length margin, and any price for product X between $80 and $85 would be an arm's length price.

Example 7. The facts are the same as in *Example 6*, except that Product X is a branded widget and the resale price in country M is $110. P owns the worldwide rights to the brand name, including in country M. The district director determines that there has been no transfer of an intangible, and that P retains all rights to the brand name. The district director determines that the resale price method applies to price the distribution functions of S, and that the transactions of distributors A, B, and C are comparable uncontrolled transactions. No additional comparability adjustments are required. Because the entire value of the brand name should inure to the benefit of P, S should continue to earn gross profit of between $15 and $20 to compensate it for its distribution functions. An arm's length transfer price would be any price between $90 and $95.

Example 8. (i) The facts are the same as in *Example 7*, except that the brand name is not widely known within country M, and it does not command any price premium over its competitors. Thus, the resale price of Product X is $100, and the arm's length transfer price in 1994 is between $80 and $85. In year 1996, P and S decide to develop a premium image for Product X in country M. S is to supervise the advertising and other marketing efforts that will be required to develop the brand name in country M. S increases strategic advertising and promotion expenses by $5, for which it is not directly reimbursed by P. However, P reduces the transfer price from $82 to $77.

(ii) The district director determines that there has been no transfer of an intangible from P to S in 1996, and that the resale price method applies to test the arm's length character of the price paid by S to P for product X. The transactions of distributors A, B, and C are comparable uncontrolled transactions after the adjustments shown in *Example 6* are made. However, an additional comparability adjustment is required to reflect the $5 additional advertising and promotional activities undertaken by S. Thus, the district director determines that the adjusted gross profit margins of distributors A, B, and C for 1996 are as follows:

	S	A	B	C
Reported gross profit ($)	23	22	14	16
Accounting reclassifications		[2]	4	1
Comparability adjustments:				
Inventory		2	[1]	
Advertising		2	7	6
Warranty		1	[3]	[1]
Volume			[1]	[1]
Adjusted gross profit	($)23	25	20	21

(iii) Thus, the district director determines that S should earn a gross profit of between $20 and $25 and an arm's length transfer price in 1996 would be any price between $75 and $80.

Example 9. The facts are the same as in *Example 8*, except that the brand name for Product X takes on value and begins to command a premium price in the marketplace. The value should inure to the benefit of P since there has been no transfer to S of any intangible rights in the brand name. Thus, as the applicable resale price goes up, the transfer price would go up accordingly. In addition, if S begins to reduce its advertising and promotional efforts, the comparability analysis would be adjusted to reflect that change, and the transfer price would again increase.

Example 10. (i) P manufactures and sells Product X to S, its wholly owned subsidiary, and to A, B, and C, which are uncontrolled taxpayers comparable to S. P sells Product X to S, A, B, and C under comparable circumstances for $82. In 1995, S decides to adopt a new marketing strategy and intends to develop a brand name, XY, for Product X with the expectation that it will command a premium price in the marketplace. Thus, S increases its expenditures for strategic advertising and promotion by $5, for which it is not directly reimbursed by P. Moreover, P does not reduce the transfer price below $82. In 1996, Product XY begins to command a price premium in the marketplace, and the resale price for Product XY increases from $100 to $110. P increases its price to S to $92.

(ii) There has been no transfer of an intangible from P to S since S has invested in the development of its own intangible. The district director applies the resale price method to test the arm's length character of the transfer price for Product XY in both 1995 and 1996. In 1995, the investment does not give rise to a price premium. Thus, no comparability adjustment is made to reflect S's investment in strategic advertising intended to develop S's brand name since that investment has not resulted in a price premium and therefore, has not had an effect on S's gross profit in that year. In 1996, as the brand name takes on value and begins to command a price premium, an adjustment must be made to the gross profit margins of the uncontrolled distributors to reflect S's increase in the resale price of Product XY. Assuming the gross profit of distributors A, B, and C is $20, $15, and $16, respectively, after adjustments for differences other than the increase in the S's resale price of product XY, then a further adjustment to their gross profit is made for the difference in market price premium, as follows:

	S	A	B	C
Partially adjusted gross profit ($)	18	20	15	16
Adjustment for price premium		10	10	10
Adjusted gross profit ($)	18	30	25	26

S's appropriate gross profit should range between $25 and $30. By increasing the transfer price of product XY sold to S in 1996, P, in effect, obtained the benefit of the price premium that should have insured to S, as a result of its successful market development strategies. Thus, an arm's length price would be any price between $80 and $85 and the $92 price charged by P to S in 1996 is not arm's length.

Example 11. (i) P has developed and manufactures Product X, a diskette that contains proprietary computer software. The computer software can be used without significant ' systems engineering" or "application engineering" by the ultimate customer, and is sold through common retail outlets. P sells the diskette to S, its controlled distributor, and S distributes to diskette to uncontrolled computer sales outlets in country M.

(ii) Regardless of whether the taxpayer characterizes the controlled transaction as a transfer of tangible or intangible property, the district director determines that an analysis of the functions performed and risks assumed by S demonstrates that these functions and risks do not materially differ from the functions and risks of distributors A, B, and C. Thus, the district director determines that the resale price method would apply to the price paid by S for Product X. The value of the software itself (an intangible) is reflected in the resale price of the diskette when it is sold to the uncontrolled computer sales outlets, and is, therefore, established by the marketplace. The entire value of the intangible inures to the benefit of P.

(d) *Cost plus method*—(1) *In general.* The cost plus method tests the arm's length character of a controlled transaction by reference to the gross profit markup realized in comparable uncontrolled transactions. The cost plus method is ordinarily used in cases involving the manufacture, assembly, or other production of goods that are sold to related parties. This method relies upon a functional comparable, as described in § 1.482–1T(c)(1)(ii).

(2) *Determination of arm's length price*—(i) *In general.* An arm's length price for the controlled transfer is equal to the controlled taxpayer's costs of producing the property involved in the controlled transaction plus an amount equal to those costs multiplied by the appropriate gross profit markup.

(ii) *Appropriate gross profit markup.* The appropriate gross profit markup is equal to the gross profit earned in

comparable uncontrolled transactions, expressed as a percentage of cost. Whenever possible, the gross profit markup should be derived from comparable uncontrolled sales made by the taxpayer involved in the controlled sale, because similar characteristics are more likely to be found among sales of property made by the same producer than among sales by other producers. In the absence of such sales, an appropriate gross profit markup may be derived from comparable uncontrolled sales of other producers whether or not such producers are members of the controlled group.

(iii) *Consistency in accounting.* The costs of producing the property involved in the controlled transaction and the costs that enter into the computation of the appropriate gross profit markup must be computed in a consistent manner in accordance with sound accounting practices for allocating and apportioning costs, which neither favors nor disfavors controlled transactions in comparison with the uncontrolled transaction. Thus, if the costs used in computing the appropriate gross profit markup are comprised of the full cost of goods sold, including direct and indirect costs, then the cost of producing the property involved in the controlled transaction must be comprised of the full cost of goods sold, including direct and indirect costs. However, if the costs used in computing the appropriate gross profit markup are comprised only of direct costs, then the costs of producing the property involved in the controlled transaction must be comprised only of direct costs. The term "cost of producing" includes the cost of acquiring property that is held for resale.

(iv) *Arm's length range.* Where two or more uncontrolled transactions independently establish an arm's length price under this paragraph (d), such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(3) *Standard of comparability*—(i) *In general.* The determination of whether an uncontrolled transaction is comparable to the controlled transaction will be made by applying the standards of § 1.482–1T(c). A producer's gross profit markup provides compensation for the performance of the production functions related to the product or products under review, including an operating profit for the producer's investment of capital and assumption of risks. Therefore, for purposes of the cost plus method, close physical similarity of the property involved in the controlled and the uncontrolled transactions is not ordinarily necessary to establish the comparability of the producers' gross profit markups. It would ordinarily be expected, however, that the controlled and uncontrolled transactions involve production of products within the same product categories. For example, producers of a wide variety of components for consumer electronics might perform comparable manufacturing and assembly functions without regard to the specific products produced, but producers of pharmaceuticals may not be comparable to producers of apparel. In the absence of such sales, the prevailing gross profit markup in the general industry involved may be appropriate.

(ii) *Adjustments for differences between controlled and uncontrolled transactions.* Appropriate adjustments for differences must be made to the gross profit with respect to comparable uncontrolled transactions, pursuant to the standards of § 1.482–1T(c)(2)(ii). For this purpose, it is necessary to consider operating expenses associated with functions performed and risks assumed. If there are differences in functions performed, the effect on price of such differences is not necessarily equal to the differences in the amount of related operating expenses. Although all of the criteria of § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include—

(A) The complexity of manufacturing or assembly;

(B) Manufacturing, production, and process engineering;

(C) Procurement, purchasing, and inventory control activities;

(D) Testing functions;

(E) Selling, general, and administrative expenses;

(F) Foreign currency risks; and

(G) Extension of credit and payment terms.

(iii) *Purchasing agent.* Where a controlled taxpayer is comparable under the criteria under this paragraph (d)(3) and § 1.482–1T(c)(3) to a purchasing agent that does not take title to property, the commission earned by such purchasing agent, expressed as a percentage of the purchase price of the goods, may constitute the appropriate gross profit markup.

(4) *Examples.* The following examples illustrate the principles of this paragraph (d). In these examples, X and Y are members of the same group of controlled taxpayers.

Example 1. (i) X is a domestic manufacturer of computer chips that sells computer chips to its foreign subsidiary Y. X earns an 8% gross profit markup with respect to its manufacturing operations. UT1, UT2, and UT3 are domestic computer chip manufacturers that sell to uncontrolled foreign purchasers. UT1, UT2, and UT3 earn gross profits markups with respect to their manufacturing operations that range from 6% to 8%.

(ii) The controlled sales by X, and the uncontrolled sales by UT1, UT2, and UT3 are comparable under paragraph (d)(3) of this section. X accounts for supervisory, general, and administrative costs as operating expenses, which are not allocated to its sales to Y. The gross profit markups of UT1, UT2, and UT3, however, reflect supervisory, general, and administrative expenses because they are accounted for as costs of goods sold. Accordingly, the gross profit markups of UT1, UT2, and UT3 must be adjusted as provided in paragraph (d)(3)(ii) of this section to provide accounting consistency.

(iii) After subtracting these expenses from the cost of goods sold of UT1, UT2, and UT3, the gross profit markups of UT1, UT2, and UT3 are between 10% and 12%. Thus, X's 8% gross profit markup is not within the range established by the results of UT1, UT2, and UT3 (assuming no other adjustments are required for other differences that may exist between X and UT1, UT2, and UT3). Consequently, the price at which X sells compact disc players to Y is not arm's length

Example 2. The facts are the same as in *Example 1*, except that under its contract with Y, X uses materials consigned by Y. UT1, UT2, and UT3, on the other hand, purchase their own materials, and their gross profit markups are determined by including the costs of material. The fact that X does not carry an inventory risk by purchasing its own materials while the uncontrolled producers carry inventory is a significant difference that may require an adjustment if the difference has an effect on the gross profit markups of the uncontrolled producers. Inability to reasonably ascertain the effect of the difference on the gross profit markups would render UT1, UT2, and UT3 noncomparable for purposes of applying the cost plus method.

(e) *Other methods*—(1) *In general.* Where none of the methods listed in paragraph (a) (1), (2), (3), or (4) of this section can reasonably be applied under the facts and circumstances of a particular case, another method may be used to determine the arm's length consideration for the controlled transaction. Any method used under this paragraph (e) must be applied in accordance with the provisions of § 1.482–1T.

(2) *Conditions for taxpayers's use of other methods.* A taxpayer may use a method under this paragraph (e) to establish the arm's length consideration for a controlled transaction only if—

(i) The taxpayer discloses the use of the method by attaching an appropriate disclosure statement to the timely filed U.S. income tax return for the taxable year of the controlled transaction;

(ii) The taxpayer prepares contemporaneous supporting

documentation setting forth the specific analysis adopted, an analysis of why the method used provides the most accurate measure of an arm's length price, and the data supporting its application; and

(iii) Within 30 days of a written request, the taxpayer furnishes to the district director the documentation described in paragraph (e)(2)(ii) of this section.

(3) *Coordination with penalty provisions.* In the case of a taxpayer that uses a method under this paragraph (e), compliance with the documentation and disclosure requirements of paragraph (e)(2) of this section will not in itself be sufficient to establish reasonable cause and good faith under section 6662(e)(3)(B) or 6664(c)(1) and the regulations thereunder. However, the district director may otherwise determine that the taxpayer acted with reasonable cause and good faith.

(f) *Coordination with intangible property rules.* The methods described in this § 1.482–3T will ordinarily not take adequate account of significant, non-routine intangibles that may be transferred or used with the sale of tangible property. In such cases, it may be necessary to adjust results obtained under the methods described in this section using the principles of § 1.482–4T. Similarly, in appropriate circumstances the methods described in this § 1.482–3T may be applied in connection with the determination of the arm's length consideration for transfers of intangible property, for example, where the value of the property transferred reflects a combination of tangible and intangible elements.

§ 1.482–4T Methods to determine taxable income in connection with a transfer of intangible property.

(a) *In general.* The arm's length character of the amount charged in a controlled transfer of intangible property must be determined under one of the three methods listed in this paragraph (a). The methods must be applied in accordance with the provisions of § 1.482–1T. The selection of a method for a particular transactions under review will be subject to the best method rule of § 1.482–1T(b)(2)(iii)(A). The arm's length consideration for the transfer of an intangible determined under this section must be commensurate with the income attributable to the intangible. The available methods are—

(1) The comparable uncontrolled transactions method, described in paragraph (c) of this section;

(2) The comparable profits method, described in § 1.482–5T; and

(3) Other methods, described in paragraph (d) of this section.

(b) *Definition of intangible.* For purposes of section 482, the term "intangible" means any commercially transferable interest in any item including in the following six classes of intangibles, that has substantial value independent of the services of any individual—

(1) Patents, inventions, formulae, processes, designs, patterns, or know-how;

(2) Copyrights and literary, musical, or artistic compositions;

(3) Trademarks, trade names, or brand names;

(4) Franchises, licenses, or contracts;

(5) Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and

(6) Other similar items.

(c) *Comparable uncontrolled transaction method*—(1) *In general.* Under the comparable uncontrolled transaction method, the arm's length consideration for a controlled transfer of intangible property is equal to the consideration charged or incurred in a comparable uncontrolled transaction. For purposes of applying the best method rule of § 1.482–1T(b)(2)(iii)(A), the comparable uncontrolled transaction method, when it can reasonably be applied on the basis of available information, ordinarily will provide the most accurate measure of an arm's length charge for the transfer of intangible property. Factors to be considered in the application of this method include access to relevant pricing and other financial information and the existence of an active market, including contemporaneous transactions involving comparable property between uncontrolled taxpayers. The amount determined under this method may be adjusted as required by paragraph (e)(2) of this section.

(2) *Standard of comparability*—(i) *In general.* Whether an uncontrolled transaction is comparable to a controlled transaction must generally be determined under the standards of § 1.482–1T(c). For purposes of this section, an uncontrolled transaction is comparable to a controlled transaction if it involves comparable intangible property and takes place under comparable circumstances. The intangible property involved in an uncontrolled transaction is comparable to the property involved in the controlled transaction if the requirements of paragraph (c)(2)(ii)(A) of this section are met. The circumstances involved in an uncontrolled transaction are comparable to those of a controlled transfer if any differences can be accounted for under § 1.482–1T(c)(2)(ii).

(ii) *Factors to be considered in determining comparability*—(A) *Comparable intangible property.* The intangible property involved in an uncontrolled transfer will be considered comparable to the intangible property involved in the controlled transfer if both intangibles—

(*1*) Are in the same class of intangibles, as defined under paragraph (b) of this section;

(*2*) Relate to the same type of products, processes, or know-how within the same general industry or market; and

(*3*) Have substantially the same profit potential. For this purpose, the profit potential of an intangible is measured by the net present value of the benefits to be realized (based on prospective profits to be realized or costs to be saved) through the use or subsequent transfer of the intangible, taking into consideration the capital investment and startup expenses required, the risks to be assumed, and other relevant considerations.

(B) *Comparable circumstances.* In evaluating the comparability of the circumstances of the controlled and uncontrolled transactions, although all of the factors described in § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include the following—

(*1*) The terms of the transfer, including the exploitation rights granted in the intangible, the exclusive or nonexclusive character of any rights granted, any restrictions on use, or any limitations on the geographic area where the rights may be exploited;

(*2*) The stage of development of the intangible (including, where appropriate, necessary governmental approvals, authorizations, or licenses);

(*3*) Any rights to receive periodic updates or improvements to the intangible;

(*4*) The uniqueness of the property and the period for which it remains unique, including the degree and duration of protection afforded to the property under the laws of the relevant countries;

(*5*) The duration of the license contract, or other agreement, and any termination or renegotiation rights;

(*6*) Any economic and product liability risks to be assumed by the transferee;

(*7*) The existence and extent of any collateral transactions or ongoing business relationships between the transferee and transferor; and

(8) The functions to be performed by the transferor and transferee, including any ancillary or subsidiary services.

(iii) *Arm's length range.* If two or more comparable uncontrolled transactions independently meet the standard of comparability of this paragraph (c)(2), such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(iv) *Example.* The following example illustrates the principles of this paragraph (c).

Example. (i) P and S are controlled taxpayers. P licenses to S a proprietary process that permits the manufacture of product X at a substantially lower cost than otherwise would be possible. If P directly manufactured and sold product X, a selling price of $2 per unit would cover its costs and provide a reasonable return on its functions and associated risks. Using the proprietary process, S manufactures product X and sells it to related and unrelated parties for a price of $6 per unit.

(ii) an uncontrolled transaction involving the license of a similar proprietary process provides for the payment of a royalty equivalent to $1 per unit. In testing the comparability of the controlled and uncontrolled transactions, under the provisions of § § 1.482–1T(c)(3)(iv) and 1.482–4T(c)(2), the district director may consider P's alternative of producing and selling product X itself as a factor that may affect the amount P would demand as a royalty for the proprietary process if dealing with an uncontrolled taxpayer at arm's length. Given that P owned the proprietary process that would enable it to produce and sell product X for $2 per unit, and that the market price of product X is $6 per unit, P would be unlikely to accept a royalty for the proprietary process of less than $4 per unit. Accordingly, the uncontrolled transaction is not a comparable uncontrolled transaction within the meaning of this paragraph (c). In considering P's alternatives in this manner, the district director does not treat P as if it had actually manufactured and sold product X to the related and unrelated parties. See § 1.482–1T(d)(3)(iii).

(d) *Other methods*—(1) *In general.* Where none of the methods listed in paragraph (a)(1), or (2) of this section can reasonably be applied under the facts and circumstances of a particular case, another method may be used to determine the arm's length consideration for the controlled transaction. A method used under this paragraph (d) must be applied in accordance with the provisions of § 1.482–1T. Pursuant to § 1.482–3T(f) (coordination rule for methods applicable to transfers of tangible and intangible property), methods ordinarily applicable to transfers of tangible property may be applied in connection with the determination of the arm's length consideration for transfers of intangible property, for example, where the value of the property transferred reflects a combination of tangible and intangible elements.

(2) *Conditions for taxpayer's use of other methods.* A taxpayer may use a method under this paragraph (d) to establish the arm's length consideration for a controlled transaction only if—

(i) The taxpayer discloses the use of the method by attaching an appropriate disclosure statement to the timely filed U.S. income tax return for the taxable year of the controlled transaction;

(ii) The taxpayer prepares contemporaneous supporting documentation setting forth the specific analysis adopted, an analysis of why the method used provides the most accurate measure of an arm's length price, and the data supporting its application; and

(iii) The taxpayer furnishes to the district director within 30 days of a written request the documentation described in paragraph (d)(2)(ii) of this section.

(3) *Coordination with penalty provisions.* In the case of a taxpayer that uses a method under this paragraph (d), compliance with the documentation and disclosure requirements of paragraph (d)(2) of this section will not in itself be sufficient to establish reasonable cause and good faith under section 6662(e)(3)(B) or 6664(c)(1) and the regulations thereunder. However, the district director may otherwise determine that the taxpayer acted with reasonable cause and good faith.

(e) *Special rules for transfers of intangible property*—(1) *Form of consideration.* An arm's length consideration for the transfer of intangible property must be in a form that is consistent with a form that would be adopted in transactions between uncontrolled taxpayers under comparable circumstances. If a transferee of an intangible pays nominal or no consideration and the transferor has retained a substantial interest in the property, the arm's length consideration shall be in the form of a royalty unless a different form is demonstrably more appropriate. Paragraph (e)(5) of this section is reserved for rules regarding consideration that takes the form of a lump sum payment for an intangible.

(2) *Periodic adjustments*—(i) *General rule.* If an intangible is transferred under an arrangement that covers more than one year, the consideration charged in each taxable year may be adjusted to ensure that it is commensurate with the income attributable to the intangible. Adjustments made pursuant to this paragraph (e)(2) shall be consistent with the arm's length standard and the provisions of § 1.482–1T. In determining whether to make such adjustments in the taxable year under examination, the district director may consider all relevant facts and circumstances throughout the period the intangible is used. The determination in an earlier year that the amount charged for an intangible was arm's length will not preclude the district director in a subsequent taxable year from making an adjustment to the amount charged for the intangible in the subsequent year. For an exception to this rule see paragraph (e)(2)(ii) of this section.

(ii) *Exceptions*—(A) *Comparable uncontrolled transactions.* No allocation will be made under paragraph (e)(2)(i) of this section if each of the following facts is established—

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, such consideration was an arm's length amount under paragraph (c) of this section for the first taxable year in which substantial periodic consideration was required to be paid under the agreement, and such agreement remained in effect for the taxable year under review.

(*2*) There is a written agreement setting forth the terms of the comparable uncontrolled transaction relied upon to establish the arm's length consideration (uncontrolled agreement), which contained no provisions that would have permitted any change to the amount of consideration, a renegotiation, or a termination of the agreement, in circumstances comparable to those of the controlled transaction in the taxable year under review (or that contained provisions permitting only specified, non-contingent, periodic changes to the amount of consideration);

(*3*) The controlled agreement was substantially similar to the uncontrolled agreement, with respect to the time period for which it is effective and the provisions described in paragraph (e)(2)(ii)(A)(*2*) of this section.

(*4*) The controlled agreement limited use of the intangible to a specified field or purpose in a manner that was consistent with industry practice and any such limitation in the uncontrolled agreement.

(*5*) There were no substantial changes in the functions performed by the controlled transferee since the controlled agreement was executed, except changes necessitated by events that were not foreseeable.

(*6*) The aggregate profits actually earned or the aggregate cost savings actually realized by the controlled taxpayer from the exploitation of the intangible in all open years are not less

than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the comparability of the uncontrolled agreement was established under paragraph (c)(2) of this section.

(B) *Methods other than comparable uncontrolled transaction.* No allocation will be made under paragraph (e)(2)(i) of this section if each of the facts set forth in paragraphs (e)(2)(ii)(B) (*1*) through (*4*) of this section is established.

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, and such agreement remained in effect for the taxable year under review.

(*2*) The consideration called for in the controlled agreement was an arm's length amount for the first taxable year in which substantial periodic consideration was required to be paid; the arm's length amount was determined under any method other than the comparable uncontrolled transaction method; relevant supporting documentation was prepared contemporaneously with the execution of the controlled agreement; and upon audit, such agreement and documentation is furnished by the taxpayer to the district director within 30 days of a written request.

(*3*) There have been no substantial changes in the functions performed by the transferee since the controlled agreement was executed, except changes required by events that were not foreseeable.

(*4*) The total profits actually earned or the total cost savings realized by the controlled transferee from the exploitation of the intangible in all open years are not less than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the controlled agreement was entered into.

(3) *Development of an intangible*—(i) *Identification of the developer.* Except as provided in § 1.482–2A(d)(4) (cost sharing provisions) when two or more members of a controlled group undertake the development of an intangible, one member will be regarded as the developer of the intangible, and, therefore, as its owner for purposes of section 482. The other participating members will be regarded as assisters. Which controlled taxpayer is the developer and which controlled taxpayers are assisters will be determined under all the facts and circumstances. In making this determination, greatest weight must be given to the extent to which each member bears the direct and indirect costs and corresponding risk of developing the intangible, and makes available, without adequate compensation, property or services likely to contribute substantially to developing the intangible. A controlled taxpayer will be treated as bearing the costs of development only if it is legally bound before the costs are incurred to bear the costs without regard to the success of the project. The determination of whether a controlled taxpayer bears the risks of development will be made under the analysis of § 1.482–1T(c)(3)(ii). For this purpose, the risk to be borne with respect to development activity is the possibility that such activity will not result in the production of intangible property or that the intangible property produced will not be of sufficient value to allow for the recovery of the costs of developing it. Other factors that may be relevant in determining which controlled taxpayer is the developer include the location of the development activities, the capability of each controlled taxpayer to carry on the project independently, the extent to which each controlled taxpayer controls the project, and the actual conduct of the controlled taxpayers.

(ii) *Allocations with respect to transfers by the developer.* If the developer of an intangible makes the intangible available to another controlled taxpayer (including any assister), the district director may make an allocation with respect to that transfer to reflect an arm's length consideration for the intangible.

(iii) *Allocations with respect to assistance provided to the developer.* The district director may make allocations to reflect arm's length consideration for assistance provided to the developer by another controlled taxpayer in connection with the development of an intangible. Such assistance may include loans, services, or the use of tangible or intangible property. The amount of any allocation required with respect to that assistance must be determined in accordance with the applicable rules under section 482. For example, if one member of a controlled group allows another member of the group to use tangible property, such as laboratory equipment, in connection with the latter's development of an intangible, any allocations with respect to the developer's use of the tangible property will be determined under § 1.482–2A(c).

(iv) *Examples.* The following examples illustrate the principles of this paragraph (e)(3). In all these examples, it is assumed that X and Y are members of the same group of controlled taxpayers.

Example 1. X, at the request of Y, undertakes to develop a new machine that will function effectively in the climate in which Y's factory is located. Y agrees in writing before X incurs any costs to bear all the direct and indirect costs of the project whether or not X successfully develops the machine. X does not make any of its own property available for use in connection with the project without adequate compensation. The machine is successfully developed and X provides to Y the process necessary to produce it. Y is considered the developer of the process and, therefore, shall not be treated as having obtained it in a transfer subject to the rules of § 1.482–4T. The district director may make appropriate allocations with respect to assistance rendered by X. The district director also may treat any use of the process by X as a transfer by Y that is subject to the rules of § 1.482–4T and make allocations with respect to that transfer.

Example 2. The facts are the same as in *Example 1*, except that Y agrees to bear the costs only if the machine is successfully developed. X is considered the developer and Y is regarded as having obtained the process in a transfer subject to the rules of § 1.482–4T. Therefore, the district director may make allocations to reflect an arm's length consideration for the transfer of the process.

Example 3. X undertakes to develop a new chemical product M in its research and development department and incurs direct and indirect costs of $1 million per year in 1994, 1995, and 1996. X employs the formula for compound N which it developed and owns. The value of the use of the formula for compound N in connection with the project is $750,000. In 1995, four chemists employed by Y spend six months working on the project in X's laboratory. The salary and other expenses connected with the chemists' activities during that period total $200,000 and are paid by Y without charge to X. In 1996, product M is perfected and Y obtains patents on its formula. X is considered the developer of product M because, among other things, it bore the greatest share of the costs and risks incurred in connection with the project and made available valuable property (the formula for compound N). The formula for product M is deemed to have been transferred to Y in 1996 by virtue of Y's obtaining patent rights to product M. The district director may make allocations in that year to reflect arm's length consideration for the transfer. The district director also may make allocations in 1995 with respect to the assistance rendered by Y. If the district director does not make an allocation for 1995 with respect to the services of the chemists in accordance with the provisions of § 1.482–2(b) of this section, the district director may treat the amount of an arm's length consideration as a loan to X from Y.

Example 4. X, a foreign producer of cheese, markets its cheese in countries other than the United States under the trade name DR. X owns all worldwide rights to this name. The name is widely known and is valuable outside the United States but is not known within the United States. In 1995, X decides to enter the U.S. market and organizes U.S.

subsidiary Y to be its U.S. distributor and to supervise the advertising and other marketing efforts that will be required to develop the name DR in the United States. Y incurs $5,000,000 of expenses promoting the name DR in that year for which it is not reimbursed by X. Y is considered the developer of the enhanced U.S. rights to the trade name.

(4) *Consideration not artificially limited.* The arm's length consideration for the controlled transfer of an intangible is not limited by the consideration paid in any uncontrolled transactions that do not meet the requirements of the comparable uncontrolled transaction method described in paragraph (c) of this section. Similarly, the arm's length consideration for an intangible is not limited by the prevailing rates of consideration paid for the use or transfer of intangibles within the same or similar industry.

(5) *Lump sum payments.* [Reserved]

§ 1.482–5T Comparable profits method.

(a) *In general.* The comparable profits method determines the arm's length consideration for a controlled transfer of property by referring to objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities with other uncontrolled taxpayers under comparable circumstances (comparable parties). An arm's length range of results is determined based upon the amounts of profit that the tested party (as defined in paragraph (d) of this section) would have earned if its profit level indicators were equivalent to those of the uncontrolled taxpayers (constructive operating profit). For purposes of applying the best method rule of § 1.482–1T(b)(2)(iii)(A), the comparable profits method ordinarily will provide an accurate measure of an arm's length result unless the tested party, in connection with the controlled transaction, uses valuable, non-routine intangibles that it—

(1) Acquired from uncontrolled taxpayers and with respect to which it bears significant risks and possesses the right to significant economic benefits; or

(2) Developed itself.

(b) *Tested party*—(1) *In general.* For purposes of this section, the tested party ordinarily will be the participant in the controlled transaction that does not use valuable, non-routine intangibles that it either acquired from uncontrolled taxpayers and with respect to which it bears significant risks and possesses the right to significant economic benefits or developed itself. The tested party need not be the taxpayer under examination.

(2) *Determination by industry segment.* Ordinarily, the comparable profit method should be applied separately to each "industry segment" of the tested party, as that term is defined in § 1.6038A–3(c)(7), provided that the operating profit and related assets and liabilities for each such industry segment can be determined reliably for the tested party and the comparable parties.

(3) *Adjustments for tested party.* The tested party's operating income must be adjusted to reflect all other allocations under section 482, other than adjustments pursuant to this section.

(c) *Selection of comparable parties*—(1) *Comparability.* The comparable profits method measures the total return on the business activities of a tested party. Therefore, the controlled and uncontrolled taxpayers need be only broadly similar, and significant product diversity and some functional diversity between the controlled and uncontrolled transactions is acceptable. However, the greater the similarity between the tested party and the comparable party, the more reliable is the measure of an arm's length result under this method. Thus, if reliable data relating to comparable parties that operate within the same industry segment as the tested party is available, such data should be employed for purposes of the application of this method. The degree of comparability between the tested party and the comparable parties will affect the size of the arm's length range, as described in paragraph (d)(2) of this section.

(2) *Adjustments to comparable parties.* Adjustments may be made to the profit level indicators of the comparable parties to improve consistency and to achieve greater similarity between such comparable parties and the tested party. For example, material items reflected in the profit level indicators of the uncontrolled transactions should be measured on a basis consistent with the accounting treatment used by the tested party. Accounting reclassifications may be required to more accurately and consistently relate the level of operating profit to the level of investment before determining profit level indicators for the uncontrolled taxpayer. Similarly, adjustments may be made to the actual operating profits earned and operating assets employed by the comparable parties to account for material differences between the controlled and uncontrolled transactions in terms of the functions performed and risks assumed by the respective taxpayers, or any other facts that materially affect profitability, but only to the extent that such adjustments have a definite and reasonably ascertainable effect on operating profit. If the assets of a comparable party are adjusted, the comparable party's operating income must also be adjusted before computing a profit level indicator in order to reflect the income and expense attributable to the adjusted assets. The adjustments described in this paragraph must be made in order to determine the arm's length range under paragraph (d)(2)(i) of this section. If these adjustments are not made, then paragraph (d)(2)(ii) of this section applies.

(d) *Determination of arm's length result*—(1) *In general.* A controlled transaction will be considered arm's length under this method if the tested party's reported operating profits are within the arm's length range consisting of a range of constructive operating profits derived from comparable parties. Constructive operating profits are calculated by applying profit level indicators derived from the comparable parties to the tested party's financial data for the time period to which the profit level indicators are attributable. For purposes of the comparable profits, each arm's length range will be established with constructive operating profits calculated by using one profit level indicator. Ordinarily, the profit level indicators should be derived from a sufficient number of years to reasonably measure returns that accrue to uncontrolled taxpayers with risk characteristics similar to those of the tested party. Generally such a period should encompass at least the taxable year under review and the preceding two taxable years.

(2) *Arm's length range.* As described in this paragraph (d)(2), the degree of comparability between the tested party and the comparable parties, and the adjustments made to the data of the comparable parties, will affect the size of the arm's length range under the comparable profits method. For rules governing the appropriate adjustment where reported operating profit is outside the arm's length range, see § 1.482–1T(d)(2)(i)(C).

(i) If the comparability standards set forth in paragraph (c) of this section are met and appropriate adjustments under paragraph (c)(2) are made, then the arm's length range will include all the constructive operating profits derived from the comparable parties.

(ii) If the arm's length range is not determined as described in paragraph (d)(2)(i) of this section, then the arm's length range ordinarily will consist of the interquartile range from the 25th to the 75th percentile of the constructive operating profits derived from the profit

level indicators of the comparable parties. If other statistical techniques and criteria can be validly applied, they may be used instead of the interquartile range to define the arm's length range. However, an arm's length range cannot not be determined under this paragraph (d)(2)(ii) unless there are at least four comparable parties.

(e) *Profit level indicators.* Profit level indicators are financial ratios that measure the relationships among profits, costs incurred and resources employed. A variety of profit level indicators can be calculated in any given case. The selection of appropriate profit level indicators depends upon a number of factors, including the nature of the activities of the tested party, the reliability of the available data with respect to comparable uncontrolled taxpayers, and the extent to which a particular profit level indicator is likely to produce a reasonable determination of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length, taking into account all of the facts and circumstances of the particular case under review. Profit level indicators that may provide a reliable basis for comparing operating profits of similar controlled and uncontrolled taxpayers include the following—

(1) *Rate of return on capital employed.* The rate of return on capital employed is the ratio of operating profit to operating assets. The rate of return on capital employed ordinarily will provide an acceptable profit level indicator if the tested party has substantial fixed assets or working capital that plays a significant role in generating operating profit.

(2) *Financial ratios.* Financial ratios are defined by relationships between profit and costs or sales revenue. Since financial ratios do not directly relate operating profit to the level of investment and risk in a trade or business, more stringent comparability is ordinarily required than when a rate of return on capital is used as a profit level indicator. Financial ratios that may be appropriate include the following—

(i) Ratio of operating profit to sales; and

(ii) Ratio of gross profit to operating expenses. This ratio is ordinarily an acceptable profit level indicator if the composition of operating expenses for the tested party and the comparable parties are substantially the same.

(3) *Other profit level indicators.* Other profit level indicators not described in this paragraph (e) may be used. Such other measures should be used only when they provide reasonable indications of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length.

(f) *Definitions.* The definitions set forth in paragraphs (f)(1) through (7) of this section apply for purposes of this section.

(1) *Sales revenue.* "Sales revenue" means the amount of total receipts from sale of goods and the providing of services, less discounts and returns. Accounting principles and conventions that are generally accepted in the trade or industry of the controlled taxpayer under review must be used.

(2) *Gross profit.* "Gross profit" means sales revenue less cost of goods sold.

(3) *Operating expenses.* "Operating expenses" includes all expenses not included in cost of goods sold except for interest expense, foreign income taxes (as defined in § 1.901–2(a)), and domestic income taxes. Operating expenses ordinarily include expenses associated with advertising, promotion, sales, marketing, warehousing and distribution, administration, and a reasonable allowance for depreciation and amortization.

(4) *Operating profit.* "Operating profit" means gross profit less operating expenses. Operating profit includes all income derived from the industry segment being tested by the comparable profits method, but does not include interest and dividends, income derived from activities not being tested by this method, or extraordinary gains and losses that do not relate to the continuing operations of the tested party.

(5) *Reported operating profit.* "Reported operating profit" means the operating profit of the tested party reflected on a timely U.S. income tax return. If the tested party files a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return if the calculation of taxable income on its return for the taxable year takes into account the income attributable to the controlled transaction under review. If the tested party does not file a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return in any taxable year for which income attributable to the controlled transaction under review affects the calculation of the U.S. taxable income of any other member of the same controlled group. Where the constructive operating profit of the tested party is determined from profit level indicators derived from financial statements or other accounting records and reports of the comparable parties, adjustments may be made to the reported operating profit of the tested party as may be required to account for the material differences between the tested party's operating profit reported for U.S. income tax purposes and the tested party's operating profit for financial statement purposes.

(6) *Operating assets.* "Operating assets" means the value of all assets used in the relevant industry segment of the tested party, including fixed assets and current assets (such as cash, cash equivalents, accounts receivable, and inventories). The term does not include investments in subsidiaries, excess cash, and portfolio investments. Operating assets may be measured by their net book value or by their fair market value, provided that the same method is consistently applied to the tested party and the comparable parties, and consistently applied from year to year. Operating assets must be measured by the average of the values for the beginning of the year and the end of the year. It may be necessary to take into account recent acquisitions, leased assets, routine intangibles that have been purchased or self-developed, currency fluctuations, and other assets or liabilities of the taxpayer that may not be explicitly recorded in the financial statements of the controlled or uncontrolled taxpayer. Appropriate adjustments must be made to ensure that the operating assets of the controlled and uncontrolled taxpayer are measured on a consistent basis. For example, non-interest bearing liabilities, such as accounts payable, payroll liabilities, and taxes payable, that are related directly to the regular and recurring operations of the trade or business, would be required to be deducted from operating assets, if differences in such liabilities are material.

(g) *Examples.* The following examples illustrate the application of this section.

Example 1—Transfer of tangible property resulting in no adjustment. (i) Foreign Parent (FP) is a publicly traded foreign corporation with a U.S. subsidiary (USS) that is under audit for its 1994 taxable year. FP manufactures a consumer product for worldwide distribution. USS imports the assembled product and distributes it within the United States at the wholesale level under the FP name.

(ii) FP does not allow uncontrolled taxpayers to distribute the product. Similar products are produced by other companies but none of them are sold to uncontrolled taxpayers or to uncontrolled distributors.

(iii)(A) The district director decides to apply the comparable profits method to determine an arm's length result for the transactions between USS and FP. Because USS does not own any valuable, non-routine intangibles, the district director selects USS as the tested party. In applying this method to test whether the consideration paid by USS for tangible property was at arm's

length, it is necessary to determine whether USS's operating profit is within the arm's length range. The district director reviews the financial reports of USS for the taxable year and the two preceding taxable years. For the taxable years 1992 through 1994, USS shows the following results:

	1992	1993	1994	Average
Operating assets	$310,000	$310,000	$310,000	$310,000
Sales	500,000	560,000	500,000	520,000
Cost of goods sold	393,000	412,400	400,000	401,800
Purchases from FP	350,000	365,000	350,000	355,000
Other	43,000	47,400	50,000	46,800
Operating expenses	80,000	110,000	104,600	98,200
Operating profit	27,000	37,600	(4,600)	20,000

(B) The data from USS in paragraph (iii)(A) of this *Example 1*, averaged over three years, results in a ratio of operating profit to operating assets (OP/OA) of 6.5%.

(iv) To identify comparable parties, the district director seeks data from independent operators of wholesale distribution businesses. These companies are further narrowed to select companies in the same industry segment that perform similar functions and assume broadly similar risks to USS. Because USS has working capital that plays a significant role in generating operating profit and because appropriate adjustments can be made to measure the unrelated distributor's assets consistently with those of USS, the district director determines that the rate of return on capital employed will be the profit level indicator. An analysis of the information available on these taxpayers shows that their ratios are fairly stable when at least three years are included in the average. Calculating the average ratio of operating profit to operating assets for each of the uncontrolled distributors and applying each ratio to USS would lead to the following constructive operating profit (COP) for USS:

Unrelated distributor	OP/OA (percent)	USS COP
A	8.0	$24,800
B	23.3	72,230
C	16.9	52,390
D	8.0	24,800
E	11.5	35,650
F	6.3	19,530
G	5.3	16,430
H	2.7	8,370
I	8.5	26,350
J	7.5	23,250

(v) The products sold by the distributors are not similar enough to allow for the range described in paragraph (d)(2)(ii) of this section. Accordingly, the arm's length range is limited to the constructive operating profits that fall within the interquartile range of results. Accordingly, the arm's length range consists of the results ranging from $19,530 to $35,650. USS's average reported operating profit of $20,000 is within this range. Therefore, the district director determines that no allocation should be made to adjust USS's operating income even though its operating income for 1994 shows a loss of $4,600.

Example 2—Transfer of tangible property resulting in adjustment. (i) The facts are the same as in *Example 1* except that USS reported the following income and expenses:

	1992	1993	1994	Average
Assets	$310,000	$310,000	$310,000	$310,000
Sales	500,000	560,000	500,000	520,000
Cost of goods sold	370,000	460,000	400,000	410,000
Purchases from FP	320,000	410,000	350,000	360,000
Other	50,000	50,000	50,000	50,000
Operating expenses	110,000	110,000	110,000	110,000
Operating profit	20,000	(10,000)	(10,000)	0

(ii) Applying the data in paragraph (i) of this *Example 2*, the ratio described in *Example 3* would now produce the ratio of operating profit to operating assets of 0%.

(iii) The arm's length range remains the interquartile range of constructive operating profits derived in *Example 1*: $19,530 to $35,650. Since USS' average operating profit for the years 1992 through 1994 ($0) falls outside the arm's length range, USS' income for 1994 is increased to the median of the range, $24,800.

Example 3—Transfer of intangible to offshore manufacturer. (i) DevCo is a U.S. developer, producer and marketer of widgets. DevCo develops a new "high tech widget" (htw) which it manufacturers at its foreign subsidiary ManuCo located in Country H. ManuCo sells the htw to MarkCo (a U.S. subsidiary of DevCo) for distribution and marketing in the United States. The taxable year 1994 is under audit, and the district director examines whether the royalty rate of 5 percent paid by ManuCo to DevCo is an arm's length consideration for the htw technology. No comparable uncontrolled transactions are available. Because ManuCo did not use any valuable non-routine intangible that it acquired from uncontrolled taxpayers or that it developed, the district director applies the comparable profit method to determine whether the operating income of ManuCo is within the arm's length range. ManuCo's financial data from 1992–1994 is as follows:

	1992	1993	1994	Average
Assets	$24,000	$25,000	$26,000	$25,000
Sales to MarkCo	25,000	30,000	35,000	30,000
Cost of goods sold	6,250	7,500	8,750	7,500
Royalty to DevCo (5%)	1,250	1,500	1,750	1,500
Other	5,000	6,000	7,000	6,000
Operating expenses	1,000	1,000	1,000	1,000
Operating profit	17,750	21,500	25,250	21,500

(ii) Two ratios derived from the data in paragraph (i) of this *Example 3* produce the following results:

	Percent
Operating Profit/Sales (OP/S)	71.7
Operating Profit/Assets (OP/OA)	86.0

(iii) In order to compare ManuCo's results with those of other comparable companies, the district director analyzes companies performing similar functions and assuming similar risks. The district director determines that the price that ManuCo charged to MarkCo for the htw's is an arm's length price under § 1.482–3T(b). No information on uncontrolled taxpayers in country H that perform similar functions is available. The search is broadened for companies performing the most similar functions in the most similar markets. The district director determines that data available in countries M and N provides the best match of companies in a similar market performing similar functions and assuming similar risks.

(iv) Applying the provisions of paragraph (e) of this section to financial information from the set of country M and N companies provides an interquartile range of constructive operating profits from $3,000 to $4,500, with a median of $3,750. ManuCo's average reported operating profit for the years 992 through 1994 of $21,500 falls outside he arm's length range, and an adjustment to increase the royalties that ManuCo paid is made equal to $17,800 (the difference between $21,500 and the median of the arm's length range $3,700).

§ 1.482–6T Profit split method. [Reserved]

§ 1.482–7T Cost sharing. [Reserved]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par 4. Section 602.101(c) is amended by adding the following citations to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * *	*
1.482–1T	1545–1298
* * * *	*
1.482–3T	1545–1298
1.482–4T	1545–1298

* * * * *

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: January 11, 1993.

Alan J. Wilensky,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–1109 Filed 1–13–93; 2:10 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 397

[DoD Directive 5330.3]

Defense Printing Service (DPS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part establishes the Defense Printing Service (DPS) within the Department of the Navy as the consolidated organization for printing and duplicating activities in the Department of Defense, excluding intelligence and tactical activities and National Guard and Reserve organizations. It also designates the Secretary of the Navy as the single manager for the operation of the DPS and assigns responsibilities, functions, and relationships relating thereto.

EFFECTIVE DATE: January 7, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. H. Gioia, 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 397

Organization and functions (Government agencies).

Accordingly, title 32, chapter I, subchapter R is amended to add part 397 to read as follows:

PART 397—DEFENSE PRINTING SERVICE (DPS)

Sec.

397.1 Purpose
397.2 Applicability.
397.3 Responsibilities and functions.
397.4 Relationships.

Authority: 10 U.S.C. 131.

§ 397.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under 10 U.S.C., this part:

(a) Establishes the DPS within the Department of the Navy as the consolidated organization for printing and duplicating activities in the Department of Defense, excluding intelligence and tactical activities and National Guard and Reserve organizations.

(b) Designates the Secretary of the Navy as the single manager for the operation of the DPS and assigns responsibilities, functions, and relationships, as prescribed herein.

§ 397.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 397.3 Responsibilities and functions.

(a) The Director of Administration and Management, Office of the Secretary of Defense, shall:

(1) Have principal OSD staff responsibility for the activities of the DPS and provide policy guidance regarding the operation and management of printing and duplicating services in the Department of Defense.

(2) Chair the DoD Printing and Duplicating Services Oversight Group, composed of senior-level representatives of the Secretaries of the Military Departments; Assistant Secretary of Defense for Command, Control, Communications, and Intelligence; and Comptroller of the Department of Defense. Other DoD officials may be invited to participate, as required.

(3) Represent the Department of Defense on printing and duplicating policy matters with the Joint Committee on Printing (JCP), Government Printing Office (GPO), Office of Management and Budget (OMB), and other Government Agencies.

(b) The Secretary of the Navy is designated as the single manager for all DoD printing, both for the operation of DoD in-house printing and duplicating facilities and for the departmental printing procurement functions. In this capacity, the Secretary of the Navy shall:

(1) Appoint a Director of the DPS to manage and operate the DPS and all assigned resources, who shall be under the Secretary of the Navy's authority, direction, and control.

(2) Provide guidance to the Director of the DPS regarding the management of the DPS and its relationships with other commands, organizations, and activities within the Navy, as well as with other DoD Components and Government Agencies.

(3) Finance the operations of the DPS under the Printing and Publications

Services business area of the Defense Business Operations Fund.

(4) Ensure that the Director, DPS, shall:

(i) Organize, direct, and manage the DPS and all its assigned resources; produce or procure printing services; and administer, supervise, and control all assigned programs, services, and functions.

(ii) Provide effective and efficient printing support to DoD Components.

(iii) Conduct a coordinated DoD printing program covering the production, procurement, and distribution of publications through conventional or alternative methods.

(iv) Administer Department-wide printing management systems, programs, and activities, including technical assistance, support services, and information.

(v) Provide advice and assistance on printing matters to the DoD Components and other organizations, as appropriate.

(vi) Act as DoD representative for technical printing and duplicating matters under DPS cognizance with the JCP, GPO, OMB, and other Government Agencies.

(vii) Supports the Director of Administration and Management, OSD, in the performance of his duties under this part.

(c) The Comptroller of the Department of Defense shall advise, and provide policy guidance to, the DPS on the functioning of the Defense Business Operations Fund and other financial management matters.

(d) The Heads of the DoD Components shall cooperate with, and provide necessary information and assistance to, the DPS in setting requirements, arranging for and executing inter-Service support agreements, and enabling the DPS to carry out day-to-day operations in an effective and efficient manner.

§ 397.4 Relationships.

(a) In the performance of assigned responsibilities and functions, the Director, DPS, shall:

(1) Maintain liaison with DoD Components, other Government Agencies, and private sector organizations for the exchange of information concerning assigned programs, activities, and responsibilities.

(2) Use established facilities and services of the Department of Defense and other Government Agencies, whenever practicable, to avoid duplication and to achieve modernization, efficiency, economy, and user satisfaction.

(b) The heads of DoD Components shall coordinate with the Director, DPS, on all matters related to the responsibilities and functions listed in § 397.3(b)(4).

Dated: January 13, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–1324 Filed 1–19–93; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 60, and 61

[MT4–1–5449, ND2–2–5619, SD1–2–5620, SD3–1–5496; FRL–4541–7]

Approval and Promulgation of Implementation Plans; Montana, North Dakota, South Dakota; Delegation of Authority; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking and delegation of authority.

SUMMARY: In this action, EPA is approving revisions to the State Implementation Plans (SIPs) for the states of Montana, North Dakota, and South Dakota, which pertain to the states' regulations for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). Specifically, EPA is approving the following submittals: The August 20, 1991 submittal of NSPS and NESHAP revisions from the Governor of Montana; the June 30, 1992 submittal of NSPS and NESHAP revisions, excluding the asbestos NESHAP regulations, from the Governor of North Dakota; and the September 25, 1991 and the February 24, 1992 submittals of revised NSPS and asbestos NESHAP regulations from the designee of the Governor of South Dakota. These revisions are being approved because they provide for consistency with Federal regulations.

In addition to approving the above-listed SIP revisions, EPA is also providing notice that it granted delegation of authority to the State of Wyoming on July 29, 1992 to implement and enforce several NSPS which were adopted by the State. This is a result of an April 13, 1992 request for delegation from the State.

EFFECTIVE DATES: The amendments to §§ 52.1370(c), 52.1820(c), 52.2170(c), 60.04(c), and 61.04(c) will become effective on March 22, 1993 unless notice is received by February 22, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

The delegation of authority to the State of Wyoming became effective on July 29, 1992.

ADDRESSES: Copies of the revisions are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, CO 80202–2466.

Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

Division of Environmental Engineering, State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, North Dakota 58502–5520.

Division of Environmental Regulation, Department of Environment and Natural Resources, Joe Foss Building, Pierre, South Dakota 57501.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, suite 500, Denver, CO 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: EPA has two options for the approval of a state's NSPS and NESHAPs regulations. Sections 111(c) and 112(1) of the amended Clean Air Act (CAA) permit EPA to delegate to the states authority to implement and enforce standards set forth in 40 CFR parts 60 and 61, NSPS and NESHAPs. EPA also has the option of approving state NSPS and NESHAPs regulations as part of the SIP. The main difference between these two options is in the processing of the State submittal. EPA's enforcement ability generally remains consistent. In either case, as provided for in the CAA, EPA has the authority to take enforcement action for a violation of a NSPS or NESHAP without providing notice of violation or waiting 30 days to take action. However, if the NSPS or NESHAP regulations are approved in the SIP, EPA has responsibility for enforcing the state regulation; whereas, if a state is delegated the authority for NSPS or NESHAP, EPA is only responsible for enforcing the Federal regulation. In either case, EPA can only approve a state regulation that is no less stringent than the respective Federal regulation.

EPA believes that, with respect to NSPS and NESHAPs established under section 111 and 112 of the CAA,

Congress intended for EPA to set the "standard," rather than including such standards in section 110 implementation plans (which allows states to set nonattainment area "standards.") EPA's Region VIII has found that many of its states wished to compile all of their air quality regulations into their respective SIPs to improve clarity and coordination of their air program. EPA believes that it does have the authority to approve state NSPS and NESHAP programs in the SIP. However, given the Congressional intent of the NSPS and NESHAP programs, EPA believes it can only approve in the SIP those state regulations that are equivalent to the corresponding Federal regulations, and such approval will be given with the understanding that EPA will retain concurrent enforcement authority for the NSPS and NESHAPs programs as outlined in the CAA.

On October 9, 1991, EPA Region VIII sent a letter to each of its states explaining the differences between SIP approval and delegation of authority for NSPS/NESHAP programs and offering each state the opportunity to change the processing of their NSPS and NESHAP programs. Pursuant to those letters, the States of Montana, North Dakota, and South Dakota decided to have their NSPS and NESHAPs approved in their respective SIPs. The State of Wyoming chose to continue with delegation of authority for its NSPS and NESHAPs. Thus, in this notice, EPA is clarifying those decisions concurrent with its action on the submittals of revised NSPS and NESHAPs from those four states.

Montana

On August 20, 1991, the Governor of Montana requested approval of revisions to the Montana SIP. The revisions consisted of amendments to ARM 16.8.1423, NSPS, and 16.8.1424, NESHAPs. The amendments update the State's NSPS and NESHAPs regulations to incorporate new Federal regulations promulgated between July 1, 1987 and July 1, 1990. On October 2, 1991, EPA notified the State that the SIP submittal was administratively and technically complete, and that the submittal would be approved. In this notice, EPA is approving the State's revisions to the SIP, providing the State with authority to implement and enforce the Federal NSPS in 40 CFR part 60 and the Federal NESHAPs in 40 CFR part 61, as in effect on July 1, 1990, with the exception of 40 CFR 61 subparts B, H, I, K, T, and W, which pertain to radionuclides.

In a March 23, 1992 letter to the State, EPA identified concerns with the State's interpretation of the term "administrator" as it applied to its NSPS and NESHAPs regulations. Some confusion had arisen because the State incorporated by reference the Federal NSPS and NESHAPs regulations, in which "administrator" is defined as the Administrator of EPA, and the State regulations did not specifically redefine "administrator" to be the appropriate State official. On April 20, 1992, the State responded with its interpretation of the term "administrator" in its NSPS and NESHAPs regulations to mean the administrator of the Montana Department of Health and Environmental Sciences or his designee (Bureau Chief of the Montana Air Quality Bureau), except for those authorities that cannot be delegated by the EPA, in which case "administrator" means Administrator of EPA. EPA concurs with the State's interpretation and is clarifying that interpretation in this notice. Also in that letter, the State committed to incorporate a definition of the term "administrator" consistent with its interpretation in the next revisions to its NSPS and NESHAPs regulations.

North Dakota

On June 30, 1992, the Governor of North Dakota submitted a request for approval of revisions to the SIP. The submittal consisted of revisions to the following sections in the State's Air Pollution Control Rules: 33–15–01 General Provisions, 33–15–05 Emissions of Particulate Matter Restricted, 33–15–06 Emissions of Sulfur Compounds Restricted, 33–15–07 Control of Organic Compound Emissions, 33–15–12 Standards of Performance for New Stationary Sources, 33–15–13 Emission Standards for Hazardous Air Pollutants, 33–15–15 Prevention of Significant Deterioration of Air Quality, and 33–15–20 Control of Emissions from Oil and Gas Well Production Facilities.

On August 27, 1992, EPA notified the State that the submittal was administratively and technically complete. In this notice, EPA is approving only the revisions to Chapter 33–15–12, NSPS, and Chapter 33/15/13, NESHAPs, of the North Dakota Administrative Code, with the exception of the State's asbestos regulations in Section 33–15–13–02. EPA will act on the remainder of the SIP submittal, including the asbestos regulations, in a separate notice. The revisions to Chapters 33–15–12 and 33–15–13 incorporate by reference the Federal NSPS in 40 CFR part 60 and the Federal NESHAPs in 40 CFR part 61, as in effect on May 1, 1991, with the exception of 40 CFR part 61, subparts B, H, I, K, M, T, and W (radionuclides and asbestos). EPA has reviewed the revised regulations and determined that they are consistent with the Federal regulations. Therefore, in this notice, EPA is approving the revisions to the State's NSPS and NESHAP regulations.

South Dakota

On September 25, 1991, the Governor's designee submitted revisions to the South Dakota SIP. The submittal consisted of revisions to the State's Air Pollution Control in Article 74:26 of the Administrative Rules of South Dakota. Specifically, revisions were made to the State's regulations for new source review (NSR) permitting, emergency episode plans for PM–10, PM–10 ambient standards and methods of measurement, operation permits, NSPS, and asbestos. The State also submitted regulations for the disposal of medical waste in Article 74:35.

On December 2, 1991, EPA notified the State that the submittal of the revisions to Article 74:26 was administratively and technically complete. In that letter, EPA returned Article 74:35 as incomplete because the State had not provided any response to the numerous public comments received.

On February 10, 1992, the State withdrew Section 74:26:26, Standards of Performance for Municipal Waste Combustors, and Section 74:26:22, Emission Standards for Asbestos Air Pollutants, so that revised regulations for these sections could be submitted for SIP approval.

On February 24, 1992, the State submitted the revised asbestos and municipal waste combustor regulations, along with its Asbestos Control Program in Article 74:31, for approval in the SIP. On April 28, 1992, EPA notified the State that the submittal was administratively and technically complete. In that letter, EPA also explained that it could not take action on the asbestos control program in Article 74:31 because those provisions were mandated by the Toxics Substances Control Act (TSCA), and EPA did not have the authority to approve such a regulation in a SIP required by section 110 of the CAA. Although EPA acknowledges receipt of these regulations, no action will be taken on the regulations.

In this notice, EPA is only taking action on the State's NSPS and asbestos regulations in Sections 74:26:8 through 74:26:26 of the Administrative Rules of South Dakota. The remainder of the SIP submittal will be acted on in a separate notice. EPA has reviewed the State's revisions to its NSPS and asbestos regulations and has found them to be

consistent with the respective Federal requirements. Specifically, EPA is approving the NSPS revisions submitted on September 25, 1991 that include the following: Sections 74:26:08–74:26:21 and 74:26:23–74:26:25 of the State's regulations which incorporate by reference 40 CFR part 60, subparts D, Da, Db, E, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, and OOO, as in effect on July 1, 1989. EPA is also approving the revisions submitted on February 24, 1992 that include Section 74:26:26 of the State regulations, which incorporates by reference 40 CFR part 60, subpart Ea, as published in the **Federal Register** on February 11, 1991 (56 FR 5506), and Section 74:26:22 of the State's regulations, which incorporates by reference 40 CFR part 61, subpart M, as in effect on July 1, 1991.

Wyoming

On April 13, 1992, the State of Wyoming submitted revisions to its NSPS regulations. The submittal included the addition of the following NSPS categories: Small industrial-commercial-institutional steam generating units, municipal waste combustors, volatile organic compound (VOC) emissions from the polymer manufacturing industry, VOC emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes, VOC emissions from synthetic organic chemical manufacturing industry distillation operations, VOC emissions from petroleum refinery wastewater systems, magnetic tape coating facilities, and polymeric coating of supporting substrates facilities (40 CFR part 60, subparts Dc, Ea, DDD, III, NNN, QQQ, SSS, and VVV). Pursuant to such submittal, on July 29, 1992, delegation was given with the following letter:

Hon. Mike Sullivan,
Governor of Wyoming, State Capitol, Cheyenne, Wyoming 82002

Dear Governor Sullivan: On April 13, 1992, you requested delegation of authority for revisions to the New Source Performance Standards (NSPS) in Section 22 of the Wyoming Air Quality Standards and Regulations (WAQSR). These revisions brought the State's NSPS up to date with the Federal NSPS in effect as of July 1, 1991.

Subsequent to states adopting NSPS regulations, the EPA delegates the authority for the implementation and enforcement of those NSPS, so long as those regulations are equivalent to the Federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of eight NSPS.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS, including the source applicability dates, by the State of Wyoming. Therefore, pursuant to section 111(c) of the Clean Air Act (CAA), as amended, and 40 CFR part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of Wyoming as follows:

(A) Responsibility for all sources located, or to be located in the State of Wyoming subject to the standards of performance for new stationary sources promulgated in 40 CFR part 60. The categories of new stationary sources covered by this delegation are as follows: Small industrial-commercial-institutional steam generating units (subpart Dc), municipal waste combustors (subpart Ea), volatile organic compound emissions from the polymer manufacturing industry (subpart DDD), volatile organic compound emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes (subpart III), volatile organic compound emissions from synthetic organic chemical manufacturing industry distillation operations (subpart NNN), VOC emissions from petroleum refinery wastewater systems (subpart QQQ), magnetic tape coating facilities (subpart SSS), and polymeric coating of supporting substrates facilities (subpart VVV).

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the CAA, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. The following are the authorities in the applicable subparts of 40 CFR part 60 that are being delegated in this letter which EPA cannot delegate: (i) 40 CFR part 60.562–2(c), which pertains to equivalency determinations in subpart DDD, Volatile Organic Compound Emissions from the Polymer Manufacturing Industry; (ii) 40 CFR part 60.613(e), which pertains to alternative test methods in Subpart III, Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes; (iii) 40 CFR part 60.663(e), which pertains to alternative test methods in subpart NNN, Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations; (iv) 40 CFR parts 60.711(a)(16), 60.713(b)(1)(i), 60.713(b)(1)(ii), 60.713(b)(5)(i), 60.713(d), 60.715(a), and 60.716, which pertain to equivalency determinations, alternative test methods, and EPA rulemakings in subpart SSS, Magnetic Tape Coating Facilities; and (v) 40 CFR parts 60.743(a)(3)(v) (A) and (B), 60.743(e), 60.745(a), and 60.746, which pertain to alternative test methods, equivalency determinations, and EPA rulemakings in subpart VVV, Polymeric Coating of Supporting Substrates Facilities.

(C) As 40 CFR part 60 is updated, Wyoming should revise its rules and regulations accordingly and in a timely manner.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal regulation (40 CFR part 60), the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our August 2, 1977 letter. A copy of this letter was published in the notices section of the **Federal Register** of September 15, 1977 (42 FR 46386), along with an associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the **Federal Register** are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

In previous letters dated October 9, 1991 and February 6, 1992, EPA expressed concerns with the State's acceptance and enforcement of the Federal NSPS applicability dates. In this submittal, the State has revised the effective dates of its NSPS to be equivalent to the effective dates of the Federal NSPS, and has provided an Attorney General's opinion verifying the State's authority to implement and enforce the Federal NSPS. Therefore, EPA believes that this submittal has adequately addressed our concerns.

If you have any questions on this matter, please call me, or have your staff contact Doug Skie, Chief of our Air Programs Branch, at 293–1750.

Sincerely,
Jack W. McGraw,
Acting Regional Administrator.

Final Action

EPA is approving the revisions to Montana's NSPS and NESHAPs regulations in ARM 16.8.1423 and 16.8.1424, respectively, which were submitted by the Governor for SIP approval on August 20, 1991. This action provides the State with the authority for implementation and enforcement of all Federal NSPS and NESHAPs (except 40 CFR part 61, subparts B, H, I, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of July 1, 1990. However, the State's NSPS and NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61.

EPA is also approving the revisions to the North Dakota SIP submitted on June 30, 1992, which include Chapters 33–15–12 (NSPS) and 33–15–13 (NESHAPs) of the State's Air Pollution Control Rules, with the exception of the asbestos regulations in Section 33–15–13–02. This action provides the State with the authority for implementation and enforcement of all Federal NSPS and NESHAPs (except 40 CFR part 61, subparts B, H, I, K, M, Q, R, T, and W, pertaining to radionuclides and asbestos) promulgated as of May 1, 1991. However, the State's NSPS and NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61.

Lastly, EPA is approving the revisions to the South Dakota SIP, Sections 74:26:08 through 74:26:26 of the Administrative Rules of South Dakota, NSPS and asbestos, which were submitted by the State on September 25, 1991 and February 24, 1992. This action provides the State with the authority for implementation and enforcement of the following subparts of 40 CFR part 60: D, Da, Db, E, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, and OOO (as in effect on July 1, 1989); and Ea (as in effect on February 11, 1991). Also, this action provides the State with authority to implement and enforce 40 CFR part 61, subpart M, as in effect on July 1, 1991. However, the State's NSPS and asbestos NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61.

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference.

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

40 CFR Part 61

Air Pollution Control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

Dated: November 13, 1992.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(25) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(25) On August 20, 1991, the Governor of Montana submitted revisions to the plan for new source performance standards and national emission standards for hazardous air pollutants.

(i) *Incorporation by reference.*

(A) Revisions to the Administrative Rules of Montana 16.8.1423, Standards of Performance of New Stationary Sources, and 16.8.1424, Emission Standards for Hazardous Air Pollutants, adopted July 1, 1991, effective July 12, 1991.

(ii) *Additional material.*

(A) Letter dated April 20, 1992 from Jeffrey T. Chaffee, Chief of the Montana Air Quality Bureau, to Doug Skie, Chief of Air Programs Branch, EPA Region VIII.

Subpart JJ—North Dakota

3. Section 52.1820 is amended by adding paragraph (c)(23) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(23) On June 30, 1992, the Governor of North Dakota submitted revisions to the plan for new source performance standards and national emission standards for hazardous air pollutants.

(i) *Incorporation by reference.*

(A) Revisions to the Air Pollution Control Rules, Chapter 33–15–12, Standards of Performance for New Stationary Sources, and Chapter 33–15–13, excluding Section 33–15–13–02, Emission Standards for Hazardous Air Pollutants, effective June 1, 1992.

Subpart QQ—South Dakota

4. Section 52.2170 is amended by adding paragraph (c)(13) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(13) On September 25, 1992 and February 24, 1992, the Governor of South Dakota submitted revisions to the plan for new source performance standards and asbestos.

(i) *Incorporation by reference.*

(A) Revisions to the Air Pollution Control Program, Sections 74:26:08–74:26:21 and 74:26:23–74:26:25, New

Source Performance Standards, effective May 13, 1991, Section 74:26:26, Standards of Performance for Municipal Waste Combustors, effective November 24, 1991, and Section 74:26:22, Emission Standards for Asbestos Air Pollutants, effective December 2, 1991.

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

Subpart A—General Provisions

2. Section 60.4(c) is amended by revising the table to read as follows:

§ 60.04 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	State					
	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
A General Provisions	(*)	(*)	(*)	(*)	(*)	(*)
D Fossil Fuel Fired Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Da Electric Utility Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Db Industrial-Commercial Institutional Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Dc Industrial-Commercial Institutional Steam Generators			(*)		(*)	(*)
E Incinerator	(*)	(*)	(*)	(*)	(*)	(*)
Ea Municipal Waste Combustors			(*)	(*)	(*)	(*)
F Portland Cement Plants	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric Acid Plants	(*)	(*)	(*)		(*)	(*)
H Sulfuric Acid Plant	(*)	(*)	(*)	(*)	(*)	(*)
I Asphalt Concrete Plants	(*)	(*)	(*)		(*)	(*)
J Petroleum Refineries	(*)	(*)	(*)	(*)	(*)	(*)
K Petroleum Storage Vessels (6/11/73–5/19/78)	(*)	(*)	(*)	(*)	(*)	(*)
Ka Petroleum Storage Vessels (5/18/78–7/23/84)	(*)	(*)	(*)	(*)	(*)	(*)
Kb Petroleum Storage Vessels (after (7/23/84)		(*)	(*)	(*)	(*)	(*)
L Secondary Lead Smelters	(*)	(*)	(*)		(*)	(*)
M Secondary Brass & Bronze Production Plants	(*)	(*)	(*)		(*)	(*)
N Primary Emissions from Basix Oxygen Process Furnaces (after 6/11/73).	(*)	(*)	(*)		(*)	(*)
Na Secondary Emissions from Basic Oxygen Process Furnaces (after 1/20/83).	(*)	(*)	(*)		(*)	(*)
O Sewage Treatment Plants	(*)	(*)	(*)	(*)	(*)	(*)
P Primary Copper Smelters	(*)	(*)	(*)		(*)	(*)
Q Primary Zinc Smelters	(*)	(*)	(*)		(*)	(*)
R Primary Lead Smelters	(*)	(*)	(*)		(*)	(*)
S Primary Aluminum Reduction Plants	(*)	(*)	(*)		(*)	(*)
T Phosphate Fertilizer Industry: Wet Process Phosphoric Plants	(*)	(*)	(*)		(*)	(*)
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants	(*)	(*)	(*)		(*)	(*)
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants	(*)	(*)	(*)		(*)	(*)
W Phosphate Fertilizer Industry: Triple Super-Phosphate Plants	(*)	(*)	(*)		(*)	(*)
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	(*)	(*)	(*)		(*)	(*)
Y Coal Preparation Plants	(*)	(*)	(*)	(*)	(*)	(*)
Z Ferroalloy Production Facilities	(*)	(*)	(*)		(*)	(*)
AA Steel Plants: Electric Arc Furnaces (10/21/74–8/17/83)	(*)	(*)	(*)		(*)	(*)
AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (after 8/7/83).		(*)	(*)		(*)	(*)
BB Kraft Pulp Mills	(*)	(*)	(*)		(*)	(*)
CC Glass Manufacturing Plants	(*)	(*)	(*)		(*)	(*)
DD Grain Elevator	(*)	(*)	(*)	(*)	(*)	(*)
EE Surface Coating of Metal Furniture	(*)	(*)	(*)		(*)	(*)
GG Stationary Gas Turbines	(*)	(*)	(*)	(*)	(*)	(*)
HH Lime Manufacturing Plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead-Acid Battery Manufacturing Plants	(*)	(*)	(*)		(*)	(*)
LL Metallic Mineral Processing Plants	(*)	(*)	(*)	(*)	(*)	(*)
MM Automobile & Light Duty Truck Surface Coating Operations	(*)	(*)	(*)		(*)	(*)
NN Phosphate Rock Plants	(*)	(*)	(*)		(*)	(*)
PP Ammonium Sulfate Manufacturing	(*)	(*)	(*)		(*)	(*)
QQ Graphic Arts Industry: Publication Rotogravure Printing	(*)	(*)	(*)		(*)	(*)
RR Pressure Sensitive Tape & Label Surface Coating	(*)	(*)	(*)		(*)	(*)
SS Industrial Surface Coating: Large Appliances	(*)	(*)	(*)		(*)	(*)
TT Metal Coil Surface Coating	(*)	(*)	(*)		(*)	(*)
UU Asphalt Processing & Asphalt Roofing Manufacture	(*)	(*)	(*)		(*)	(*)
VV Synthetic Organix Chemicals Manufacturing: Equipment Leaks of VOC.	(*)	(*)	(*)		(*)	(*)
WW Beverage Can Surface Coating Industry	(*)	(*)	(*)		(*)	(*)
XX Bulk Gasoline Terminals	(*)	(*)	(*)		(*)	(*)
AAA Residential Wood Heaters		(*)	(*)		(*)	(*)
BBB Rubber Tires		(*)	(*)		(*)	(*)
DDD VOC Emissions from Polymer Manufacturing Industry					(*)	(*)
FFF Flexible Vinyl & Urethane Coating & Printing	(*)	(*)	(*)		(*)	(*)
GGG Equipment Leaks of VOC in Petroleum Refineries	(*)	(*)	(*)		(*)	(*)
HHH Synthetic Fiber Production	(*)	(*)	(*)		(*)	(*)
III VOC Emission from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit processes.		(*)	(*)		(*)	(*)

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued
[(NSPS) for Region VIII]

Subpart	State					
	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
JJJ Petroleum Dry Cleaners	(*)	(*)	(*)		(*)	(*)
KKK Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	(*)	(*)	(*)		(*)	(*)
LLL Onshore Natural Gas Processing: SO_2 Emissions	(*)	(*)	(*)		(*)	(*)
NNN VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations.		(*)	(*)		(*)	(*)
OOO Nonmetallic Mineral Processing Plants	(*)	(*)	(*)	(*)	(*)	(*)
PPP Wool Fiberglass Insulation Manufacturing Plants	(*)	(*)	(*)		(*)	(*)
QQQ VOC Emission from Petroleum Refinery Wastewater Systems		(*)	(*)		(*)	(*)
SSS Magnetic Tape Industry		(*)	(*)		(*)	(*)
TTT Plastic Parts for Business Machines Coatings		(*)	(*)		(*)	(*)
VVV Polymeric Coating of Supporting Substrates		(*)	(*)		(*)	(*)

*Indicates approval of state regulation.
[1]Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart A—General Provisions

2. Section 61.04(c) is amended by revising the table to read as follows:

§ 61.04 address

* * * * *

(c) * * *

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
[(NESHAPs) for Region VIII]

Subpart	State					
	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
A General Provisions	(*)	(*)	(*)	(*)	(*)	.....
C Beryllium	(*)	(*)	(*)	.....	(*)	.....
D Beryllium Rocket Motor Firing	(*)	(*)	(*)	.....	(*)	.....
E Mercury	(*)	(*)	(*)	.....	(*)	.....
F Vinyl Chloride	(*)	(*)	(*)	.....	(*)	.....
J Equipment Leaks (Fugitive Emission Sources) of Benzene	(*)	(*)	(*)	.....	(*)	.....
L Benzene Emission from Coke By-Product Recovery Plants	.....	(*)	(*)	.....	(*)	.....
M Asbestos	(*)	(*)	(*)	(*)	(*)	(*)[2]
N Inorganic Arsenic Emissions from Glass Manufacturing Plants	.....	(*)	(*)	.....	(*)	.....
O Inorganic Arsenic Emissions from Primary Copper Smelters	.....	(*)	(*)	.....	(*)	.....
P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities	.....	(*)	(*)	.....	(*)	.....
V Equipment Leaks (Fugitive Emission Sources)	.....	(*)	(*)	.....	(*)	.....
Y Benzene Emissions from Benzene Storage Vessels	.....	(*)	(*)	.....	(*)	.....
BB Benzene Emissions from Benzene Transfer Operations	.....	(*)	(*)	.....	(*)	.....
FF Benzene Waste Operations	.....	(*)	.....	.....	(*)	.....

*Indicates approval of state regulations.
[1]Indicates approval of state regulation. Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP).
[2]Delegation for asbestos demolition, renovation and spraying operations, and waste disposal for demolition, renovation and spraying operations only.

[FR Doc. 93–1389 Filed 1–19–93; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73
[MM Docket No. 92–129; RM–8006]

Radio Broadcasting Services; Grundy Center, IA

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: The Commission, at the request of Grundy Broadcasting Company, substitutes Channel 249C3 for Channel 249A at Grundy Center, Iowa, and modifies the license of Station KGCI–FM to specify operation on the higher powered channel. See 57 FR 28163, June 24, 1992. Channel 249C3 can be allotted to Grundy Center in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.2 kilometers (11.3 miles) east to avoid a short-spacing to Station KHBT, Channel 249A, Humboldt, Iowa, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 249C3 at Grundy Center are North Latitude 42–21–25 and West Longitude 92–33–14. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 26, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–129, adopted December 22, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 249A and adding Channel 249C3 at Grundy Center.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1287 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–131; RM–8005]

Radio Broadcasting Services; Copenhagen, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The commission, at the request of Tia A. Soliday, substitutes Channel 294C3 for Channel 294A at Copenhagen, New York, and modifies Station WWLF–FM's construction permit to specify operation on the higher class channel. See 57 FR 28163, June 24, 1992. Channel 294C3 can be allotted to Copenhagen in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7 miles) northeast to avoid a short-spacing to Station WPCX, Channel 295B, Auburn, New York, at coordinates North Latitude 43–56–30 and West Longitude 75–33–00. While the allotment is short-spaced to Station CKO–1, Channel 295C1, Ottawa, Ontario, and vacant Channel 293A at Brockville, Ontario, Canada, we find that the use of Channel 294C3 at Copenhagen will not result in any prohibited interference. Canadian concurrence in the allotment as a specially negotiated allotment has been received because Copenhagen is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 26, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–131, adopted December 22, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 294A and adding Channel 294C3 at Copenhagen.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1288 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–130; RM–8007]

Radio Broadcasting Services; Canyon City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Blue Mountain Broadcasting, allots Channel 233A to Canyon City, Oregon, as the community's first local aural broadcast service. See 57 FR 28162, June 24, 1992. Channel 233A can be allotted to Canyon City without the imposition of a site restriction, at coordinates North Latitude 44–23–18 and West Longitude 118–56–54. With this action, this proceeding is terminated.

DATES: Effective February 26, 1993. The window period for filing applications will open on March 1, 1993, and close on March 31, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–130, adopted December 22, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Canyon City, Channel 233A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1284 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 12
Thursday, January 21, 1993

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AE15

List of Approved Spent Fuel Storage Casks: Additions; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On June 26, 1992 (57 FR 28645), the NRC published for public comment a proposed rule which would amend its list of approved spent fuel storage casks by adding two casks to the list. The proposed amendment would allow holders of power reactor operating licenses to store spent fuel in these approved casks under a general license. The initial comment period for this proposed rule expired on September 9, 1992. Subsequent to the expiration of the public comment period, the NRC took steps to implement the provisions in its regulations (10 CFR 2.790(c)) that provides that information submitted to NRC in a rulemaking proceeding which subsequently forms the basis for a final rule will not be withheld from public disclosure by NRC. The NRC has evaluated the information which forms the basis of this proposed rule. Accordingly, additional supplemental information which was previously categorized as proprietary information has been placed in the Public Document Room and all local public document rooms. The additional information being placed in the PDR at this time only relates to the VSC–24 cask. The second cask (TN–24) will be covered separately in a subsequent notice. In addition, the comment period for the June 26, 1992, proposed rule is being reopened for 30 days to allow comments on the additional information.

DATES: Although the comment period expires on February 22, 1993 comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gunderson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803, or Mr. James F. Schneider, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2692.

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 2.790(c), NRC is placing in the NRC Public Document Room portions of the cask vendor's Safety Analysis Report (SAR), as well as certain information of the vendor, supporting its respective SAR, which the vendor claimed to be proprietary. Although NRC has not yet approved or adopted a final rule in the present rulemaking, NRC is disclosing now the vendor's information described above, in advance of any final rule, during the proposed rulemaking stage.

The information of the cask vendor being disclosed at this time provides added detail to the information NRC previously placed in the NRC Public Document Room at the outset of this rulemaking. It complements and supplements the design information already disclosed, providing further detail on such matters as the vendor's design calculations (often in the form of computer runs) and specific data inputs for models used by the vendor for such calculations, as well as cask design details such as reinforcing steel sizing and shield lid thickness. The information being disclosed therefore provides additional specificity for the public about the technical information that was considered by the NRC staff in preparing the principal NRC documents underlying this rulemaking, that is, the proposed Certificate of Compliance for the cask and the associated NRC staff Safety Evaluation Report and related Environmental Assessment which were previously placed in the NRC Public Document Room at the outset of this proposed rulemaking.

In disclosing the cask vendor's information described above, in advance of any final rule, NRC is giving ghe public an additional opportunity to review the content of such information, and the agency is accordingly extending the public comment period for an additional 30 days for this limited purpose, in case members of the public wish to submit additional comments or supplement their prior comments in this proceeding. However, the agency will consider all comments already received to date (which are available in the NRC Public Document Room), and it is therefore unnecessary for commenters to repeat or resubmit prior comments. Accordingly, commenters are specifically requested to limit their written submissions to comment based on a review of the cask vendor's information now being put in the NRC Public Document Room.

Dated at Rockville, Maryland, this 15th day of January 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–1500 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANE–45]

Proposed Alteration of VOR Federal Airways, Control Areas and Jet Routes; MA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the descriptions of various Federal airways, control areas, and jet routes in the Hyannis, MA, area. The realignment of these Federal airways, control areas, and jet routes is necessary because of the decomissioning of the Hyannis (HYA) very high frequency omnidirectional range/tactical air navigation (VORTAC) and the commissioning of the Marconi, MA (LFV), VORTAC in North Truro, MA.

DATES: Comments must be received on or before March 8, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 92–ANE–45, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

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 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–ANE–45." 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 various VOR Federal airways, control areas and jet routes in the Hyannis, MA, area. The alterations are necessary because the Hyannis VORTAC was decommissioned and relocated to North Truro, MA. The commissioning of the new navigational aid, Marconi VORTAC in North Truro, MA, will necessitate the changes to VOR Federal airways, control areas, and jet routes in that airspace. The coordinates for this airspace docket are based on North American Datum 83. Domestic VOR Federal airways, control areas, and jet routes are published, respectively, in sections 71.123, 71.161, and 71.607 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airways, control areas, and jet routes listed in this document will be published subsequently in the Order.

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.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Rules and Procedures Service, FAA, in areas outside domestic airspace of the United States is governed by article 12 of, and annex 11 to, the Convention on International Civil Aviation, which pertain to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes are carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aviation safety, Control areas, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

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 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 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–141 [Revised]

From Nantucket, MA; INT Nantucket, 334 °T(349 °M) and Boston, MA, 138 °T(154 °M) radials; to Boston. From Manchester, NH; Concord, NH; Lebanon, NH; Burlington, VT; to Massena, NY.

* * * * *

V–151 [Revised]

From INT Nantucket, MA, 334 °T (349 °M) and Providence, RI, 079 °T(093 °M) radials; Providence, Putnam, CT; Gardner, MA; Keene, NH; Lebanon, NH, Montpelier, VT; Burlington, VT.

* * * * *

V–167 [Revised]

From Hancock, NY; INT Hancock 117° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 269° radials; Hartford; Providence, RI; INT Providence 101 °T(115 °M) and Marconi, MA, 211 °T(227 °M) radials; Marconi; INT Marconi 346 °T(002 °M) and Kennebunk, ME, 161 °T(178 °M) radials; to Kennebunk. The airspace outside the United States below 2,000 feet MSL, including the portion within Warning Area W–103, is excluded.

* * * * *

Section 71.161 Control Areas Associated With Jet Routes Outside the Continental Control Area

* * * * *

J–150 [Revised]

From Robbinsville, NJ; via Hampton, NY; Marconi, MA; to the INT of Marconi 082°T(098°M) and Boston, MA, 097°T(113°M) radials.

* * * * *

J–174 [Revised]

From Snow Hill, MD, via Hampton, NY; Marconi, MA, to HERIN INT. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00"N., long. 74°43'59"W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

* * * * *

Section 71.607 Jet Routes

* * * * *

J–79 [Revised]

From Key West, FL, via Miami, FL; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Ormond Beach 360° and Charleston, SC, 210° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 080° and Nantucket, MA, 254° radials; INT Nantucket 254°T(269°M) and Marconi, MA, 205°T(221°M) radials; Marconi; INT Marconi 006°T(022°M) and Bangor, ME, 206°T(225°M) radials; Bangor.

* * * * *

J–150 [Revised]

From Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Coyle, NJ; INT Coyle 075° and Hampton, NY, 231° radials; Hampton; INT Hampton 069°T(082°M) and Marconi, MA, 228°T(244°M) radials; Marconi; to the INT Marconi 082°T(098°M) and Boston, MA, 097°T(113°M) radials.

* * * * *

J–174 [Revised]

From Craig, FL, via INT Craig 020° and Charleston, SC, 210° radials; Charleston; Wilmington, NC; Dixon NDB, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; Hampton, NY; INT Hampton 069°T(082°M) and Marconi, MA, 228°T(244°M) radials; Marconi, to the INT of Marconi 090°T(106°M) and Nantucket, MA, 066°T(063°M) radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45'00"N., long. 74°43'59"W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

* * * * *

Issued in Washington, DC, on January 11, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–1309 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANE–2]

Proposed Alteration and Establishment of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on May 21, 1992 (57 FR 21633). The NPRM proposed to alter VOR Federal Airway V–58 by renumbering a segment of that airway between Hartford, CT, and Nantucket, MA. That segment of V–58 affected by the proposal would have been renumbered to read V–22. The FAA has determined that withdrawing the proposal at this time is warranted. This action will provide an opportunity to reexamine the operations in the airspace associated with the Bradley International Airport departure procedures.

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: On May 21, 1992, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to alter V–58 by renumbering a segment of the airway and establishing that segment as V–22 (57 FR 21633). This action was proposed to assist air traffic control in eliminating the confusion arising from pilots departing Bradley International Airport and transitioning to V–58. Pilots departing Bradley International Airport with assigned departure instructions to southeast bound routes had intercepted V–58 and inadvertently proceeded west on that airway. Renumbering that segment of the airway to V–22 between Hartford, CT, and Nantucket, MA, would have clarified departure instructions and procedures and limit excessive navigation to the assigned airway. No comments were received on the proposed amendment.

The FAA has decided to withdraw the proposal at this time. In lieu of rulemaking action, the FAA has charted two intersections to define the turning points and assist pilots transitioning from terminal environment to the en route airways. A standard instrument departure route has been developed and published to provide further guidance. The FAA believes that the action taken will clarify the departure procedures and will better serve the airspace users, rather than renaming a segment of that airway.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 92–ANE–2, as published in the **Federal Register** on May 21, 1992 (57 FR 21633), is hereby withdrawn.

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

Issued in Washington, DC, on January 11, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–1310 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL–21–91]

RIN 1545–AQ45

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the Income Tax Regulations relating to substantial and gross valuation misstatements as defined in sections 6662(e) and 6662(h) of the Internal Revenue Code. The regulations would apply to taxpayers who have substantial and gross valuation misstatements attributable to section 482 allocations (Intercompany transfer pricing).

DATES: Written comments must be received by April 21, 1993. A public hearing has been scheduled for May 14, 1993 at 10 a.m. Requests to speak at the hearing, along with outlines of oral comments, must be received by April 23, 1993.

ADDRESSES: Send written comments, requests to speak at the hearing, and outlines of oral comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IL–21–91), room 5228, Washington, DC 20044. The public hearing will be held in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph, with respect to the proposed regulations, telephone (202) 622–3880, and Carol Savage, with respect to the public hearing, telephone (202) 622–8452. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

The collection of information in this proposed regulation is contained in § 1.6662–5(j)(5)(ii). This information is required by the Internal Revenue Service to ensure that persons claiming that an amount should be excluded from the calculation of the net section 482 transfer price adjustment have acted with reasonable cause and good faith. The information will be used to document how the result of a controlled transaction was determined. The likely respondents and recordkeepers are business or other for-profit institutions.

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

Estimated total annual recordkeeping burden: 20,000 hours.

Estimated average annual burden per recordkeeper: 10 hours.

Estimated number of recordkeepers: 2000.

Background

This document contains proposed amendments to the Income Tax Regulations under sections 6662 and 6664 relating to the imposition of accuracy-related penalties.

Explanation of Provisions

The experience of Internal Revenue Service international examiners has been that the majority of taxpayers are unable to provide an explanation of how their intercompany pricing was established. This may account in large part for the fact that in many cases international examiners' access to a corporation's transfer pricing information is delayed or denied. Moreover, experience has been that many taxpayers do not rely upon any form of comparables or other contemporaneous information either in planning or in defending intercompany transactions. Thus, the taxpayer, not having structrued the transaction with any comparable in mind, seeks to defend its position by finding whatever transaction or method gives rise to a result that most closely approximates the controlled transaction result initially reported. Thus, the lack of contemporaneous documentation of how a controlled transaction result was determined increases the time spent and expense incurred by both the taxpayer and the Service in determining whether that result was arm's length. Further, the lack of documentation explaining the basis for a taxpayer's intercompany pricing tends to increase controversy between taxpayers and the Service, as both seek to develop post hoc analyses of the arm's length character of the taxpayer's transactions. Accordingly, these regulations are designed to encourage taxpayers to document their transfer pricing transactions and to provide that documentation to the Internal Revenue Service upon request.

Section 6662(a) imposes a penalty in the amount of 20 percent of any underpayment to which the section applies. Section 6662(b) lists the types of underpayments to which section 6662(a) applies. One such underpayment is an underpayment attributable to any substantial valuation misstatement under chapter 1 of the Internal Revenue Code.

Section 6662(e) defines a substantial valuation misstatement. These proposed regulations under section 6662(e) contain the rules for determining whether a section 482 allocation constitutes a substantial valuation misstatement under chapter 1 of the Internal Revenue Code on which a penalty of 20 percent of the underpayment of tax may be imposed. Such a substantial valuation misstatement exists if (1) the transfer price for any property or services (or for the use of property) claimed on a return is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the arm's length price, or (2) the net section 482 transfer price adjustment exceeds ten million dollars.

Section 6662(h) provides for an increased penalty in the case of a gross valuation misstatement. The proposed regulations provide that the penalty for a gross valuation misstatement is 40 percent of the underpayment of tax attributable to the gross valuation misstatement if (1) the price for any property or services (or for the use of property) claimed on any return in connection with any transaction

between persons described in section 482 is 400 percent or more (or 25 percent or less) of the amount determined under section 482 to be the arm's length amount, or (2) the net section 482 transfer price adjustment exceeds twenty million dollars.

Certain adjustments are excluded in determining the ten or twenty) million dollar threshold. Adjustments that are attributable to an allocation under section 482 are excluded if there was reasonable cause for the taxpayer's determination of that price and the taxpayer acted in good faith. The proposed regulations set forth the criteria for determining whether there is reasonable cause and good faith for excluding an adjustment. If a transfer pricing methodology is developed and applied pursuant to an Advance Pricing Agreement in any tax year, then use of such a methodology to establish intercompany transfer prices for a different year may be considered evidence of reasonable cause and good faith. Adjustments that are attributable to a transaction between foreign corporations are also excluded, unless the treatment of that transaction affects the determination of U.S. source income or taxable income that is effectively connected with the conduct of a trade or business within the United States.

The rules of § 1.6664–4 apply for purposes of applying the reasonable cause and good faith exception to substantial and gross valuation misstatements under section 6662(e)(1)(B)(i) and sections 6662(h)(2)(A) (i) and (ii). If those valuation misstatements satisfy the reasonable cause and good faith exclusion provisions under § 1.6662–5(j)(5) of the proposed regulations, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of § 1.6664–4. For purposes of applying the reasonable cause and good faith exclusion to net section 482 transfer price adjustments under section 6662(e)(1)(B)(ii), the rules of § 1.6662–5(j)(5) of the proposed regulations apply. A net section 482 transfer price adjustment for which the rules of § 1.6662–5(j)(5) are not satisfied will not satisfy the reasonable cause and good faith exception under section 6664(c).

Proposed Effective Date

These regulations would apply to taxable years beginning after April 21, 1993. For returns with respect to which the penalty may be imposed that were filed prior to this date, any reasonable interpretation of section 6662(e) is acceptable. The Treasury Department considers these regulations to be a reasonable interpretation of section 6662(e), except that no requirement of contemporaneous documentation may be imposed for past transactions. However, contemporaneous documentation may be helpful in establishing that the taxpayer had reasonable cause and acted in good faith. Taxpayers may elect the application of these regulations to tax returns due prior to this proposed effective date.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, an initial Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these 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 Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on May 14, 1993 at 10 a.m. in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply to the public hearing.

Persons who have submitted written comments by April 21, 1993, and who also desire to present oral comments at the hearing on the proposed regulation, must submit, not later than April 23, 1993, a request to speak at the hearing, along with an outline of the oral comments 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 the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.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.

Drafting Information

The principal author of these proposed regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.6654–1 through 1.6709–1T

Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding a new citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6662–5 also issued under 26 U.S.C. 6662. * * *

Par. 2. Section 1.6662–0 is amended by revising the entries for § 1.6662–5, paragraph (e) and (j) in the table of contents to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

* * * * *

(e) Definitions.
(1) Substantial valuation misstatement.
(i) 200 percent test.
(ii) 200 percent and 50 percent test.
(iii) Ten million dollar threshold.
(2) Gross valuation misstatement.
(i) 400 percent test.
(ii) 400 percent and 25 percent test.
(iii) Twenty million dollar threshold.
(3) Property.
(4) Identical terms used in section 482 regulations.

* * * * *

(j) Transactions between persons described in section 482 and net section 482 transfer price adjustments.
(1) In general.
(i) Penalty of 20 or 40 percent of underpayment.

(ii) Example.
(2) Ten million dollar threshold.
(i) Net section 482 transfer price adjustment.
(ii) Reasonable cause and good faith.
(iii) Exclusion of certain foreign to foreign transactions.
(iv) Examples.
(3) Special rules in the case of carrybacks and carryovers.
(i) In general.
(ii) Calculation of net section 482 transfer price adjustment for carryback or carryover years not reduced by amount of carryback or carryovers.
(4) Rules for coordinating between two different penalties.
(i) In general.
(ii) Coordination of net section 482 transfer price adjustment under section 6662(e)(1)(B)(ii) and gross valuation misstatement adjustment under section 6662(h)(2)(A) (i) or (ii).
(iii) Coordination of twenty million dollar threshold amount under section 6662(h)(2)(iii) and the ten million dollar threshold under section 6662(e)(1)(B)(ii).
(iv) Examples.
(5) Reasonable cause and good faith exclusion for purposes of net section 482 transfer price adjustments.
(i) In general.
(ii) Contemporaneous documentation.
(iii) Reasonable belief in arm's length result.
(A) Result to be sustained on merits.
(B) Reliance on advice of professional.
(C) Defense of transfer pricing results with a methodology other than that used in preparing return.
(iv) Examples.
(6) Special Rule.
(7) Effective date.

* * * * *

Par. 3. Section 1.6662–5 is amended by revising paragraphs (e) and (j) to read as follows:

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

* * * * *

(e) *Definitions*—(1) *Substantial valuation misstatement.* There is a substantial valuation misstatement if—

(i) *200 percent test.* The value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 of the Internal Revenue Code is 200 percent or more of the correct amount;

(ii) *200 percent and 50 percent test.* The result of any controlled transaction is 200 percent or more (or 50 percent or less) of the arm's length result determined under section 482; or

(iii) *Ten million dollar test.* The net section 482 transfer price adjustment for the taxable year exceeds ten million dollars.

(2) *Gross valuation misstatement.* There is a gross valuation misstatement if—

(i) *400 percent test.* The value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 of the Internal Revenue Code is 400 percent or more of the correct amount;

(ii) *400 percent and 25 percent test.* The result of any controlled transaction is 400 percent or more (or 25 percent or less) of the arm's length result determined under section 482; or

(iii) *Twenty million dollar test.* The net section 482 transfer price adjustment for the taxable year exceeds twenty million dollars.

(3) *Property.* For purposes of this section, the term "property" refers to both tangible and intangible property. Tangible property includes property such as land, buildings, fixtures, and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts, and choices in action.

(4) *Identical terms used in section 482 regulations.* For purposes of this section, the terms used in these regulations shall have the same meaning as identical terms used in regulations promulgated under section 482.

* * * * *

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments*—(1) *In general*—(i) *Penalty of 20 or 40 percent of underpayment.* If a taxpayer makes a substantial valuation misstatement as defined in paragraph (e)(1) of this section, section 6662(a) imposes a penalty equal to 20 percent of the underpayment of income tax attributable to it. If there is a gross valuation misstatment as defined in paragraph (e)(2) of this section, section 6662(h) increase the penalty to 40 percent of the underpayment of tax attributable to the gross valuation misstatement. The result of a controlled transaction that is reported on the income tax return will be used to determine whether a substantial or gross valuation misstatement exists regardless of whether the amount reported on the return differs from the transaction price. If the taxpayer has filed an amended return, the result of a controlled transaction that is reported on an amended return will be used to determine whether a substantial or gross valuation misstatement exists only if that amended return has been filed before the Service has contacted the taxpayer regarding that taxable year's return. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (j)(1) if it satisfies the requirements of a qualified amended return for purposes of § 1.6662–2(c)(3) as set forth in those regulations or as the Commissioner may prescribed by Revenue Procedure. See § 601.601(d)(2)(ii)(B) of this chapter.

(ii) *Example.* The following example illustrates these principles.

Example. A and B are controlled taxpayers as defined in § 1.482–1T(g)(5). A agrees to pay B $5 apiece for 100,000 units of Product X. A and B also agree to adjust that price, as may be necessary, based on subsequent events pursuant to an agreement under § 1.482–1T(e)(2) (Compensating Adjustments). A and B subsequently make a $10 adjustment to that price. Accordingly, when B files its U.S. income tax return it reports $15 for each Product X sold to A. Applying section 482, the IRS makes a further $3 adjustment, resulting in a final transfer price of $18. Thus, the net section 482 transfer price adjustment is $300,000 (100,000×$3). B has not made a substantial valuation misstatement because the price claimed on B's return ($15) is not 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct price ($18). Further, B's net section 482 transfer price adjustment does not exceed ten million dollars. Accordingly, B is not subject to the substantial valuation misstatement penalty under section 6662(b)(3).

(2) *Ten million dollar threshold.* (i) *Net section 482 transfer price adjustment.* The term "net section 482 transfer price adjustment" means the net increase in the taxable income of a taxpayer for a taxable year that results from all section 482 allocations. Increases in taxable income are netted against decreases, including setoffs as allowed under § 1.482–1T(e)(5). In determining whether the ten million dollar threshold is met, all section 482 transfer price adjustments will be included, notwithstanding that an adjustment may be subject to a penalty under section 6662(h) or 6663. However, no adjustment will be subject to more than one accuracy-related penalty. See paragraph (j)(4) of this section.

(ii) *Reasonable cause and good faith.* In calculating the ten million dollar threshold, any increase in taxable income that is attributable to any redetermination of a result of a controlled transaction shall be excluded if the taxpayer shows that there was reasonable cause for the result reported and it has at all times acted in good faith. See paragraph (j)(5) of this section.

(iii) *Exclusion of certain foreign to foreign transactions.* Solely for purposes of determining whether the ten million dollar threshold is met, any increase in taxable income resulting from an allocation under section 482 that is attributable to any controlled transaction solely between foreign

corporations will be excluded unless the treatment of that transaction affects the determination of either corporation's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States. However, the penalty imposed under section 6662(b)(3) will be imposed on any underpayment of a United States shareholder attributable to section 482 allocations with respect to transactions solely between foreign corporations if the ten million dollar threshold is met without regard to the increase that is attributable to any transaction solely between foreign corporations.

(iv) *Examples.* The principles of this paragraph (j) are illustrated by the following examples.

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following section 482 transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$4,000,000	(Attributable to an increase in gross income because of an increase in the royalty).
(2)	4,500,000	(Attributable to an increase in sales proceeds due to a decrease in the profit margin of a related buyer).
(3)	2,000,000	(Attributable to a decrease in the cost of goods sold because of a decrease in the cost plus mark-up of a related seller).
	10,500,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold. The net section 482 adjustment is greater than ten million dollars. Thus, the ten million dollar threshold is met.

Example 2. (i) Applying section 482, the Internal Revenue Service makes the following section 482 transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$11,000,000	
(2)	4,000,000	(Because of a setoff under § 1.482–1T(e)(5)).
(3)	2,000,000	
	9,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold. The net section 482 adjustment is less than ten million dollars. Thus, the ten million dollar threshold is not met.

Example 3. CFC1 and CFC2 are controlled foreign corporations within the meaning of section 957. Applying section 482, the IRS disallows a deduction for twenty five million dollars of the interest expense of CFC1 paid to CFC2, which results in CFC1's U.S. shareholder having an additional subpart F inclusion in excess of ten million dollars. No other adjustments under section 482 are made with respect to the controlled taxpayers. However, the increase has no effect upon the determination of CFC1's or CFC2's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States. Accordingly, the ten million dollar threshold is not met. However, the penalty imposed pursuant to section 6662(b)(3) may still be applicable in the event of a substantial valuation misstatement described in section 6662(e)(1)(B)(i) or a gross valuation misstatement described in section 6662(h)(2).

Example 4. Assume the same facts as in *Example 3*, except that the U.S. shareholder has an additional $100 million section 482 transfer price adjustment for the taxable year attributable to the sale of goods to CFC that is not excluded under section 6662(e)(3)(B). Accordingly, the ten million dollar threshold is met. The penalty will be computed on the underpayment attributable to the total net section 482 transfer price adjustment, including the portion excluded in determining whether the ten million dollar threshold is met in *Example 3* above.

(3) *Special rules in the case of carrybacks and carryovers*—(i) *In general.* The penalty for a substantial or gross valuation misstatement applies to any portion of an underpayment of tax for a year to which a loss, deduction or credit is carried that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year). Any portion of a substantial or gross valuation misstatement attributable to a loss or credit year shall retain its character as a substantial or gross valuation misstatement in any carryback or carryover year. No portion of a substantial or gross valuation misstatement attributable to a loss or credit year shall be used to determine whether there is a separate substantial or gross valuation misstatement attributable to the carryback or carryover year.

(ii) *Calculation of net section 482 transfer price adjustment for carryback or carryover years not reduced by amount of carryback or carryovers.* The amount of a net section 482 transfer price adjustment for a carryback or carryover year is not reduced because of a carryback or carryover of a loss, deduction or credit to that year.

(4) *Rules for coordinating between two different penalties*— (i) *In general.* In determining the penalty imposed with respect to a substantial valuation misstatement under section 6662(b)(3) or a gross valuation misstatement under section 6662(h), no adjustment will be subject to more than one accuracy-related penalty.

(ii) *Coordination of net section 482 transfer price adjustment under section 6662(e)(1)(B)(ii) and gross valuation misstatement adjustment under section 6662(h)(2)(A)(i) or (ii).* In determining whether a net section 482 transfer price adjustment exceeds the ten million dollar threshold amount under section 6662(e)(1)(B)(ii), an adjustment attributable to a gross valuation misstatement under section 6662(h)(2)(A)(i) or (ii) will be taken into account. If the threshold amount is exceeded, the portion of such amount that is attributable to the gross valuation misstatement is subject to the 40 percent penalty under section 6662(h), but will not be subject to the 20 percent penalty under section 6662(a) and section 6662(b)(3). The remaining amount is subject to the 20 percent penalty, even if such amount is less than ten million dollars.

(iii) *Coordination of twenty million dollar threshold amount under section 6662(h)(2)(iii) and the ten million dollar threshold under section 6662(e)(1)(B)(ii).* If a net section 482 transfer price adjustment exceeds the twenty million dollar threshold under section 6662(h)(2)(iii), then the entire amount of the adjustment is subject to the 40 percent penalty under section 6662(h). The adjustment is not subject to an additional 20 percent penalty under sections 6662(a) and 6662(b)(3).

(iv) *Examples.* The following examples illustrate the principles of paragraph (j)(4).

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following adjustments to the taxable income of a taxpayer for the taxable year:

(1)	$2,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	6,000,000	(Not a 200 or 400 percent adjustment).
	8,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold under section 6662(e)(1)(B)(ii). The net section 482 transfer price adjustment is less than ten million dollars. Thus, the ten million dollar threshold has been not met. However, the two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer is subject to a penalty, under section 6662(h), equal to 20 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The six million dollar adjustment is not subject to a penalty under section 6662(b)(3).

Example 2. (i) Applying section 482, the Internal Revenue Service makes the following adjustments to the taxable income of a taxpayer for the taxable year:

(1)	$2,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	9,000,000	(Not a 200 or 400 percent adjustment).
	11,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold under section 6662(e)(1)(B)(ii). The net section 482 transfer price adjustment is greater than ten million dollars. Thus, the ten million dollar threshold has been not met. The two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The nine million dollar adjustment is subject to a penalty under sections 6662(a) and 6662(b)(3), equal to 20 percent of the underpayment of tax attributable to the substantial valuation misstatement.

Example 3. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$6,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	15,000,000	(Not a 200 or 400 percent adjustment).
	21,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the twenty million dollar threshold under section 6662(h). The net section 482 transfer price adjustment is greater than twenty million dollars and thus constitutes a gross valuation misstatement. Accordingly, the total adjustment of twenty one million dollars is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the 21 million dollar gross valuation misstatement. The six million dollar adjustment will not be separately included for purposes of any additional penalty.

Example 4. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$4,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	15,000,000	(Not a 200 or 400 percent adjustment).
	19,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold under section 6662(e)(1)(B)(ii). The net section 482 transfer price adjustment is greater than ten million dollars and thus constitutes a substantial valuation misstatement. The four million dollar adjustment constitutes a gross valuation misstatement. Accordingly, the adjustment of four million dollars is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement. The fifteen million dollar adjustment is subject to a penalty, under sections 6662(a) and 6662(b)(3), equal to 20 percent of the underpayment of tax attributable to a substantial valuation misstatement for a net section 482 transfer price adjustment exceeding ten million dollars.

(5) *Reasonable cause and good faith exclusion for purposes of net section 482 transfer price adjustments*—(i) *In general.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made by taking into account all relevant facts and circumstances. There are two elements to the reasonable cause and good faith exclusion, both of which must be satisfied by a taxpayer to prevent imposition of the penalty.

(ii) *Reasonable effort to accurately determine proper tax liability.* The first element of the reasonable cause and good faith exclusion is whether the taxpayer has made a reasonable effort to accurately determine its proper tax liability. This determination must be made no later than the time the return is filed for the tax year, and documentation must be contemporaneous with that determination. Such documentation must include an analysis indicating that the result was an arm's length result within the meaning of the regulations promulgated under section 482. It is presumed that the taxpayer did not make a reasonable effort to accurately determine its proper tax liability if it possesses contemporaneous documentation of how a transfer price was determined but does not provide the documentation to the Service within 30 days of the Service's request.

(iii) *Reasonable belief in arm's length result.* The second element of the reasonable cause and good faith exclusion is whether the taxpayer reasonably believed that its transfer pricing methodology produced an arm's length result. The determination of whether the taxpayer has such a reasonable belief is made in light of the experience and knowledge of the taxpayer. Use of one or more methods

prescribed in the regulations promulgated under section 482 is a factor to be considered in determining reasonable belief. For this purpose, the methods described in §§ 1.482–3T(e) and 1.482–4T(d) are not considered to be methods prescribed in the regulations promulgated under section 482.

(A) *Result to be sustained on merits.* The taxpayer must show that at the time the taxpayer's income tax return, or amended return as allowed in paragraph (j)(1) of this section, was filed the taxpayer reasonably believed that the result would more likely than not be sustained on its merits. If, at the time the prices were established, the taxpayer had a reasonable belief that its methodology would produce an arm's length result, and the taxpayer had a reasonable belief that the underlying critical assumptions would not change during the taxable year, and at the time the tax return was filed the critical assumptions had not changed, then the taxpayer will have a reasonable belief that its transfer pricing methodology produced an arm's length result. However, if before the tax return was filed, the taxpayer learned that a critical assumption had changed, the taxpayer will have had an obligation to review the reasonableness of its initial result. Finally, if before the return was filed, the taxpayer acquired actual knowledge that a critical assumption had changed and that the pricing methodology did not produce an arm's length result, then the taxpayer was obligated to review the reasonableness of its initial result and make any adjustments necessary to reflect an arm's length result.

(B) *Reliance on advice of professional.* Reliance on the advice of, or a study done by, a professional (including, but not necessarily limited to, an attorney, accountant, or economist (and regardless of whether the professional is an employee of the taxpayer)) is a factor to be taken into account in demonstrating a reasonable belief that a transfer price produced an arm's length result. Reliance on advice or a study will give rise to a reasonable belief that a methodology produced an arm's length result if under all the circumstances that reliance was well-founded. In determining whether that reliance is well-founded consideration should be given to the professional's relevant experience and expertise. Factors to consider in determining whether reliance on a professional's advice or study is well-founded include whether the taxpayer has disclosed all relevant information regarding the controlled transaction to the professional, the methodology and critical assumptions underlying the advice or study, and the quantity and quality of data used in the study relative to the quantity and quality of data available in the taxpayer's industry. Critical assumptions are the objective business and economic criteria that are fundamental to the operation of the taxpayer's transfer pricing methodology. A critical assumption is any fact about the taxpayer, a third party, or an industry that would significantly affect the substantive conclusions of the study if the assumption changed, whether the change was within the taxpayer's control (for example, a new business strategy or mode of conducting an operation, or the cessation or transfer of a business segment or entity covered by the study) or beyond it (for example, a significant deviation from budgeted sales volume, or operating results that differ from the reasonably expected range of arm's length results).

(C) *Defense of transfer pricing results with a methodology other than that used in preparing return.* A taxpayer will not be considered to have acted without reasonable cause and good faith merely because it chooses to defend its transfer pricing results by way of a methodology different than that used in preparing its return, provided the reliance on the initial rationale was reasonable at the time the return was filed.

(iv) *Examples.* The following examples illustrate the application of the reasonable cause and good faith exclusions provided in this paragraph (j)(5).

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$9,000,000	
(2)	2,000,000	
(3)	9,000,000	
	20,000,000	Total section 482 adjustments.

(ii) The taxpayer can show reasonable cause and good faith under section 6662(e)(3)(B)(1) for adjustments number one and two. Accordingly, solely for purposes of determining the threshold, eleven million dollars is excluded from the section 482 transfer pricing adjustments. The net section 482 adjustment is $9 million. Therefore, the ten million dollar threshold is not met.

Example 2. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$9,000,000	
(2)	2,000,000	(Attributable to an adjustment that is 200 percent or more (or 50 percent or less) of the correct section 482 price).
(3)	9,000,000	
	20,000,000	Total section 482 adjustments.

(ii) The taxpayer can show reasonable cause and good faith under section 6662(e)(3)(B)(i) for adjustments number one and three. Accordingly, eighteen million is excluded from the section 482 transfer pricing adjustments for purposes of determining the ten million dollar threshold. The net section 482 adjustment is two million. Thus, the taxpayer is not subject to the substantial valuation misstatement penalty under section 6662(b)(3) by virtue of section 6662(e)(1)(B)(ii). However, the taxpayer is subject to the penalty imposed under section 6662(b)(3) by virtue of section 6662(e)(1)(B)(i) on the underpayment of tax attributable to the two million dollar adjustment.

(6) *Special rule.* If the regular tax (as defined in section 55(c)) imposed by chapter 1 of the Internal Revenue Code on the taxpayer is determined by reference to an amount other than taxable income (for example, for purposes of the alternative minimum tax), then that other amount shall be treated as the taxable income of the taxpayer for purposes of section 6662(e)(3). Accordingly, for taxpayers whose regular tax is determined by reference to an amount other than taxable income, the increase in that other amount resulting from section 482 adjustments is the taxpayer's net section 482 transfer price adjustment.

(7) *Effective Date.* For rules relating to transactions between persons described in section 482 and net section 482 transfer price adjustments, these

regulations apply to taxable years beginning after April 21, 1993. Taxpayers may elect the application of these regulations to tax returns due prior to this effective date.

* * * * *

Par. 4. Section 1.6664–0 is amended by revising the entry for § 1.6664–4, paragraph (d) in the table of contents to read as follows:

§ 1.6664–0 Table of contents. * * *

* * * * *

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(d) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

* * * * *

Par. 5. Section 1.6664–4 is amended by adding the text of paragraph (d) to read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(d) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* For purposes of applying the reasonable cause and good faith exception of section 6664(c) to controlled transactions under sections 6662(e)(1)(B)(ii) and (h)(2)(A)(iii) the rules of § 1.6662–5(j)(5) of the proposed regulations apply. A taxpayer that does not satisfy the rules of § 1.6662–5(j)(5) cannot satisfy the reasonable cause and good faith exception under section 6664(c). The rules of this section apply to substantial and gross valuation misstatements under section 6662(e)(1)(B)(i) and sections 6662(h)(2)(A)(i) and (ii). If the standards of the reasonable cause and good faith exclusion provisions under § 1.6662–5(j)(5) of the proposed regulations are met with respect to such valuation misstatements, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of this section.

* * * * *

Shirley D. Peterson,

Commission of Internal Revenue.

[FR Doc. 93–1111 Filed 1–13–93; 2:10 pm]

BILLING CODE 4830–01–M

26 CFR Parts 1 and 602

[INTL–0401–88]

RIN 1545–AL80

Intercompany Transfer Pricing Regulations Under Section 482

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. The Tax Reform Act of 1986 amended section 482. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking and additional text is proposed in this document.

DATES: Written comments and request for a public hearing must be received by July 20, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0401–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Sim Seo at (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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

The collection of information in this notice of proposed rulemaking is in §§ 1.482–1T, 1.482–3T, 1.482–4T, and 1.482–6T. This information is required by the Internal Revenue Service to implement section 482 of the Internal Revenue Code. This information will be used by the Service to ensure compliance with the relevant statutes and regulations. The likely respondents and/or recordkeepers are businesses. The following estimates are approximations. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual reporting and/or recordkeeping burden: 30,700 hours. The estimated annual burden per respondent is estimated to be 3.6 hours.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** add new §§ 1.482–0T, 1.482–1T, and 1.482–2T through 1.482–7T to the Income Tax Regulations. The final regulations that will result from the regulations proposed in this notice will be based on the text of the temporary regulations and will provide rules relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. For the text of the temporary regulations, see T.D. 8470, published in the Rules and Regulations section of this issue of the **Federal Register**. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

In addition to the text of the temporary regulations, the final regulations that will result from the regulations proposed in this notice will be based on the text of proposed §§ 1.482–1T(f)(2) and 1.482–6T contained in this notice. These provisions are proposed to take the place of reserved sections of the temporary regulations.

Proposed regulations under section 482 were issued on January 30, 1992 (INTL–0372–88, INTL–0401–88, 57 FR 3571). With the exception of the cost sharing provisions of proposed § 1.482–2(g), the proposed regulations issued on January 30, 1992, are withdrawn.

Comments and Public Hearing

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

Explanation of Proposed Regulations

Section 1.482–1(f)(2)

Section 1.482–1(f)(2) provides guidance on the extent to which foreign

legal restrictions on payments between controlled taxpayers will be respected for purposes of section 482. In general, section 1.482–1(f)(2)(i) provides that a foreign legal restriction will be recognized for this purpose if the taxpayer demonstrates that the receipt of an arm's length payment was prevented by a foreign legal restriction, and the taxpayer elects the deferred income method of accounting with respect to such payments.

Section 1.482–1(f)(2)(ii) defines an applicable foreign legal restriction as a restriction that is publicly promulgated and generally applicable, with respect to which the controlled taxpayer has exhausted all practicable legal remedies afforded under foreign law for obtaining a waiver, expressly prevents the payment of an arm's length amount within the meaning of section 482, and was not circumvented through other transactions between the controlled taxpayers.

Section 1.482–1(f)(2)(iii) provides that if the restriction meets the definition of an applicable foreign legal restriction and the taxpayer has elected the deferred income method of accounting, any section 482 allocation connected with the transaction will be deferrable until the restriction is removed. Deductions and credits chargeable against a deferred amount are subject to deferral under section 461.

Section 1.482–1(f)(2)(iv) provides an exception from the election requirement in cases in which the taxpayer can demonstrate, based on a comparable uncontrolled transaction, that the transaction as structured was at arm's length.

Section 1.482–6

In response to comments, the scope of application and flexibility of the profit split approach has been significantly expanded from that in the former proposed regulations. Section 1.482–6 describes three profit split methods that may be employed. Like the comparable profits method (§ 1.482–5T), this approach may be used in transactions involving either tangible or intangible property. The basic objective of this approach is to estimate an arm's length return by comparing the relative economic contributions that two parties make to the success of a venture, and dividing the returns from that venture between them on the basis of the value of such contributions.

Since the profit split method either wholly or in part relies on internal data rather than data derived from uncontrolled taxpayers, other methods often will provide the most reliable indicator of an arm's length result. Accordingly, several requirements have been imposed on taxpayers that wish to apply this method to ensure that it only is used in cases where it is the most appropriate method. A taxpayer may apply the profit split method only if both controlled taxpayers own valuable, non-routine self-developed intangible property (or an intangible acquired from an uncontrolled taxpayer, but only if the controlled taxpayer assumes significant risks and possesses the right to significant economic benefits attributable to the intangible) and the intangible contributes significantly to earning the combined income derived from the relevant business activity; there are significant transactions between the controlled taxpayers; and certain administrative requirements are followed. The most important administrative requirement is that the taxpayer must make a binding election to apply the profit split method that may be revoked only with the consent of the Commissioner.

Section 1.482–6(c) provides that the three profit split methods are: the residual allocation rule; the capital employed allocation rule; and the comparable profit split rule.

Section 1.482–6(c)(2) describes the residual allocation rule. This rule is similar to the Basic Arm's Length Return Method profit split that was described in the section 482 White Paper (Notice 88–123, 1998–2 C.B. 458). It consists of two basic steps. First, applying an analysis similar to that described under other methods such as the comparable profits methods, market returns to the parties' routine functions are estimated and allocated to the parties performing them. Such an allocation normally will not account for the income attributable to the exploitation of valuable intangible property, and a residual profit will remain in such cases. On the assumption that this residual amount is attributable to intangible property, the residual amount is divided between the controlled taxpayers based on a measure of their relative value of their contributions of intangible property. Of course, market values normally are unavailable and some other measure than a market price must be employed. Often a reliable measure will be the parties' relative expenditures related to the development of the intangible property exploited. Depending on the facts and circumstances, the expenditures that are compared may be limited to current expenditures, or may be capitalized expenditures over a period of years. Moreover, other measures may be more appropriate in particular cases.

Section 1.482–6(c)(3) describes the capital employed allocation rule. This rule applies only if all the controlled taxpayers participating in the relevant business activity assume an approximately equal level of risk with respect to their capital employed. Risk is measured based on the probability of gain or loss rather than a measurement of total potential gain or loss from an activity. Comment is requested on the merits of a profit split based on this approach and the feasibility of measuring relative levels of risk.

Under the capital employed allocation rule, the parties' combined income is divided between the parties by allocating an equal return to each controlled taxpayer's capital employed. For this purpose, capital employed is equal to the book or fair market value of all operating assets employed in the relevant business activity be determined, plus the value of any intangible property employed. Intangible property value may be estimated by capitalizing past expenditures on intangible development. Tangible and intangible assets can be valued based on their fair market values only if reliable information regarding the fair market value of such assets is available.

Section 1.482–6(c)(4) describes the comparable profit split rule. This rule is similar to the comparable profit split set forth in the former proposed regulations (proposed § 1.482–2(f)(6)(iii)(C)(*3*)). Finally, § 1.482–6(c)(5) provides that other profit splits may be employed where capital is difficult to measure or is not a significant determinant of operating profit. The taxpayer must demonstrate to the district director that such a profit split provides an economically valid basis for the allocation of profit or loss arising from the relevant business activity.

Section 1.482–6(d) describes the administrative requirements that a taxpayer must meet in order to apply the profit split method. In addition to the binding election requirement, the taxpayer also must document, to the satisfaction of the district director, the combined profit or loss attributable to the business activity and explain in such documentation why the profit split method provides the best method for determining an arm's length result under the facts and circumstances; prior to making the binding election the taxpayer must execute a pricing agreement setting forth the allocation method chosen; and the method must be applied consistently by all the parties to the agreement from year to year. Section 1.482–6(e) clarifies that the written pricing agreement has no effect other

than satisfying these procedural requirements.

Section 1.482–6(f) provides that, with the exception of the administrative requirements, the district director also must satisfy the requirements that the taxpayer must satisfy in order to apply the profit split method.

Other Comments Solicited

In connection with the issuance of the proposed and temporary regulations under section 482, the Service considered a number of other provisions that have not been included in either the proposed regulations or the temporary regulations. Comment is solicited on these issues, which are described below.

(1) Exception from adjustment using current year data—Comment is requested on the possibility of introducing an exception from the general, multiple year data rule under § 1.482–1T(d)(3)(iv), under which taxpayers would be permitted to determine an arm's length result for a particular year by reference to data derived from comparable uncontrolled transactions that occurred in previous years. Under this exception, the taxpayer would be required to update this data as new information became available. While the district director would be permitted to adjust the taxpayer's results obtained under this approach, such adjustments could be made only on the basis of data derived from transactions occurring in the same years as the transactions that the taxpayer employed to determine its prices.

(2) Definition of valuable, non-routine intangible—A comprehensive definition of the term "valuable, non-routine intangible" is not included in the Temporary Regulations under section 482. Comment is requested on possible precise definitions for this term that could be provided by regulation.

(3) Other methods for determining arm's length consideration for transfers of intangible property—Comment is requested as to whether, in addition to the methods enumerated in § 1.482–4T, a method could be provided that would measure an arm's length result for the transfer of an intangible by discounting the projected costs and benefits to the licensor or the licensee, employing valid measures of the cost of capital such as the capital asset pricing model. Alternatively, the projected costs and benefits of both the licensor and licensee could be determined and any residual amount apportioned between the parties based on a profit split.

(4) Definition of an intangible—Comment is requested as to whether the definition of intangible property incorporated in § 1.482–4T(b) should be expanded to include items not normally considered to be items of intellectual property, such as work force in place, goodwill or going concern value.

Drafting Information

Personnel from the Internal Revenue Service and the Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR 1.481–1 Through 1.483–2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the notice of proposed rulemaking published on January 30, 1992, (57 FR 3571) is withdrawn with the exception of proposed § 1.482–2(g), and 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.482–1T is amended by adding the text of paragraph (f)(2) to read as follows:

§ 1.482–1T Allocation of income and deductions among taxpayers.

* * * * *

(f) * * *

(2) *Effect of foreign legal restrictions*—(i) *In general.* The district director may make an allocation under section 482 without regard to the effect of any foreign legal restriction, except as provided in paragraph (f)(2)(iv) of this section. However, an allocation under section 482 will be treated as deferrable if the following requirements are met:

(A) The taxpayer must establish to the satisfaction of the district director that the payment or receipt of part or all of the arm's length amount that would otherwise be required under section 482 was prevented because of a foreign legal restriction and circumstances described in paragraph (f)(2)(ii) of this section.

(B) The taxpayer whose U.S. tax liability may be affected by the foreign legal restrictions must elect the deferred income method of accounting, as described in paragraph (f)(2)(iii) of this section, on a written statement attached to a timely U.S. income tax return (or an amended return) filed before the Internal Revenue Service first contacts any member of the controlled group concerning an examination of the return for the taxable year to which the foreign restriction applies. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (f)(2)(i) if it satisfies the requirements of a qualified amended return for purposes of § 1.6662–5(j)(1) as set forth in those regulations or as the Commissioner may prescribe by applicable revenue procedures. The election statement must identify the affected transactions, the parties to the transactions, and the applicable foreign legal restrictions.

(ii) *Applicable legal restrictions.* Foreign legal restrictions (whether temporary or permanent) will be taken into account for purposes of this paragraph (f)(2) only if the conditions set forth in paragraphs (f)(2)(ii) (A) through (D) of this section are met.

(A) The restrictions are publicly promulgated, generally applicable to all similarly situated persons (both controlled and uncontrolled), and not imposed as part of a commercial transaction between the taxpayer and the foreign sovereign.

(B) The taxpayer (or other member of the controlled group with respect to which the restrictions apply) has exhausted all effective and practical remedies prescribed by foreign law or practice for obtaining a waiver of such restrictions (other than remedies that would have a negligible prospect of success if pursued).

(C) The restrictions expressly prevented the payment or receipt of part or all of the arm's length amount that would otherwise be required under section 482; a restriction that applies only to the deductibility of an expense for tax purposes is not a restriction on payment or receipt for this purpose.

(D) The related parties subject to the restriction did not engage in any transaction with controlled or uncontrolled parties that had the effect of circumventing the restriction, and have not otherwise violated the restriction in any material respect.

(iii) *Deferred income method of accounting.* If the requirements of paragraph (f)(2)(i) of this section are satisfied, any allocation that may be made under section 482 with respect to such transaction will be treated as deferrable until payment or receipt of the relevant item ceases to be prevented by the foreign legal restriction. For purposes of the deferred income method

of accounting under this paragraph (f)(2)(iii), deductions (including the cost or other basis of inventory and other assets sold or exchanged) and credits properly chargeable against any amount so deferred, are subject to deferral under the provisions of § 1.461–1(a)(4).

(iv) *Exception for arm's length transactions.* Regardless of whether the election described in paragraph (f)(2)(i)(B) of this section has been made, an allocation will not be made under section 482 with respect to a controlled transaction if the taxpayer establishes the following to the satisfaction of the district director—

(A) Payment or reimbursement for the controlled transaction was prevented at the time of the transaction because of a foreign legal restriction and circumstances described in paragraph (f)(2)(ii) of this section; and

(B) Uncontrolled transactions that establish a comparable uncontrolled price under § 1.482–3T(b) (in the case of tangible property) or a comparable uncontrolled transaction under § 1.482–4T(c) (in the case of intangible property) demonstrate that, taking into account the foreign legal restriction, the controlled transaction was at arm's length.

(v) *Examples.* The following examples, in which Sub is a Country FC subsidiary of U.S. corporation, Parent, illustrate this paragraph (f)(2).

Example 1. (i) Parent licenses an intangible to Sub. FC law prohibits Sub from paying a royalty to Parent. The requirements of paragraphs (f)(2)(ii) (A), (B), and (C) of this section are satisfied. Parent attached to its timely filed U.S. income tax return a written statement that satisfies the requirements of paragraph (f)(2)(i)(B) of this section, electing the deferred income method of accounting under paragraph (f)(2)(iii) of this section. The arm's length royalty rate for the use of the intangible property in the absence of the foreign restriction is 10% of its sales in country FC.

(ii) The district director makes an allocation of royalty income to Parent, based on the arm's length royalty rate of 10%. Further, the district director determines that because the distribution from Sub to Parent had the effect of circumventing the FC law, the requirements of paragraph (f)(2)(ii)(D) of this section are not satisfied. Thus, Parent did not validly elect the deferred income method of accounting, and the allocation of royalty income cannot be treated as deferrable. In appropriate circumstances, the district director may permit the amount of the distribution to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1T(e)(4).

Example 2. The facts are the same as in *Example 1*, except that Sub distributes an amount equal to 8% of its sales in country FC. Because the distribution has the effect of circumventing the FC law within the meaning of paragraph (f)(2)(ii)(D) of this section, the deferred income method of accounting was not validly elected, and does not apply, with respect to the amount of the distribution. However, the election was properly made, and does apply, with respect to the 2% difference between the arm's length royalty rate and the amount of the distribution. Accordingly, of the 10% royalty allocated to Parent, 2% may be treated as deferrable. In appropriate circumstances, the district director may permit the 8% that was distributed to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1T(e)(4).

Example 3. The facts are the same as in *Example 1*, except that Country FC law permits the payment of a royalty, but limits the amount to 5% of sales, and Sub pays the 5% royalty to Parent. Parent demonstrates the existence of comparable uncontrolled transactions in which an uncontrolled parties accepted a royalty rate of 5%, even though an arm's length royalty would otherwise have equalled 10%. Because the requirements of paragraph (f)(2)(iv) of this section are satisfied, the district director does not make an allocation of royalty income to Parent under section 482.

* * * * *

Par. 3. The text of § 1.482–6T is added to read as follows:

§ 1.482–6T Profit split method (temporary).

(a) *In general*—(1) *Definition.* Under the profit split method, the arm's length result with respect to one or more controlled transactions is determined by allocating the combined profit or loss of the business activity that includes the controlled transactions (relevant business activity). This allocation must reflect the relative value of each controlled taxpayer's contribution to that combined profit or loss.

(2) *Appropriate share of profits and losses.* The relative value of each controlled taxpayer's contribution to the success of the relevant business activity must be determined in a manner that reflects the functions performed, risks assumed, and resources employed by each participant in the relevant business activity, consistent with the provisions of § 1.482–1T(c)(3). Such an allocation is intended to correspond to the division of profit or loss that would result from an arrangement between uncontrolled taxpayers, each performing the functions of the various controlled taxpayers engaged in the relevant business activity under review. The profit allocated to any particular member of a controlled group is not necessarily limited to the total net profit of the group from the relevant business activity. For example, one member of the group may be entitled to trade at a profit while another member incurs a loss. In addition, it may not be assumed that the combined profit or loss from the relevant business activity should be shared equally, or in any other arbitrary proportion. The specific method of allocation shall be determined under paragraph (c) of this section.

(b) *Scope.* A controlled taxpayer may apply the profit split method if the conditions set forth in paragraphs (b) (1) through (4) of this section are satisfied.

(1) Each controlled taxpayer owns a valuable, non-routine intangible that it either:

(i) Acquired from uncontrolled taxpayers, and with respect to which it assumes significant risks and possesses the right to significant economic benefits, or

(ii) It developed itself (including intangibles developed pursuant to a qualified cost-sharing arrangement in which the controlled taxpayer was an eligible participant).

(2) Such intangible contributes significantly to earning the combined profit from the business activity to which the controlled transactions are attributable.

(3) There are significant transactions between the controlled taxpayers, and the activities of each controlled taxpayer related to the controlled transactions contribute significantly to the combined profit or loss derived from the relevant business activity.

(4) The controlled taxpayer elects to apply the profit split method as provided in paragraph (d)(1) of this section and complies with the procedural requirements set forth in paragraph (d)(2) of this section.

(c) *Application*—(1) *In general.* The allocation of profit or loss under the profit split method must be made in accordance with one of the following allocation rules—

(i) The residual allocation rule, described in paragraph (c)(2) of this section;

(ii) The ratio of capital employed allocation rule, described in paragraph (c)(3) of this section;

(iii) The comparable profit split rule, described in paragraph (c)(4) of this section; and

(iv) Other profit splits, described in paragraph (c)(5) of this section.

(2) *Residual allocation rule.* Under this rule, the combined profit or loss from the relevant business activity is allocated between the controlled taxpayers following a two-step process set forth in paragraphs (c)(2) (i) and (ii) of this section.

(i) *Allocate income to routine contributions.* The first step allocates operating income to each party to the controlled transactions to provide a market return for its contributions to the relevant business activity other than valuable non-routine intangibles. A

functional analysis is required to identify these contributions according to the functions performed, resources employed, and risks assumed by each of the controlled taxpayers. Market returns for these contributions should be determined by reference to the returns achieved by uncontrolled taxpayers engaged in similar activities, consistent with the methods described in §§ 1.482–3T, 1.482–4T and 1.482–5T.

(ii) *Allocate residual profit.* Since the profit split method ordinarily will be employed in cases involving the exploitation of non-routine intangible property, the allocation of income to the controlled taxpayers' tangible and routine intangible contributions will not reflect profits attributable to such intangible property, and there normally will be an unallocated residual profit after the allocation of income described in paragraph (c)(2)(i) of this section. This residual profit should, under this second step, generally be divided among the controlled taxpayers based upon the relative value of their contributions of valuable non-routine intangible property to the relevant business activity. These values may be estimated as provided in paragraph (c)(3)(ii) of this section. Where the intangible development expenditures of the parties are relatively constant over time, the relative value of actual expenditures in recent years may be used to estimate the relative value of intangible contributions rather than capitalizing these expenditures. Where the relevant intangible development expenditures are difficult to identify or where the facts and circumstances indicate that comparison of such expenditures does not satisfactorily approximate the relative values of the controlled taxpayers' contributions, other methods of approximating the relative values of the controlled taxpayers contributions of valuable, non-routine intangible property may be appropriate.

(iii) *Example.* The provisions of this paragraph (c)(2) are illustrated by the following example.

Example. (i) XYZ is a U.S. corporation that develops, manufacturers and markets a line of household detergents in the U.S. XYZ's research unit developed a detergent (SOAP) that causes substantially less water pollution than competing products. Since its introduction in the U.S., SOAP has captured a substantial share of the U.S. detergent market.

(ii) XYZ licensed its European subsidiary, XYZ-Europe, to manufacture and market SOAP in Europe. XYZ-Europe is a well-established company that manufactures and markets XYZ products in Europe. XYZ-Europe has a research unit that adapts XYZ products for the European market, as well as a well-developed marketing network that employs brand names that it developed.

(iii) XYZ-Europe's research unit alters the formula for SOAP to adapt it to European washing machines. XYZ-Europe's marketing unit selects a fragrance for SOAP that is intended to appeal to European consumers. Beginning with the 1995 taxable year, XYZ-Europe manufactures and sells SOAP in Europe through its marketing network under one of its brand names.

(iv) Based on these facts, the district director determines that both XYZ and XYZ-Europe contribute valuable, non-routine intangibles to the European SOAP business. The district director uses the residual allocation rule to determine an arm's length royalty for the right to use the SOAP formula.

(v) For the 1995 taxable year, XYZ has no direct expenses associated with the license of the SOAP formula to XYZ-Europe and incurs no expenses related to the marketing of SOAP in Europe. For the taxable year, XYZ-Europe's SOAP sales and pre-royalty expenses are $500 million and $300 million, respectively, resulting in net pre-royalty profit of $200 million related to the SOAP business. The operating assets employed in XYZ-Europe's SOAP business is $200 million. Based on an examination of a sample of European companies performing functions similar to those of XYZ-Europe, the district director determines that an average market return on XYZ-Europe's operating assets in the SOAP business is 10 percent, resulting in a market return of $20 million (10% × $200 million) for XYZ-Europe's SOAP business, and a residual profit of $180 million.

(vi) Under the residual profit split method, it is assumed that the residual profit of $180 million is attributable to the valuable, non-routine intangibles related to SOAP, *i.e.*, the European brand name for SOAP and the SOAP formula (including XYZ-Europe's modifications). To estimate the relative values of these intangibles, the district director compares the ratios of the capitalized value of expenditures as of 1995 on detergent-related research and development and marketing over the 1995 sales related to such expenditures.

(vii) XYZ's detergent research and development expenses support the worldwide detergent sales of the XYZ group. The district director determines that it is appropriate to allocate the value of these expenses based on worldwide detergent sales. Using information on the average useful life of its investments in detergent research and development, the district director capitalizes and amortizes XYZ's detergent research and development expenses. This analysis indicates that the capitalized research and development expenditures have a value of $0.20 per dollar of global detergent sales in 1995.

(viii) XYZ-Europe's expenditures on SOAP research and development and marketing support only its sales in Europe. Using information on the average useful life of XYZ-Europe's investments in marketing and research and development, the district director capitalizes and amortizes XYZ-Europe's expenditures and determines that they have a value in 1995 of $0.40 per dollar of XYZ-Europe's SOAP sales.

(ix) Thus, XYZ and XYZ-Europe together contributed $0.60 in capitalized intangible development expenses for each dollar of XYZ-Europe's detergent sales for 1995, of which XYZ contributed one-third (or $0.20 per dollar of sales). Accordingly, the district director determines that an arm's length royalty for the SOAP license for the 1995 taxable year is $60 million, *i.e.*, one-third of XYZ-Europe's $180 million in residual SOAP profit.

(3) *Capital employed allocation rule*—(i) *In general.* Under this rule, the combined profit or loss from the relevant business activity is allocated to the controlled taxpayer based upon the ratio of the taxpayer's average capital employed in the relevant business activity during the taxable year under review to the total capital employed in the relevant business activity. The capital employed allocation rule applies only if each controlled taxpayer participating in the relevant business activity assumes an approximately equal level of risk with respect to its investment in the relevant business activity. For this purpose, risk is measured on the basis of the probability of success or failure rather than an absolute measure of the maximum potential gain or loss. For example, both participants in a relevant business activity would be considered to have assumed an approximately equal level of risk if their activities are so interdependent that the degree of success or failure of each participant is directly related to the degree of success or failure of the other participant.

(ii) *Operating assets.* For purposes of this paragraph (c)(3), operating assets are defined in § 1.482–5T(f)(6) and are increased to reflect the capital attributable to the intangibles employed in the relevant business activity that were not included in the calculation of operating assets under § 1.482–5T(f)(6). The capital attributable to intangibles may be measured by the fair market value of the intangibles, or the capitalized cost of developing the intangibles and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible. The same method of determining the capital attributable to intangibles must be used consistently from year to year and for all intangibles used in the relevant business activity. In addition, if fair market value is employed to value either the tangible or intangible assets, then all assets must be valued on the basis of fair market value. Intangibles acquired from a controlled taxpayer shall be included only in the capital employed of the taxpayer that is the "developer" of the intangible as

defined in § 1.482–4T(e)(4), or a participant that acquired such intangible pursuant to a qualified cost sharing arrangement described in § 1.482–2T(d)(4). When an intangible is used in business activities in addition to the relevant business activity, an appropriate apportionment of the value of the development expenditures for such intangible property shall be taken into account. Such apportionment should be based on the objective measures that most accurately reflect the relative benefits obtained from the developed intangibles in different business activities. Relative net profits or sales of the different business activities in which the intangible property is used may be appropriate bases for apportioning intangible development expenditures.

(iii) *Example.* The provisions of this paragraph (c)(3) are illustrated by the following example.

Example. (i) ABC is a U.S. corporation that manufactures and markets telecommunications equipment in the United States. ABC-Europe is a wholly-owned European subsidiary of ABC that manufactures and markets telecommunications equipment in Europe. Both ABC and ABC-Europe have substantial research and development operations that develop new products and manufacturing processes, improve the products and manufacturing processes of the other, and adapt the products of the other for their respective markets. Thus, both ABC and ABC-Europe use valuable technology and know-how developed by the other. Both companies are engaged in approximately equally risky endeavors. Under these circumstances, the district director determines that the capital employed allocation rule is appropriate for determining the correct allocation of income between ABC and ABC-Europe.

(ii) The following financial information is available for ABC and ABC-Europe for the year 1995, expressed in millions of U.S. dollars and using U.S. GAAP:

	ABC	ABC-Europe	Combined
Sales	1000	800	1800
Expenses	600	480	1080
Operating Profit	400	320	720
Operating Assets	1000	800	1800

(iii) ABC and ABC-Europe regularly and continuously incur annual expenditures for marketing and sales promotion as well as research and development. Using information on the average useful life of ABC and ABC-Europe investments in the development and enhancement of various types of intangible property, these expenditures are capitalized and amortized to yield the following estimates for the value of "intangible capital" in 1995:

	ABC	ABC-Europe	Combined
Marketing and sales promotion	80	40	120
Product R&D	228	72	300
Manufacturing R&D	132	48	180
Total Intangible capital	440	160	600

Based upon the above calculations, the total capital imputed to ABC and ABC Europe is:

	ABC	ABC-Europe	Combined
Tangible capital	1000	800	1800
Intangible capital	440	160	600
Total Capital	1440	960	2400
Percent of Total Capital	60	40	100

The combined profit of 720 would be allocated between ABC and ABC-Europe based on their share of total imputed capital as follows:

	ABC	ABC-Europe	Combined
	432	288	720

(4) *Comparable profit split.* A comparable profit split is derived from the combined operating profit of uncontrolled taxpayers whose transactions, functions, product markets, risks and intangibles are similar to those of the controlled taxpayer in the relevant business activity. Under this method, each uncontrolled taxpayer's percentage of the combined operating profit or loss is determined and used to allocate the combined profit or loss of the relevant business activity. This method may be used only if each uncontrolled taxpayer meets the requirements of a functional comparable with respect to one of the controlled parties as described in § 1.482–1T(c)(1)(i), and reliable financial data is available regarding such uncontrolled taxpayers. Further, a comparable profit split may not be used if the combined return on capital earned by the uncontrolled taxpayers varies significantly from the combined return on capital earned by the relevant business activity.

(5) *Other profit splits.* Where capital is difficult to measure, or is not a significant determinant of operating profit, the combined profit or loss from a relevant business activity may be allocated between the controlled taxpayers based upon the appropriate ratios of costs or other factors, if it can be shown to the satisfaction of the district director that such ratios provide an economically valid basis for the allocation of the combined profit or loss of the relevant business activity.

(d) *Administrative requirements*—(1) *Election to apply the profit split method.* A controlled taxpayer that is a participant in a relevant business activity may elect to apply the profit split method by including a written statement electing the provisions of this section in a timely filed U.S. income tax return. Such statement shall define the relevant business activity to which the profit split method will apply, identify all of the participants in such activity, and define the allocation method to be used to determine each participant's proportionate share of the profits or losses from such activity. An election made pursuant to this paragraph (d)(1) will apply to the year of election and to all subsequent taxable years, and may be revoked only with the consent of the Commissioner.

(2) *Procedural requirements.* In addition to making the election described in paragraph (d)(1) of this section, a controlled taxpayer also must comply with the following procedural requirements in order to apply the profit split method for any taxable year:

(i) The controlled taxpayer must document to the satisfaction of the district director:

(A) The total amount of combined profit or loss attributable to the relevant business activity, and

(B) That the profit split method provides the most accurate measure of an arm's length result.

(ii) Prior to making the election under paragraph (d)(1) of this section, the controlled taxpayers must have executed a written pricing agreement describing the relevant business activity and the mechanism under which each participant's share of the combined profit or loss will be determined.

(iii) The allocation method selected must be applied in a consistent manner by each participant and in each year for which the method is applied.

(e) *Limited effect of pricing agreement.* The written pricing agreement required by paragraph (d)(2)(ii) of this section shall be given effect solely for purposes of section 482. The preceding sentence does not, however, prevent the district director from characterizing any transaction between controlled taxpayers in accordance with its economic substance.

(f) *Discretion to apply the profit split method.* If the conditions described in paragraphs (b) (1) through (3) of this section are met, the district director may apply the provisions of this section to determine an arm's length result for one or more controlled transactions, in a manner consistent with the provisions of § 1.482–1T, if necessary to ensure that

the division of the controlled taxpayers' combined profit or loss attributable to a relevant business activity reasonably reflects each member's proportionate contribution to the combined profit or loss. In applying the provisions of this paragraph (f), it is not intended to effect a result equivalent to computation of consolidated income under subchapter A, chapter 6 of the Internal Revenue Code.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by adding a new entry to the table to read as follows:

"1.482–6T.....1545–1298"

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 93–1110 Filed 1–13–93; 2:10 pm]

BILLING CODE 4830–01–M

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26 CFR Parts 5f and 35a

[INTL–0115–90]

RIN 1545–AP33

Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not In Registered Form; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations relating to the definition of the term "registration-required obligation." This document also contains proposed regulations relating to the repeal of 30 percent withholding on certain types of interest by the Tax Reform Act of 1984. These regulations would provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984 and affect persons issuing or holding registration required debt obligations and persons issuing debt obligations to foreign persons.

DATES: Comments and requests for a hearing must be received by March 22, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0115–90), room 5228, Washington, DC 20044.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that amend 26 CFR parts 5f and 35a. These amendments are proposed to clarify and refine the requirements of §§ 5f.163–1 and 35a.9999–5 of the Income Tax Regulations.

Explanation of Provisions

Registration Required Obligations

Section 163(f)(2)(A) of the Internal Revenue Code (Code) provides that the term "registration required obligation" means any obligation (including any obligation issued by a governmental entity) other than an obligation which (i) is issued by a natural person, (ii) is not of a type offered to the public, (iii) has a maturity (at issue) of not more than one year, or (iv) is described in section 163(f)(2)(B) (relating to certain foreign-targeted obligations).

The report of the Senate Finance Committee on the Tax Equity and Fiscal Responsibility Act of 1982 states:

> The Committee believes that a fair and efficient system of information reporting and withholding cannot be achieved with respect to interest bearing obligations as long as a significant volume of long term bearer instruments is issued. A system of book entry registration will preserve the liquidity of obligations while requiring the creation of ownership records that can produce useful information reports with respect to both the payment of the interest and sale of obligations prior to maturity through brokers. Furthermore, registration will reduce the ability of non-compliant taxpayers to conceal income and property from the reach of the income, estate and gift taxes. Finally, the registration requirements may reduce the volume of readily negotiable substitutes for cash available to persons engaged in illegal activities.
>
> The Committee also recognizes the importance of preserving liquidity in financial markets. Thus, a flexible book entry system of registration is permitted and exceptions from the registration requirements are provided for short term obligations, for obligations not offered to the public, and for certain obligations issued abroad. S.Rept. 97–494, Vol. 1 at 242.

The report of the Senate Finance Committee indicates that an obligation that represents a "readily negotiable substitute for cash" should be a registration-required obligation. Such an obligation should be considered "of a type offered to the public" for purposes of section 163(f)(2)(A), and therefore be ineligible for the exemption from registration under section 163(f)(2)(A)(ii).

To determine when an obligation is a readily negotiable substitute for case for this purpose, it is appropriate to use the standard provided sections 453(f) (4) and (5) and the regulations thereunder, which address an analogous concern with negotiability. Under section 453(f)(5)(B) and § 15a.453–1(e)(1)(i)(C), the receipt of a bond or other evidence of indebtedness issued in a form designed to render such obligation readily tradeable in an established securities market is treated as a receipt of payment, and not as an installment obligation, for purposes of section 453. The purpose of section 453(f)(5)(B) and the regulations thereunder is to ensure that certain obligations that may function as substitutes for cash are treated in the same manner as cash, and not as installment obligations. The Service believes that the same standard should apply for purposes of section 163(f)(2)(A) and, therefore, that an obligation treated as in a form designed to render it readily tradable in an established securities market for purposes of section 453(f)(5)(B) and the regulations thereunder should be considered of a type offered to the public for purposes of section 163(f)(2)(A).

Under paragraph (b)(2)(ii)(A) of the proposed regulation, an obligation that is treated as in a form designed to render it readily tradeable in an established securities market under § 15a.453–1(e)(4) is considered to be of a type offered to the public for purposes of section 163(f)(2)(A)(ii). For this purpose, however, the term "established securities market" is defined so as to include foreign, as well as domestic, securities exchanges.

Section 15a.453–1(e)(4)(i) provides that an obligation is deemed to be in a form designed to render such obligation readily tradeable in an established securities market if (A) steps necessary to create a market for the obligation are taken at the time of issuance (or later if taken pursuant to an expressed or implied agreement or understanding which exists at the time of issuance), (B) the obligation is treated as readily tradeable in an established securities market under § 15a.453–1(e)(4)(ii) or (c) the obligation is a convertible obligation described in § 15a.453–1(e)(5).

Under § 15a.453–1(e)(4)(ii)(A), an obligation is treated as readily tradeable in an established securities market for purposes of § 15a.453–1(e)(4)(i)(B) if the obligation is part of an issue or series of issues which are readily tradeable in an established securities market. Alternatively, under § 15a.453–1(e)(4)(ii)(B), an obligation is treated as readily tradeable in an established

securities market for purposes of § 15a.453–1(e)(4)(i)(B) if the corporation issuing the obligation has other obligations of a comparable character which are readily tradeable in an established securities market.

Under § 15a.453–1(e)(4)(iii), an obligation is treated as readily tradeable for purposes of § 15a.453–1(e)(4)(ii) if it is regularly quoted by brokers or dealers making a market in such obligation or it is part of an issue a portion of which is in fact traded in an established securities market. Under § 15a.453–1(e)(4)(iv), the term "established securities market" includes a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, an exchange which is exempted from registration under section 5 of the Securities Exchange Act of 1934 because of its limited volume of transactions, and any over-the-counter market. An over-the-counter market is reflected by the existence of an inter-dealer quotation system, defined as any system of general circulation to brokers and dealers which regularly disseminates quotations of obligations by identified brokers or dealers, other than a quotation sheet prepared and distributed by a broker or dealer in the regular course of business and containing only quotations of such broker or dealer.

Under paragraph (b)(2)(ii)(B) of the proposed regulation, an obligation is also considered to be of a type offered to the public if it would be treated as in a form designed to render it readily tradeable in an established securities market under § 15a.453–1(e)(4) if § 15a.453–1(e)(4)(ii)(B) provided for the comparison of the obligation to obligations of other issuers (as well as other obligations of the same issuer). In addition, for purposes of the proposed regulation, the term "established securities market" also includes any exchange or market described in § 1.897–m. Thus an obligation (whether issued by a corporation, a government or political subdivision thereof, or any other person) is considered to be of a type offered to the public if the obligation is comparable in character to other obligations (whether of the same or a different issuer) that are regularly quoted by brokers or dealers making a market in such other obligations or that are in fact traded in an established domestic or foreign securities market. Under § 15a.453–1(e)(4)(ii), the determination of whether there exist obligations of comparable character depends upon the particular facts and circumstances.

Under the proposed regulation, an obligation that is not treated as in a form designed to render it readily tradeable in an established securities market under § 15a.453–1(e)(4), and would not be so treated even if § 15a.453–1(e)(4) were modified as described in paragraph (b)(2)(ii)(B) of the proposed regulation, may nevertheless be considered of a type offered to the public when necessary to carry out the purpose of section 163(f).

Electronic Certification

Under A–9 of § 35a.9999–5(b), interest on a registered form obligation may be treated as portfolio interest by a United States person otherwise required to deduct and withhold tax under section 1441(a) or 1442(a) if that person receives a statement that (i) is signed by the beneficial owner under penalties of perjury, (ii) certifies that such owner is not a United States person or, in the case of an individual, that he is neither a citizen nor a resident of the United States, and (iii) provides the name and address of the beneficial owner. The statement may be made on a Form W–8 or substantially similar substitute. Where one or more financial institutions or clearing organizations stand between the beneficial owner of an obligation and the United States person otherwise required to withhold, A–9 requires the beneficial owner to provide the statement to the lowest institution in the chain and requires each institution in the chain to provide similar statements to the institution above it in the chain and, ultimately, to the United States person otherwise required to withhold. The proposed regulation provides that the required statements may be made electronically, under certain conditions, to a clearing organization by a member financial institution and by a clearing organization to the United States person otherwise required to withhold.

Special Analyses

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, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafing Information

The principal author of these regulations is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 5f

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 5f and 35a are proposed to be amended as follows:

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Paragraph 1. The authority citation for part 5f continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 5f.163–1 is amended by revising paragraph (b)(2) to read as set forth below.

§ 5f.163–1 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

* * * * *

(b) * * *

(2) An obligation not of a type offered to the public.

(i) *Readily tradeable obligations.* For purposes of section 163(f)(2)(A)(ii) and this section, an obligation shall be considered to be of a type offered to the public if it either—

(A) Is treated as in a form designed to render such obligation readily tradeable in an established securities market under § 15a.453–1(e)(4) of this chapter; or

(B) Would be treated as in a form designed to render such obligation readily tradeable in an established securities market under § 15a.453–1(e)(4) of this chapter if § 15a.453–1(e)(4)(ii)(B) of this chapter provided for comparison of the obligation to obligations of other issuers (as well as other obligations of the same issuer) and the term "established securities market" were defined to include any exchange or market described in either § 151.453–1(e)(4)(iv) or § 1.897–1(m) of this chapter.

(ii) *Other Obligations.* When necessary to carry out the purposes of section 163(f), an obligation that is not described in paragraph (b)(2)(i) of this section may nevertheless be considered to be of a type offered to the public. The determination as to whether an obligation that is not described in paragraph (b)(2)(i) of this section is of a type offered to the public shall be based on whether similar obligations are in fact publicly offered or traded.

(iii) *Effective date.* Except as otherwise provided in this paragraph (b)(2)(iii), paragraph (b)(2) of this section applies with respect to obligations issued after January 21, 1993. Paragraph (b)(2) of this section shall not apply with respect to obligations issued after January 21, 1993, where substantially all of the financial terms of such obligations were agreed upon by the obligor in writing on or before January 21, 1993.

* * * * *

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 3. The authority citation for part 35a continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 35a.9999–5(b) is amended by revising A–9 to read as follows:

§ 35a.9999–5 Questions and answers relating to repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

* * * * *

(b) * * *

A–9. (i) Interest on a registered obligation may be treated as portfolio interest by a United States person otherwise required to deduct and withhold tax under section 1441(a) or 1442(a) if that person receives a statement that—

(A) Is signed by the beneficial owner under penalties of perjury;

(B) Certifies that such owner is not a United States person or, in the case of an individual, that he is neither a citizen nor a resident of the United States; and

(C) Provides the name and address of the beneficial owner. The statement may be made, at the option of the person otherwise required to withhold, on a Form W–8 or on a substitute form that is substantially similar to Form W–8. The statement must be prepared, renewed and retained in accordance with the procedures prescribed in § 1.6049–5(b)(2)(iv) of this chapter. If the information provided in the statement changes, the beneficial owner must so inform the person otherwise required to withhold within 30 days of such change.

(ii)(A) Interest paid on a registered obligation also may be treated as portfolio interest if an appropriate statement is provided to the United States person otherwise required to withhold by a securities clearing organization, a bank, or another financial institution that holds customers' securities in the ordinary course of its trade or business (an intermediary). The statement (an intermediary certificate) must be signed under penalties of perjury by an authorized representative of the intermediary and must state—

(*1*) That the intermediary has received from the beneficial owner a Form W–8 (or substitute form) in accordance with the provisions of § 1.6049–5(b)(2)(iv) of this chapter; or

(*2*) That it has received from another intermediary a similar intermediary certificate stating that it, or another intermediary acting on behalf of the beneficial owner, has received the Form W–8 (or substitute form) from the beneficial owner.

(B) In the case of multiple intermediaries between the beneficial owner and the United States person otherwise required to withhold, this intermediary certificate must be given by each intermediary to the one above it in the chain. No particular form is required for the intermediary certificate. However, the intermediary certificate must provide the name and address of the beneficial owner, and a copy of the Form W–8 (or substitute form) provided by the beneficial owner must be attached. The intermediary certificate must be prepared, renewed and retained in accordance with procedures similar to those prescribed in § 1.6049–5(b)(2)(iv) of this chapter. If the information on the Form W–8 (or substitute form) changes, the beneficial owner must so notify the intermediary acting on its behalf within 30 days of such change, and the intermediary must promptly so inform the United States person otherwise required to withhold. This notice also must be given if the intermediary has actual knowledge that the information has changed but has not been so informed by the beneficial owner. In the case of multiple intermediaries between the beneficial owner and the person otherwise required to withhold, this notice must be given by each intermediary to the intermediary above it in the chain.

(iii) The intermediary certificate (including the name and address of the beneficial owner) described in paragraph (ii) of this A–9 may be provided electronically to a qualified clearing organization by an intermediary that is a member of such qualified clearing organization. In such case, a copy of the Form W–8 (or substitute form) provided by the beneficial owner need not be provided by the member intermediary to the qualified clearing organization, but the member intermediary must retain such Form W–8 (or substitute form), or copy thereof received from another intermediary pursuant to this paragraph (b)A–9(ii), for the period described in § 1.6049–5(b)(2)(iv) of this chapter. A clearing organization shall constitute a qualified clearing organization if—

(A) The clearing organization is the last intermediary in the chain before the United States person otherwise required to withhold; and

(B) The member intermediary and the clearing organization have entered into a written agreement pursuant to which an electronic certificate provided under this A–9 has the effect of a physical certificate signed by an authorized representative of the member intermediary and pursuant to which the member intermediary agrees to furnish a copy of the Form W–8 (or substitute form), to the clearing organization promptly upon request. Such written agreement must be entered into prior to the time of electronic certification (and must be in effect at such time) and may be contained in a written agreement of membership in the clearing organization. A qualified clearing organization may itself provide an electronic intermediary certificate to the United States person otherwise required to withhold. In such case, a copy of the Form W–8 (or substitute form), provided by the beneficial owner need not be provided by the qualified clearing organization to such Unites States person. However, the electronic intermediary certificate provided by the qualified clearing organization must state that the qualified clearing organization will furnish (or will cause the relevant member intermediary to furnish) a copy of such Form W–8 (or substitute form), either to such United States person or to the Internal Revenue Service, promptly upon request of such United States person or the Internal Revenue Service. Such United States person shall attach the names and addresses of the beneficial owners provided in the electronic intermediary certificate to the Form 1042S required to be filed with respect to the payment as described in paragraph (b)A–9(iv) of this

section. Each sender and recipient of an electronic certificate pursuant to this paragraph (b)A–9(iii) must maintain adequate records as prescribed under § 1.6049–5(b)(2)(iv) of this chapter.

(iv) A United States person otherwise required to deduct and withhold tax under section 1441(a) or section 1442(a) who receives a statement or intermediary certificate described in this paragraph (b)A–9 must make an information return on Form 1042S of the payment with respect to which such statement or intermediary certificate is required for the calendar year in which the payment is made. A payment described in the preceding sentence shall be treated as a payment for which there is a requirement to file a Form 1042S within the meaning of § 1.1461–2(c)(1) of this chapter and thus all the provisions of § 1.1461–2(c) of this chapter relating to the time and manner of filing the Form 1042S relate to the payment. If the statement or intermediary certificate received by such United States person is described in paragraph (b)A–9 (i) or (ii) of this section, a copy of such statement or certificate shall be attached to the Form 1042S required to be filed with respect to the payment. Section 1.1461–2(c) of this chapter will be amended to conform to the provisions of this paragraph.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 93–1195 Filed 1–19–93; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL19–2–5696; IL14–3–5694; FRL–4553–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: In a November 13, 1992, (57 FR 53868) notice of proposed rulemaking, USEPA proposed to disapprove a revision to Illinois' State Implementation Plan (SIP) for particulate matter (PM). The purpose of this SIP revision was to provide Olin Corporation with a variance from Illinois' particulate matter limits. The Illinois Environmental Protection Agency (IEPA) withdrew its underlying SIP revision request for Olin Corporation on December 15, 1992. Thus, USEPA's November 13, 1992, proposal is moot. USEPA is withdrawing this proposed rulemaking and will take no further action on the SIP revision because the State has formally withdrawn the request.

In a December 2, 1992, (57 FR 57047) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Illinois sulfur dioxide (SO_2) SIP. The purpose of this SIP revision was to increase the allowable hourly emission of SO_2 at the Central Illinois Public Service Company's Coffeen Generating Station (CIPS Coffeen). IEPA withdrew its underlying SIP revision request for CIPS Coffeen on December 2, 1992. Thus, USEPA's December 2, 1992, proposal is moot. USEPA is withdrawing this proposed rulemaking and will take no further rulemaking action on the SIP revision because the State has formally withdrawn the request.

DATES: This withdrawal of proposed rulemaking becomes effective January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Section (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. (312) 353–5954.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671(q).

Dated: January 7, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–1333 Filed 1–19–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

MSS Above 1GHz Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the third and forth meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee ("Committee").

DATES: *Meeting No. 3:* Thursday, February 4, 1993 at 9:30 a.m.

Meeting No. 4: Wednesday, February 10, 1993 at 9:30 a.m.

ADDRESSES: *Meeting No. 3:* Federal Communications Commission, rm. 856, 1919 M Street NW., Washington, DC 20554.

Meeting No. 4: Law Offices of Steptoe & Johnson, 1330 Connecticut Avenue NW., Concourse Level, Conference Room, Washington, DC 20036–1795 at 9:30 a.m.

FOR ADDITIONAL INFORMATION CONTACT: Kathleen Campbell, Administrative Assistant to the Committee, at (202) 634–1952.

SUPPLEMENTARY INFORMATION: The agenda for these meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee is as follows:

1. Opening Remarks/Comments
2. Adoption of Agenda
3. Minutes/Records of Previous Meeting
4. Introduction of Documents
5. Informal Working Group Reports—Issues
6. Acceptance/Approval of Recommended Rules
7. Acceptance/Approval of Report Text
8. Agenda for future meetings—Schedule for future meetings
9. Other Business

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Fern J. Jarmulnek, the Committee's Designated Federal Officer, before the meeting.

In Public Notice, DA 93–24 (released January 8, 1993), the subsequent meeting date schedule included Monday, February 8 as the date for a meeting of this Committee. There will be no meeting for the full committee on February 8. This meeting is now scheduled for February 10 as indicated in this notice. Subsequent Committee meetings are currently scheduled for Thursday, February 18; Thursday, February 25; Thursday, March 4; Tuesday, March 9; Thursday, March 18; Thursday, March 25; and Friday, April 2. All subsequent Committee meetings noted in this paragraph are scheduled to begin at 9:30 a.m. at the Federal Communications Commission, 1919 M Street NW., room 856, Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1388 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[ET Docket No. 92-298; FCC 92-546]

Establishment of a Stereophonic Transmitting Standard in the AM Radio Broadcasting Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to select a transmitting standard for AM stereophonic broadcasting. Specifically, it proposes to adopt the Motorola C-QUAM system as the US standard. This proposal responds to section 214 of the Telecommunications Authorization Act of 1992, which requires the Commission to adopt a single AM stereo broadcasting transmission standard. The effect of the proposed rules would be to eliminate any remaining uncertainty among broadcasters as to the technology they should employ and to foster expansion of the AM stereo service and a corresponding improvement in the overall quality of the AM service.

DATES: Comments must be filed on or before April 5, 1993, and reply comments must be filed on or before April 20, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David L. Means, Office of Engineering and Technology, (301) 725-1585, extension 206.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in ET Docket No. 92-298, adopted December 10, 1992, and released January 6, 1993.

The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC., and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1919 M Street NW., room 246, Washington, DC 20554.

Synopsis of Notice of Proposed Rulemaking

1. By this action, the Commission proposes to adopt a standard for stereophonic AM broadcast radio service, specifically, the Motorola C-Quam system. This proposal responds to section 214 of the Telecommunications Authorization Act of 1992 (Authorization Act), which requires the Commission to adopt a single AM broadcasting stereo transmission standard.

2. Section 214 of the Authorization Act, which was signed into law on October 27, 1992, states that the Commission shall, within 60 days of enactment of the Act, initiate a rulemaking to adopt a single AM radio stereophonic transmitting equipment standard that specifies the composition of the transmitted stereophonic signal; and, within one year of such date of enactment, adopt such a standard.

3. In 1982, the Commission authorized AM stations to offer stereo service, but it declined to select a single standard from among the five competing AM stereo technical systems. Rather, the Commission concluded that it would be more effective and efficient to allow market forces to determine the course of AM stereo development. Shortly afterward, the field narrowed to two systems: Motorola's C-Quam system and the system marketed by Kahn Communications, Inc./Hazeltine Corporation (the Kahn system).

4. Of the approximately 660 US AM broadcasting stations that have converted to stereo, 591 use the Motorola system and an additional 37 use the Harris Corporation C-Quam compatible system. Fewer than 20 stations now employ the Kahn system. Twenty-six receiver manufacturers incorporate the Motorola system in at least one model; none incorporate the Kahn system. There are approximately 24 million C-Quam receivers currently in use by radio listeners. In the mid-1980's, approximately 280,000 receivers were made that could decode both the Motorola and Kahn signals; however, these are no longer produced. The Motorola system has been adopted as the national standard in six foreign countries; none have adopted the Kahn system.

5. In light of the data presented above, and considering our mandate to select a single standard, we believe the public interest would be best served by adopting the Motorola C-Quam system as the US AM stereo standard. Broadcasters, manufacturers and radio purchasers have, directly or indirectly, demonstrated strong preference for the Motorola system. Adoption of the C-Quam system as the AM stereo standard would eliminate the remaining uncertainty with regard to the AM technology broadcasters should employ and thereby serve to promote expansion of AM stereo transmitting equipment and a corresponding improvement in the quality of the AM service.

6. We believe that selection of an alternative to the Motorola system would set back the clock on the implementation of AM stereo service by undercutting the existing investment in C-Quam equipment by both receiver purchasers and broadcasters. Further, we are aware that many AM broadcasters are struggling financially and may not be able to afford replacement stereo transmitting equipment. Selection of an alternative stereo standard thus could conceivably result in discontinuance of the existing stereo service with no replacement. Such a result would be inconsistent with the legislative intent to advance AM stereo service. In light of these factors, proponents of alternative standards would bear a heavy burden to show that the potential benefits of an alternative technology outweigh the likely costs and delays arising from selection of an alternate standard. Nevertheless, we invite comment on alternatives to the proposed standard.

7. We are proposing to incorporate the Motorola C-Quam standard in part 73 of our rules. We are also proposing to require stations that employ alternative AM stereo systems (i.e., the Kahn and Harris systems) to discontinue such operation as of one year from the effective date of these rules. Any stations converting to AM stereo after the effective date of these rules will be required to employee the system adopted by the Commission. We invite comment on the extent of compatibility of the Harris system with the Motorola system and whether we should permit stations currently employing the Harris system to continue to do so indefinitely. Consistent with our general policies towards improvement of the AM broadcasting service, we will continue to encourage the availability of AM receivers, including AM stereo receivers, that meet appropriate quality standards. Finally, we propose to condition the selection of Motorola's system as the AM stereo standard by requiring Motorola to license its patents to other parties under fair and reasonable terms.

Ex Parte Rules—Non-Restricted Proceeding

8. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Information

9. Pursuant to procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 5, 1993, and reply comments on or before April 20, 1993. Extensions of these time periods are not contemplated. All relevant and timely comments will be

considered by the Commission before final action is taken in this proceeding. To file formally, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

Regulatory Flexibility Act

10. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities:

Reason for Action. This proceeding is being initiated to select an AM radio stereophonic equipment standard, as required under section 214 of the Telecommunications Authorization Act of 1992.

Objectives. The Commission's goal is to select an AM stereophonic transmission standard.

Legal basis. Authority for this proposed rule making is contained in section 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r) and section 214 of the Telecommunications Authorization Act of 1992, Public Law 102–538 (1992).

Reporting, Recordkeeping and other Compliance Requirements. AM stereo transmission equipment would require type acceptance by the FCC to demonstrate compliance with the proposed standard.

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule. None.

Description, Potential Impact, and Number of Small Entities Involved. This action is expected to expand the operation of AM stereo service and sales of AM stereo receivers. The effect of this proposal would be to necessitate conversion to use of the C-Quam transmission system by approximately 50 AM stations currently using the Kahn or Harris systems in order to continue to provide stereo service.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. None.

Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the IFRA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. sections 601 et seq. (1981)).

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Amendatory Text

Part 73 of the Code of Federal Regulations is proposed to be amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation in part 73 continues to read:

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

2. Section 73.128 is proposed to be amended by revising paragraph (a), (b) introductory text and adding paragraph (c) to read as follows:

§ 73.128 AM stereophonic broadcasting.

(a) An AM broadcast station may, without specific authority from the FCC, transmit stereophonic programs upon installation of type accepted stereophonic transmitting equipment and the necessary measuring equipment to determine that the stereophonic transmissions conform to the modulation characteristics specified in paragraphs (b) and (c) of this section.

(b) The following limitations on the transmitted wave must be met to insure compliance with the occupied bandwidth limitations, compatibility with AM receivers using envelope detectors, and any applicable international agreements to which the FCC is a party:

* * * * *

(c) Effective (insert date one year after enactment), stereophonic transmissions shall conform to the following additional modulation characteristics:

(1) The audio response of the main (L+R) channel shall conform to the requirements of the ANSI/EIA–549–1988, NSRC–1 AM Preemphasis/Deemphasis and Broadcast Transmission Bandwidth Specifications (NRSC–1).

(2) The left and right channel audio signals shall conform to frequency response limitations dictated by ANSI/EIA–549–1988.

(3) The stereophonic difference (L–R) information shall be transmitted by varying the phase of the carrier in accordance with the following relationship:

$$\phi_c = \tan^{-1}\left(\frac{m(L(t)-R(t))}{1+m(L(t)+R(t))}\right)$$

where:

L(t) = audio signal left channel,
R(t) = audio signal right channel,
m = modulation factor, and
m_{peak} (L(t) + R(t)) = 1 for 100% amplitude modulation,
m_{peak} (L(t) + R(t)) = 1 for 100% phase modulation,

(4) The carrier phase shall advance in a positive direction when a left channel signal causes the transmitter envelope to be modulated in a positive direction. The carrier phase shall likewise retard (negative phase change) when a right channel signal causes the transmitter envelope to be modulated in a positive direction. The phase modulation shall be symmetrical for the condition of difference (L–R) channel information sent without the presence of envelope modulation.

(5) Maximum angular modulation, which occurs on negative peaks of the left or right channel with no signal present on the opposite channel (L(t) = −0.75, R(t) = 0, or R(t) = −0.75, L(t) = 0) shall not exceed 1.25 radians.

(6) A peak phase modulation of +/−0.785 radians under the condition of difference (L–R) channel modulation and the absence of envelope (L+R) modulation and pilot signal shall represent 100% modulation of the difference channel.

(7) The composite signal shall contain a pilot tone for indication of the presence of stereophonic information. The pilot tone shall consist of 25 Hz tone, with 1% or less total harmonic distortion and a frequency tolerance of +/−0.1 Hz, which modulates the carrier phase +/−0.05 radians peak, corresponding to 5% L–R modulation when no other modulation is present. The injection level shall be 5%, with a tolerance of +1, −0%.

(8) The composite signal shall be described by the following expression:

$$E_c = A_c\left[1 + m\sum_{n=1}^{\infty} C_{sn}\cos(\omega_{sn}t + \phi_{sn})\right]\cos\left[-\omega_c t + \tan^{-1}\frac{m\sum_{n=1}^{\infty} C_{dn}\cos(\omega_{dn}t + \phi_{dn}) + .05\sin 50\pi t}{1 + m\sum_{n=1}^{\infty} C_{sn}\cos(\omega_{sn}t + \phi_{sn})}\right]$$

where:
A=the unmodulated carrier voltage
m=the modulation index
C_{sn}=the magnitude of the nth term of the sum signal
C_{dn}=the magnitude of the nth term of the difference signal
ω_{sn}=the nth order angular velocity of the sum signal
ω_{dn}=the nth angular velocity of the difference signal
ω_c=the angular velocity of the carrier

$$\phi_{sn} = \text{the angle of the nth order term} = \tan^{-1}\left[\frac{B_{sn}}{A_{sn}}\right]$$

$$\phi_{dn} = \text{the angle of the nth order term} = \tan^{-1}\left[\frac{B_{dn}}{A_{dn}}\right]$$

A_{sn} and B_{sn} are the n^{th} sine and cosine coefficients of C_{sn}
A_{dn} and B_{dn} are the n^{th} sine and cosine efficients of C_{dn}

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1294 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–313, RM–8140]

Radio Broadcasting Services; Central, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mel-Mike Enterprises, Inc., seeking the substitution of Channel 237C1 for Channel 237C2 at Central, New Mexico, and the modification of Station KZTT's construction permit to specify the higher class channel. Channel 237C1 can be allotted to Central in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.6 kilometers (11.6 miles) northwest to accommodate petitioner's desired transmitter site and avoid short-spacings to Station KKRK, Channel 237A, Douglas, Arizona, and Station KLAQ, Channel 238C, El Paso, Texas, at coordinates North Latitude 32–52–15 and West Longitude 108–18–57. Mexican concurrence in the allotment is required since Central is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before March 5, 1993, and reply comments on or before March 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard F. Swift, Esq., Tierney & Swift, 1200 Eighteenth Street NW., suite 210, Washington, DC 20036 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–313, adopted December 17, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1290 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92-314, RM-8142]

Radio Broadcasting Services; Oliver, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James J. Humes d/b/a Humes Broadcasters seeking the substitution of Channel 235B1 for Channel 235A at Oliver, Pennsylvania, and the modification of Station WXAK's construction permit to specify operation on the higher class channel. Channel 235B1 can be allotted to Oliver in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east to accommodate petitioner's desired transmitter site, at coordinates North Latitude 39-55-15 and West Longitude 79-34-12. Canadian concurrence is required since Oliver is located within 320 kilometers (200 miles) of the U.S.—Canadian border.

DATES: Comments must be filed on or before March 5, 1993, and reply comments on or before March 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas W. Fletcher, Esq., 9825 Laurel Street, Fairfax, Virginia 22031 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-314, adopted December 17, 1992, and released January 13,1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1289 Filed 1-19-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-312, RM-8137]

Radio Broadcasting Services; Valhalla, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition field by Roger A. and Kathryn Ann Anderson seeking the allotment of Channel 294C2 to Walhalla, North Dakota, as the community's first local FM service. Channel 294C2 can be allotted to Walhalla in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.3 kilometers 10.1 miles) west to avoid short-spacings to Channels 292C and 296C, Winnipeg, Manitoba, and Channel 294C, Kenora, Ontario, Canada, at coordinates North Latitude 48-55-23 and West Longitude 98-03-11. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before March 5, 1993, and reply comments on or before March 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roger A. and Kathryn Ann Anderson, 1113 Sunflower Lane, Route #1, Hazen, North Dakota 58545 (Petitioners).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-312, adopted December 17, 1992, released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1291 Filed 1-19-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93-02; Notice 01]

RIN 2127-AD48

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel System and Fuel Tank Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On October 12, 1990, NHTSA published an advance notice of proposed rulemaking concerning the possibility of proposing special fuel integrity requirements for vehicles using compressed natural gas (CNG) and liquefied petroleum gas (LPG). Today's notice proposes to establish a new Federal Motor Vehicle Safety Standard (FMVSS) specifying performance requirements for CNG fuel tanks and vehicles using CNG as a fuel. The proposed standard is based on the FMVSS 301, with additional

requirements that apply to the fuel tank alone. In addition to requesting comments on the proposed standard, NHTSA is requesting comment on whether vehicles using LPG as a fuel should be subject to similar requirements. Finally, NHTSA is requesting comment on whether it should make the proposed requirements for CNG vehicles applicable to all vehicles designed to be powered by a gaseous fuel, such as liquefied natural gas or hydrogen.

DATES: Comments on this notice must be received by the agency no later than March 22, 1993.

Proposed effective date: If adopted, the amendments to the Code of Federal Regulations would become effective 30 days after publication of the final rule.

Under those amendments, CNG tanks manufactured on or after September 1, 1994 would be required to comply and CNG vehicles manufactured on or after September 1, 1994 would be required to comply.

ADDRESSES: Comments on this notice should refer to the above docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4804).

SUPPLEMENTARY INFORMATION:

I. Background

A. Standard No. 301

FMVSS No. 301, Fuel System Integrity, specifies performance requirements for vehicles that use fuel with a boiling point above 32 degrees Fahrenheit. The purpose of the standard is to reduce deaths and injuries from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to passenger cars, multipurpose passenger vehicles (MPV's), trucks, and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to school buses. However, since CNG and LPG have a boiling point below 32 degrees, vehicles manufactured to use only CNG or LPG as a fuel are not subject to Standard 301.

Standard 301 limits the amount of fuel spillage from the vehicle during and after a barrier crash test and (except for large school buses, i.e., those over 10,000 pounds GVWR) a static rollover test. Large school buses are impacted by a moving contoured barrier at any point and angle.

Fuel spillage must not exceed the following limits. In the fixed or moving barrier tests, from the vehicle's impact with the barrier until the vehicle has ceased motion, spillage must not exceed one ounce; for the five minute period after the vehicle ceases motion, spillage must not exceed five ounces; and for the following 25-minute period, spillage during any one-minute interval must not exceed one ounce. In the static rollover test, fuel spillage from the onset of rotational motion cannot exceed five ounces for the first five minutes of testing at each successive 90 degree increment. For the remaining testing period, at each increment of 90 degrees, fuel spillage cannot exceed one ounce during any one-minute interval.

B. Characteristics of CNG and LPG

Natural gas is a vapor at standard temperature and pressure, 0 degrees Celsius and 101.4 kiloPascals (kPa) (32 degrees Fahrenheit and 14.7 pounds per square inch (PSI)), and is lighter than air. When used as a motor fuel, natural gas is typically stored on-board a vehicle in cylindrical tanks at a pressure of approximately 20,684 kPa gauge pressure (3,000 pounds per square inch gauge, psig). Natural gas is kept in this compressed state to increase the amount that can be stored on-board the vehicle, thus increasing the vehicle's driving range. Currently, there are about 30,000 CNG vehicles operating in the United States.

Liquefied petroleum gas (LPG) is a vapor at standard temperature and pressure but is heavier than air. When used as a motor fuel, LPG is also stored on-board a vehicle in cylindrical tanks. Unlike CNG, however, LPG is stored at a relatively low gauge pressure of 1,724 Kpa (250 psig). At that pressure, LPG exists as liquid. Because of LPG's lower storage pressure on-board vehicles, as compared to that of CNG, LPG presents a lower potential safety risk due to explosion. Indeed, LPG has been used as a motor fuel for over 60 years and has raised few safety problems. Currently, there are approximately 300,000 LPG vehicles operating in the United States.

C. Alternative Motor Fuels

Alternative fuel vehicles have not been numerous to date. However, recent Federal legislation, as well as the need to meet environmental and energy security goals, will lead to increased production and use of those vehicles.

1. Clean Air Act Amendments

The Clean Air Act Amendments of 1990, which established Clean Fuel Requirements, should encourage the further use of CNG. These amendments treat fuel type and content, along with vehicle technology, as a potential source of emission reductions. The Clean Air Act Amendments call for many programs including the Clean-Fueled Fleets Program which applies to some business, utility and government fleets and requires a specified percentage of vehicles purchased for the fleets to meet lower emission standards than those applicable to conventional vehicles. This program alone is expected to substantially increase the number of low-polluting vehicle/fuel combinations in use. Similarly, the Urban Buses Program and the California Pilot Program, both designed to encourage production of clean fuels and vehicles, are expected to significantly increase the number of vehicles designed to use alternative motor fuels.

2. Alternative Motor Fuels Act

Under the Alternative Motor Fuels Act of 1988, the Department of Energy is conducting demonstration programs to encourage use of alternative motor fuels. The alternative fuels include natural gas, methanol, and ethanol. The Federal Transit Administration (FTA) of the Department of Transportation is also encouraging the use of alternative fuels by local transit authorities.

The Alternative Motor Fuels Act further encourages the use of alternative fuels by specifying that any new passenger automobile which meets the applicable range of operation criteria, as well as the other criteria in the Alternative Motor Fuels Act, will have its fuel economy calculated according to a special mileage enhancing procedure. By facilitating a manufacturer's compliance with applicable Corporate Average Fuel Economy Standards, that Act thus encourages the production of dual energy passenger automobiles.

The range of operation criteria was established by NHTSA in a final rule establishing minimum driving range criteria for dual energy passenger automobiles (April 26, 1990; 55 FR 17611). Dual energy passenger automobiles are those capable of operating on an alternative fuel as well as on gasoline or diesel fuel. The minimum driving range for dual energy passenger automobiles operating on alcohol and petroleum fuel is 200 miles; the one for dual energy passenger automobiles operating on natural gas and petroleum fuel is 100 miles.

3. Energy Policy Act of 1992

While the agency was formulating this rulemaking, Congress enacted the Energy Policy Act of 1992. A provision in the Act states that the Secretary of Transportation shall within 3 years after enactment promulgate rules setting forth safety standards in accordance with the National Traffic and Motor Vehicle Safety Act of 1966 applicable to all conversions. (section 507(o)(2)(B))

NHTSA believes that by proposing to establish a new safety standard specifying performance requirements for CNG fuel tanks and soliciting comment about vehicles powered by other alternative fuels, the agency is acting to satisfy the Congressional mandate in § 507 with respect to the conversion of new vehicles. The agency notes that it may be necessary to conduct additional rulemaking to satisfy the Congressional mandate related to the conversion of in-use vehicles to alternative fuel vehicles.

D. Advance Notice of Proposed Rulemaking

Due to its expectation about increasing numbers of vehicles using gaseous fuels and its concerns about the safety of these vehicles, NHTSA published an advance notice of proposed rulemaking (ANPRM) on the fuel system integrity of vehicles using CNG and LPG (55 FR 41561, October 12, 1990). NHTSA requested comments on whether the agency should establish a safety performance standard for the fuel system integrity of vehicles using CNG or LPG as a motor fuel.

In the ANPRM, NHTSA stated that the potential safety problems concerning fuel system integrity of vehicles using CNG or LPG as a motor fuel could be divided into three categories. The categories were (1) crash integrity of vehicle fuel systems; (2) integrity of fuel storage containers; and (3) pressure relief for storage containers.

NHTSA received 28 written comments on the ANPRM from a variety of groups. Fourteen commenters either expressed general support for a Federal motor vehicle safety standard specifying fuel system integrity requirements for CNG vehicles, or recommended specific approaches to regulating the safety of these vehicles. For example, the Insurance Institute for Highway Safety (IIHS) recommended that NHTSA establish a safety standard with a level of performance comparable to that of the current Standard No. 301.

Other commenters opposed such requirements. One of these commenters, the Motor Vehicle Manufacturers Association (MVMA), asserted that there was no clearly established safety need and stated that any NHTSA rulemaking was premature.

Below, NHTSA discusses general comments in the three major areas. Comments relating to specific aspects of the ANPRM are discussed in the next section of this preamble, entitled "Agency Proposal."

1. Crash Integrity—Vehicle Fuel Systems

Given that CNG is stored in a vehicle under relatively high pressure, NHTSA stated its concern in the ANPRM about the potential for fuel leakage and catastrophic fire or explosion in a crash. NHTSA further stated that the location and safe performance of fuel lines and fittings, fuel components, fuel storage cylinders, and the mounting hardware for these components should be such that the fuel leakage is minimized during and after a crash.

In the ANPRM, NHTSA discussed three options to assure a minimum level of safety performance in a crash. The first option was a performance standard comparable to the current Standard No. 301. The second option was a standard consisting of selected portions of the National Fire Protection Association's (NFPA) Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1988 edition (NFPA 52). NFPA 52 is a voluntary industry guideline and contains sections concerning engine fuel systems for vehicles. The third option was a standard consisting of selected portions of the American Gas Association (AGA) Laboratories's Requirements for Natural Gas Vehicle (CNG) Conversion Kits, No. 1–85, August 20, 1985. The AGA requirements apply to on-board CNG equipment designed to operate a dual fuel gasoline/CNG vehicle or dedicated CNG vehicle and form the basis for an AGA program to certify natural gas vehicle conversion systems. Under this option, NHTSA would use the portions of the AGA requirements relevant to the safe performance, location, and securement of fuel system components and storage cylinders.

Six commenters supported a standard similar to Standard No. 301. In addition, the MVMA, GM, Ford, and Chrysler stated that if NHTSA decided to regulate CNG fuel system integrity, they would prefer a standard similar to Standard No. 301. Navistar, GM, and Ford stated that the NFPA 52 and AGA 1–85 standards, while appropriate as design guidelines, are not appropriate for regulatory requirements. These commenters asserted that the NFPA and AGA standards are too design-restrictive and not structured to provide crash integrity. Other commenters, such as Flexible Corporation and CNG Pittsburgh, suggested that NHTSA adopt standards based on both Standard No. 301 and NFPA 52. These commenters suggest that the design-oriented specifications of NFPA 52 address many safety concerns and have been used as an engineering guideline for the development of many existing CNG vehicles. Although they believe the NFPA standard should be supplemented with crash test requirements resembling Standard No. 301, these commenters suggest that the adoption of NFPA 52 would provide consistency and alleviate confusion for existing CNG vehicle manufacturers. Three commenters (NFPA, Ocean Phoenix, and Oklahoma Gas) stated that NHTSA should adopt only NFPA 52 requirements. NFPA strongly believes that the NFPA 52 requirements completely address the safety concerns associated with CNG systems. These commenters also noted that adoption of the existing NFPA 52 would promote consistency, as well as minimize leadtimes and compliance costs for manufacturers.

2. Integrity—CNG Fuel Tank

In the ANPRM, NHTSA stated that additional performance requirements may be appropriate for the fuel storage container, or tank. CNG is stored on-board a vehicle in cylindrical containers at between approximately 16,547 kPa and 24,821 kPa gauge pressure (2,400 and 3,600 psig). The fuel is stored in this compressed state so that there is sufficient fuel capacity to achieve a vehicle driving range comparable to that achievable with conventional fuels. This relatively high storage pressure for CNG could greatly increase the magnitude of any fire, however, because such high pressure would increase the force with which the stored energy in the fuel tank was forced (through a rupture) onto any fire resulting from a crash. Thus, the agency stated in the ANPRM its tentative belief that the integrity of the storage tanks is critical for vehicle safety.

NHTSA also discussed options in the ANPRM for ensuring that containers used to store CNG as a motor fuel have a minimum level of strength and durability. NHTSA suggested that the CNG storage container strength and durability requirements could be based on standards which the Department of Transportation's Research and Special Programs Administration (RSPA) has established for cylinders used to transport hazardous materials.

Commenters supported having container requirements. Five commenters (CGA, SCI, CNG Cylinder, IIHS, and Flexible) recommended that

NHTSA adopt the current RSPA regulations. Three other commenters (NFPA, Ocean Phoenix, and CNG Pittsburgh) commented favorably on the RSPA regulations, as well as voluntary standards of various organizations.

3. Pressure Relief—Fuel Storage Tank

As discussed above, CNG is stored on-board a vehicle in cylindrical containers, or tanks, at a relatively high pressure of about 20,684 kPa gauge pressure (3000 psig). In the event of a fire resulting from a crash, the temperature of the tank and its contents could increase, causing a corresponding increase in pressure. In such a case, the pressure within the tank could cause it to burst; high temperatures could also weaken the tank to the point of rupture.

In light of these concerns, NHTSA stated in the ANPRM that CNG storage tanks should have a means of pressure relief. The pressure relief system would allow venting of the tank contents at a controlled rate and thus would significantly reduce the possibility of the tank bursting and explosively releasing its contents. In the ANPRM, NHTSA also stated that pressure relief may be needed to prevent overfill during refueling operations.

Current RSPA regulations (49 CFR 173.34(d)) require cylinders used to transport CNG to have a pressure relief device capable of preventing rupture of a fully-charged cylinder under fire conditions. As these requirements are specifically designed for a fully-charged cylinder, however, they may not be adequate for ensuring the safe performance of a partially charged cylinder which may require more time for the pressure of its contents to increase sufficiently to activate the pressure relief device. If a partially-charged cylinder is exposed to heat during this time, the cylinder could weaken and fail before the relief device is activated. In the ANPRM, NHTSA requested information on whether CNG cylinders used in motor fuel applications should be equipped with a pressure relief system capable of preventing cylinder rupture, under fire conditions, at all fill levels.

Eleven commenters addressed the issue of pressure relief. Seven commenters supported NHTSA's establishing requirements for pressure relief. NGVC advocated use of its industry working group's standard for CNG fuel storage containers, instead of a NHTSA safety standard. Three commenters opposed pressure relief requirements. One of these commenters, Ford, added that NHTSA should consider performance-oriented requirements if the agency considers pressure relief requirements to be essential.

II. Agency Proposal

After considering the comments on the ANPRM, NHTSA has decided to propose a rule to address the fuel system integrity of vehicles using CNG. NHTSA does not agree with the commenters who asserted that there is no safety need for the rulemaking or that the rulemaking is premature. Since only about 30,000 CNG vehicles currently operate in the United States, NHTSA would not expect there to be extensive crash data. As explained above, however, the number of CNG vehicles is expected to increase substantially in the future.

Given the safety concerns associated with CNG fueled vehicles, the agency tentatively concludes that appropriate safety requirements should be issued before the increase in those vehicles occurs. NHTSA has tentatively concluded that the high pressure at which CNG is stored on-board a vehicle makes it necessary to assure the safety of those vehicles through a fuel system integrity standard.

CNG cylinders can present a significant risk to motor vehicle safety because they contain highly flammable fuels which are stored under high pressure. Due to the pressure, the cylinders are continuously operated at very high levels of stress. Potential safety problems from these conditions can be addressed by specifying the materials used, controlling the design, or setting performance requirements for the cylinders. These requirements are derived while considering factors such as embrittlement, corrosion, stress corrosion cracking, corrosion fatigue, general fatigue, and mechanical damage. These factors can degrade the cylinders throughout their service life. Because these factors are time dependent, performance tests which are conducted when the cylinders are first manufactured may not detect problems with the cylinders that could occur ten to fifteen years into their life. The agency strongly encourages manufacturers of these cylinders to consider these time dependent degradation factors in their design. NHTSA cannot require that the cylinders be subject to periodic inspection during their life, since the agency's authority to regulate these vehicles is limited to their initial manufacture. However, the agency urges that the cylinders be designed to resist these degradation factors for their entire service life, so that at the end of the cylinder service life, adequate margin of safety on burst strength is provided.

After considering the ANPRM comments, NHTSA has decided to base the proposed requirements on Standard 301 because the agency has tentatively concluded that these requirements would effectively limit fuel leakage during crashes and post-crash fires. Further, IIHS commented on the ANPRM that manufacturers currently have the facilities, technology, and expertise to comply with a CNG vehicle safety standard based on Standard 301. NHTSA tentatively agrees with that assessment.

NHTSA has tentatively concluded that the proposed rule would provide passengers of CNG vehicles a level of safety comparable to that provided passengers of vehicles fueled by gasoline or diesel fuel. NHTSA does not believe that this proposed rule would slow the development and marketing of CNG vehicles. To the contrary, it would, if adopted as a final rule, increase consumer confidence concerning safe performance of the fuel systems in CNG vehicles.

NHTSA believes that this proposed rule is consistent with the provisions in the Clean Air Act Amendments of 1990. Section 247(e) of the Clean Air Act states that DOT "shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles." In addition, section 250 of the Clean Air Act states that DOT "shall, in accordance with the [National Traffic and Motor Vehicle Safety Act of 1966], promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles."

NHTSA discusses below the details of the proposed standard, and in particular, the ways in which it differs from current Standard 301.

A. Summary of Proposed Rule

NHTSA is proposing a standard which would apply to both motor vehicles and items of motor vehicle equipment.

As a "vehicle" standard, it would specify fuel leakage limitations for school buses and for vehicles 10,000 pounds or less GVWR using CNG as motor fuel. It would also require vehicles, regardless of GVWR, that are manufactured with a CNG fuel tank to be equipped with a tank that meets proposed specifications for tank integrity. Since CNG is a vapor and not a liquid, the fuel leakage limitations for the vehicle standard would be stated in terms of fuel pressure drop. Fuel

pressure would be measured during and after a barrier crash test, as liquid leakage is measured in Standard 301.

The proposed amount of permissible fuel pressure drop is based on the volume of leaked CNG that is equivalent in energy content to the amount of gasoline leakage permitted by Standard 301. NHTSA is proposing to use the energy equivalence of gasoline, instead of diesel or any other 301 fuel, because gasoline is the most common motor fuel. The tanks would be tested full, using nitrogen as the test gas. As discussed in more detail below, NHTSA has tentatively concluded that nitrogen is safer than CNG as a test substance, but sufficiently similar to CNG in important respects.

As an "equipment" standard, the new standard would specify performance requirements for CNG fuel tanks manufactured for motor vehicles, including aftermarket tanks. The standard would define "CNG fuel tank" as any container designed to store CNG as motor fuel on-board a motor vehicle.

The proposed equipment performance requirements are twofold. First, they regulate the strength and durability of the CNG fuel "tank," or container, by specifying limits on tank leakage and deformation in a pressure cycling test and a pressure burst test. The pressure cycling test is intended to ensure that the tank is capable of sustaining the cyclic loads imposed on it by refueling. The burst test is intended to ensure that the tank, or container, is capable of operating at the pressures for which it was designed, with some margin of safety.

Second, the equipment requirements would regulate how the tank may "vent," i.e., expel, its contents under specified conditions of elevated temperature and pressure. The notice proposes that, when subjected to a controlled bonfire test, the tank must vent its contents through a pressure relief device. NHTSA tentatively concludes that the requirement would help reduce the possibility that the tank may explode during refueling, or when exposed to fire in a crash.

B. Vehicle Requirements

1. Applicability of the Proposed Vehicle Requirements

The vehicle requirements would apply to vehicles manufactured to operate on CNG only ("dedicated" CNG vehicles), and to vehicles manufactured to operate on CNG and gasoline or diesel fuel ("dual-fuel" CNG vehicles).

GVWR. The limits on fuel leakage would apply to passenger cars, and to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less. They would also apply to school buses, regardless of their GVWR. These vehicles are the same vehicle types currently covered by Standard 301.

NHTSA has tentatively concluded that it would be inappropriate to apply the fuel leakage limits to CNG vehicles, other than school buses, that have a GVWR greater than 10,000 pounds. The fuel leakage limits are measured in a barrier crash test. Except for school buses, vehicles with a GVWR of more than 10,000 pounds using gasoline or diesel fuel are not subject to the requirements of Standard 301. Further, NHTSA does not currently require any barrier crash tests of vehicles over 10,000 pounds in any safety standard.

NHTSA notes that Transport Canada's CNG fuel system integrity standard includes all motor vehicles with a GVWR over 10,000 pounds. NHTSA further notes that some commenters stated they believe that, in the near future, CNG will primarily be used for vehicles with a GVWR over 10,000 pounds. Accordingly, NHTSA requests comment on whether such vehicles should be subject to the proposed fuel pressure drop limitations.

Any CNG-fueled motor vehicle, regardless of GVWR, would be required to be equipped with CNG storage containers that meet the proposed container requirements.

Dual-fuel vehicles. In the ANPRM, NHTSA discussed whether dual-fuel vehicles should be treated differently than dedicated CNG-fueled vehicles. General Motors and the National Fire Protection Association stated that there was no need for special requirements for dual-fuel vehicles. Thomas Built Buses, Washington State, Ford, and Flexible recommended that dual-fuel vehicles have separate fuel system integrity tests based on the fuels used in the particular vehicle.

After considering comments, NHTSA has tentatively concluded that the energy equivalency of the permissible fuel leakage from dual-fuel vehicles should be the same as that for dedicated vehicles. NHTSA disagrees with commenters who suggest that dual-fuel vehicles be tested once under current Standard 301 as though they operated only on gasoline or diesel fuel and a second time under the proposed CNG standard as though they operated only on CNG. If the agency were to adopt this suggestion, it would result in an allowable level of total fuel leakage for dual-fuel vehicles that is twice what is currently permitted under either current Standard 301 or what the agency is contemplating establishing under the proposed CNG standard for dedicated vehicles. Since a real world crash could cause both fuel systems to leak, the agency believes that safety concerns associated with dual-fuel vehicles are most appropriately addressed by establishing a single, overall fuel leakage limit that applies to the combined energy equivalency of the amount of both types of fuel leaked in a single crash test. Thus, a dual-fuel CNG vehicle would be subjected to a single crash test, and the fuel leakage represented by the pressure drop of the CNG fuel system, coupled with any gasoline or diesel fuel leakage, could not exceed the energy equivalent of the amount specified in the proposed standard for a dedicated CNG vehicle. This is the same energy content to the amount of gasoline currently allowed to leak under Standard 301.

Vehicles manufactured in more than one stage. In comments on the ANPRM, commenters also addressed issues relating to the application of a CNG fuel system integrity safety standard to vehicles manufactured in more than one stage. NHTSA tentatively concludes that it would be practicable for final stage manufacturers of multi-stage vehicles to comply with this proposed rule. With regard to the vehicle requirements, NHTSA notes that the requirements in this proposed rule would only involve those vehicles currently covered under Standard 301. Final stage manufacturers of multi-stage gasoline or diesel powered vehicles are already subject to Standard 301's dynamic crash test requirements.

With regard to the equipment requirements, NHTSA does not anticipate any compliance difficulties for final stage manufacturers. Such manufacturers could purchase CNG fuel tanks from equipment manufacturers who would have certified the compliance of the containers with the strength, durability, and pressure relief requirements of the proposed rule.

Nevertheless, NHTSA requests comment on the agency's tentative conclusion that final stage manufacturers could comply with the proposed requirements and provide the requisite level of safety. NHTSA requests that commenters explain any potential problems final stage manufacturers would face in complying with this proposed rule. If any commenter believes the proposed requirements are impracticable, the commenter should explain the basis for that belief, especially given the current application of Standard 301 to some multi-stage vehicles.

The agency is interested in receiving information from incomplete vehicle

manufacturers on whether they plan to manufacture incomplete vehicles with CNG fuel systems. NHTSA is also interested in receiving information from manufacturers of fuel conversion kits on the instructions those manufacturers provide with the kit to persons converting a vehicle from gasoline-powered to dedicated CNG-powered, or dual fuel. In addition, NHTSA requests information on whether devices or designs that are installed on a gasoline-powered vehicle to ensure the vehicle's compliance to Standard 301 can be used to ensure compliance with the dynamically-tested requirements for CNG vehicles proposed today. Finally, NHTSA is also interested in obtaining information from final stage manufacturers and alterers on the types of vehicles they might produce with CNG fuel systems, including the GVWR's of the vehicles.

2. Allowable Leakage

The proposed CNG standard would specify limits on the amount of fuel that may leak from the vehicle's entire fuel system. The amount of allowable CNG leakage for a dedicated vehicle would be equivalent in energy content to the amount allowed for gasoline in Standard 301. CNG leakage from the vehicle would be measured for a 15-minute period following a barrier crash test. The measurements would be taken from impact until the vehicle ceases motion, for the subsequent five minute period, and every minute following the five-minute period, up to 10 minutes.

NHTSA's calculations of the equivalent energy content and procedure for deriving the formulas for allowable CNG leakage are contained in a memorandum to the agency's docket at the above address.

Limits. NHTSA proposes that the following amounts of CNG be allowed to leak during the test procedure. (Allowable CNG leakage by volume is at the standard temperature and pressure of 15.6 degrees Celsius and atmospheric pressure, 101.4 kPa (60 degrees Fahrenheit and 14.7 psi).)

Test condition	Allowable CNG leakage	
	By weight	By volume
From impact until vehicle motion has ceased.	27 grams	39.8 liters.
Subsequent 5-minute period.	135 grams	199 liters.
Subsequent 10-minute period.	27 grams per minute.	39.8 liters per minute.

NHTSA is further proposing that the amount of leakage (volume loss of CNG) be determined by measuring pressure loss in the fuel system, the approach which Ford, Chrysler, and Thomas suggested. Ford's comments included a formula for determining CNG leakage based on pressure loss and a supporting rationale for the derivation of the formula. Ford also suggested allowing a pressure drop which would correspond to an amount of gaseous fuel leakage having the energy content equivalent to the leakage allowed for liquid fuels under Standard 301. After analyzing Ford's comments, NHTSA is proposing a method of regulating CNG leakage that is consistent with Ford's suggested approach. The difference between the two methods is that NHTSA is proposing to measure CNG leakage at specific time increments during the test, whereas Ford suggested measuring total CNG leakage at the end of the test period. (Also, as discussed further below, the suggested Ford procedure measured leakage from the CNG container only, while NHTSA is proposing that fuel leakage from the entire fuel system be measured.)

Under NHTSA's formula, the volumes of CNG leakage specified above would translate into the following allowable pressure drops in units of kPa for CNG fuel systems:

Volume of CNG leakage	Permissible pressure drop
39.8 liters CNG	$13.72(T/V_{FS})$
199.0 liters CNG	$68.6(T/V_{FS})$

where, T = Temperature of the test gas in degrees Kelvin, stabilized to ambient temperature prior to testing.

V_{fs} = The internal volume in liters of the fuel system from which CNG is leaked.

NHTSA emphasizes that the proposed amounts are absolute, instead of percentage pressure changes. These pressure drops are the limiting levels for a given test temperature and vehicle fuel system volume. A pressure drop of the fuel system which is greater than the pressure drop determined by the applicable formula would not be in compliance with the proposed standard. A pressure drop less than or equal to the drop determined by the applicable formula would be in compliance.

The agency tentatively concludes that measuring pressure loss, instead of the amount of gas leaking, addresses the concerns of the commenters who believed that there were extreme difficulties associated with measuring collected gas at a particular location on a vehicle. Further, NHTSA believes that attempts to measure leaking gas under high pressure could endanger test personnel.

No leakage. In the ANPRM, NHTSA discussed the option of allowing no fuel leakage during the crash test, and for up to 30 minutes after motion of the vehicle has ceased. Such a specification appears consistent with Transport Canada's standard for CNG fuel system integrity, which specifies a no leakage requirement. Transport Canada's standard does, however, allow a five percent drop in pressure.

NFPA, Ocean Phoenix, Flexible, Thomas, MVMA, Navistar, GM, Ford, and Chrysler opposed a no-leakage requirement. Commenters stated that any gaseous fuel system under pressure will allow a minimal amount of leakage from fittings and valves. NFPA stated that standards for residential and commercial gas equipment allow a few cubic centimeters of leakage per hour. Chrysler and Ford stated that NHTSA allows a certain amount of leakage from liquid fueled vehicles under Standard 301. MVMA added that it knows of no method for proving zero gas leakage. Ford commented that although Transport Canada has a no-leakage requirement, the standard does not include a method for establishing no leakage. NFPA, MVMA, GM, and Ford suggested that NHTSA establish a minimal leakage level. They indicated that NHTSA could base this level on acceptable leakage levels established for residential appliances or, NHTSA could also select a level that would not present a flammable mixture for a given space. MVMA and GM said that NHTSA would have to consider temperature, pressure, and ambient air movement in establishing a leakage level based on flammability. Alternatively, Ford and GM suggested that NHTSA set allowable CNG leakage at a level equivalent in energy content to that permitted for liquid fuels under Standard 301. Both commenters stated that a no-leakage requirement would be impracticable and unduly restrictive, given that minimal leakage is allowed under Standard 301.

After considering the comments, NHTSA decided against proposing an absolute prohibition against leakage. NHTSA agrees with commenters that any gaseous fuel system under pressure can be expected to leak minimal amounts around its joints and fittings. Also, a no-leakage requirement would be more difficult to enforce, since measuring minuscule losses in pressure would require highly sensitive instruments. While leak detectors (e.g., sensing devices) can identify whether a small amount of gas is leaking, they cannot reliably measure the amount of leakage.

NHTSA further tentatively concludes that the amount of leakage allowed in this proposed rule would have the same safety effect as a zero leakage requirement. NHTSA reached a similar conclusion with regard to Standard 301 when the agency adopted the final rule that established an allowable level of liquid fuel leakage during that standard's crash test (38 FR 22397; August 20, 1973). In that case, NHTSA concluded that limiting fuel spillage to one ounce per minute for the frontal impact and static rollover tests would effectively require manufacturers to design motor vehicles for complete fuel containment, since any spillage allowed by design could well exceed the limit of the standard. NHTSA also concluded that a one ounce per minute spillage allowance would eliminate concern over the few drops of spillage that may be unavoidable in a functioning system.

Similarly here, NHTSA believes that allowing a minimal amount (equivalent in energy content to the amount of gasoline leakage currently allowed) of CNG leakage, would be the functional equivalent of a zero leakage requirement in terms of safety, and yet would also avoid the practicability problems associated with an absolute no leakage requirement. Although NHTSA tentatively concludes that the approach proposed here would be practicable and adequate to ensure safety, NHTSA requests comment on whether a basis other than the equivalent gasoline energy content should be used to establish the allowable level of CNG leakage in a crash test. NHTSA requests that commenters state whether they believe there to be a more appropriate basis for establishing allowable CNG leakage, and include the rationale for their suggested level.

Time intervals. NHTSA is proposing to regulate the amount of CNG leakage over a 15-minute period. NHTSA has tentatively concluded that specifying this period would be appropriate for all CNG vehicles covered by this proposed rule because any CNG that would leak from the fuel system would do so within 15 minutes. Thus, 15 minutes is enough time to measure any pressure drop that would occur.

However, NHTSA requests comment on the appropriateness of its proposal to measure CNG leakage at specific time increments during the test. The agency is proposing this method because it is consistent with the method used in measuring liquid fuel leakage under current Standard 301. However, NHTSA recognizes that it is more difficult to accurately measure small incremental amounts of pressure drop, such as those required (1) after barrier impact and the ceasing of vehicle motion, or (2) after one minute intervals. Therefore, NHTSA requests comment on the feasibility and practicability of specifying gaseous leakage measurements at specific time intervals. NHTSA is particularly interested in information on the availability of devices that are capable of measuring the incremental pressure changes.

Alternatively, as suggested by Ford, the agency could require that total CNG leakage be measured at the end of the test period, using a pressure drop formula similar to the ones derived above. Using that procedure, allowable pressure drop, expressed in kPa, at the end of the 15 minute test period would be: Allowable $P_{Drop} = 219.S(T/V_{FS})$

where, T = Temperature of the test gas in degrees Kelvin, stabilized to ambient temperature prior to testing.

V_{FS} = The internal volume in liters of the fuel system from which CNG is leaked.

Ford stated that prolonged release limits are less important for gaseous fuels which dissipate more rapidly. NHTSA requests comment on the safety consequences of allowing cumulative leakage to be measured at the end of the test period. Also, comments are requested on Ford's approach as applied to dual-fuel vehicles. Under today's proposal, the energy content of the total amount of fuel leaked from the dual-fuel vehicle must not exceed the energy content of gasoline leakage permitted under Standard 301. Using Ford's approach, it would seem that the energy content of the leaked CNG (measured at the end of the 15 minute period) would be added to that of the total amount of diesel/gasoline that had leaked in the different time intervals of the test.

Commenters are requested to provide a supporting rationale in discussing the practicability and safety consequences of each of these approaches for measuring allowable CNG fuel leakage.

Leakage from components of the fuel system. NHTSA also received ANPRM comments addressing the specific fuel components or subsystems from which the standard should allow leakage, and those from which the standard should prohibit leakage. Navistar stated that the standard should permit some negligible amount of leakage from valves and fittings, but not allow leakage from high pressure storage containers. GM, Ford, and Chrysler suggested that fuel system lines downstream of the fuel storage containers be allowed to leak partially or totally, but that the standard should permit no leakage, or only a small amount of leakage, from the fuel storage containers.

NHTSA has tentatively concluded that the allowable CNG leakage level should apply to the vehicle's entire fuel system, instead of only to the fuel storage containers. The proposed standard would define "fuel system" as "All components used to store or supply CNG to the vehicle's engine." Accordingly, under the proposal, any shutoff valve at the fuel storage container would be in the open position to represent vehicle operation. NHTSA believes that a standard which permits limitless leakage from the fuel lines during a crash test could raise serious safety concerns. Under Ford's suggested approach, for example, a vehicle with large volume fuel lines could meet the standard's performance requirements even if the vehicle emitted an amount of CNG greater than the energy equivalent amount of gasoline allowed in Standard 301.

However, NHTSA requests comment on the appropriateness of its proposal to include the entire fuel system in measuring allowable leakage. Under this proposal, vehicle manufacturers would have to know the internal volume of the vehicle's fuel system for use in the pressure drop formula, including lines, components, and fuel storage containers. NHTSA believes that this information is available to manufacturers through design specifications, or that it could be obtained by measuring a given amount of liquid displaced through the fuel system. Commenters are requested to provide information on the practicability of this approach.

As an alternative, the agency could require measurement of allowable leakage from the storage containers only, and permit any amount of leakage from fuel lines and other components downstream of the storage containers. Under such a proposal, a shutoff valve at the fuel storage containers would be in the closed position during testing, and manufacturers would have to know the internal volume of the storage container only. However, this approach assumes all storage containers will have a shutoff valve. NHTSA requests comments on that assumption, and on the safety consequences of allowing unlimited leakage from fuel lines and fuel system components other than the fuel storage containers, particularly for vehicles with large volume fuel lines.

Commenters are requested to provide supporting rationale with respect to the practicability and safety consequences of each of these approaches for measuring allowable fuel leakage.

Measuring fuel leakage. NHTSA has proposed the limits on pressure loss anticipating that each vehicle subject to

the limits will be manufactured with a mechanism that will enable the agency and the manufacturers to measure pressure loss. NHTSA believes such a mechanism would probably be a system of pressure gauges or fittings (to which NHTSA could attach gauges or pressure transducers). Since under today's proposal the limits on pressure loss would apply to the entire fuel system, NHTSA further assumes the pressure gauges or fittings would be installed at particular locations in the fuel system such that measurements can be made of any leak that occurs anywhere within the system. Comments are requested on that assumption, and on the regulatory alternatives available to the agency if that assumption is incorrect.

Further, if the manufacturer installed a gauge or pressure transducer, NHTSA tentatively concludes the gauge or pressure transducer would be sufficiently precise and reliable to enable the agency to determine a vehicle's compliance with the pressure loss requirements. The agency assumes that the gauges used by the different manufacturers would have essentially the same degree of accuracy. The agency does not believe that manufacturers would face insurmountable problems complying with a standard that required such a measurement of pressure loss throughout a CNG fuel system. NHTSA requests comments on these issues.

Rollover. NHTSA agrees with the ANPRM commenters who believed that a vehicle rollover test for CNG dedicated vehicles is unnecessary. The rollover requirement is needed for liquid fuel vehicles (including dual-fuel vehicles) because leakage is a function of gravity and the location of the rupture relative to the fuel. Without a rollover test, a rupture in the fuel system above the level of the liquid fuel would not be detected. CNG, however, is pressurized and would quickly escape upon rupture of the fuel system. Thus, for a CNG fuel system, any leakage would be unaffected by vehicle attitude or gravity. Additionally, as Transport Canada does not have rollover requirements to measure the fuel system integrity of CNG vehicles, a decision not to include a rollover requirement in this proposal is consistent with the goal of harmonizing safety standards with Canada.

3. Test Conditions

Test temperature. NHTSA has decided not to specify an ambient test temperature at which the crash test would be performed.

In the ANPRM, NHTSA discussed whether all testing should be done within an ambient air temperature range of 60 to 70 degrees Fahrenheit. Ocean Phoenix and Flexible had no objection to the 60 to 70 degrees range. Thomas, MVMA, Navistar, and Chrysler recommended that the test temperatures be the same as in current Standard 301. Ford and GM recommended that the temperature range be consistent with that specified in other standards involving a crash test. The commenters stated that adopting such a range would promote testing efficiency by allowing tests for various standards (e.g., Standard 204, 212, and 219) to be combined.

Standard 301 does not specify an ambient test temperature. NHTSA believes these commenters may be referring to the test condition for Standard 208, Occupant Crash Protection, for the stabilized temperature of the dummy used in 208's crash tests. (See, S8.1.12 of Standard 208) The Standard 208 crash test is conducted with the dummy's temperature at the levels specified in S8.1.12. These levels are between 66° F and 78° F for the dummy described in subpart B of part 572, and 69° F and 72° F for the subpart E (Hybrid III) dummy.

The agency has tentatively concluded that it is not necessary to specify an ambient temperature in the proposed standard. The proposed rule's formulas for determining allowable pressure drop in the fuel system take into account variations in the temperature at which testing is conducted. Under the proposal, allowable pressure drop in the vehicle's fuel system, expressed in kPa, would be determined through use of the following formulas:

(1) $13.72(T/V_{FS})$ from impact until motion of the vehicle has ceased;

(2) $68.6(T/V_{FS})$ during the 5 minute period following cessation of motion; and

(3) $13.72(T/V_{FS})$ in any 1-minute interval during the subsequent 10 minute period, (where T is the temperature of the test gas in degrees Kelvin, stabilized to ambient temperature prior to testing, and V_{FS} is the internal volume in liters of the system from which CNG is leaked).

As shown here, as the ambient temperature at which testing is conducted rises, so would the amount of allowable pressure drop in the fuel system. However, the amount of allowable CNG leakage would remain constant. Accordingly, NHTSA believes that, although not specifying an ambient temperature would likely result in tests being conducted at varying temperatures, this would not affect vehicles' compliance with the standard. Further, as commenters suggested, not specifying an ambient temperature would facilitate the combining of tests for various standards. NHTSA requests comment on its tentative decision not to specify an ambient temperature for testing under the proposed standard.

Despite NHTSA's tentative conclusion that it is unnecessary to specify a test temperature for crash testing under this proposed rule, the agency is aware of the concern that certain materials that could be used for CNG containers (e.g., certain high strength steels), can lose their ductility at low temperatures (e.g., –40 degrees Celsius (–40 degrees Fahrenheit)), potentially becoming brittle and leading to catastrophic failure of the CNG container. While NHTSA is not proposing a specific test to address this issue, the agency requests comment on whether there is a serious safety problem due to failure of CNG containers at low temperatures. Specifically, NHTSA requests commenters to address the following questions:

1. Is there a safety problem sufficiently serious to warrant establishing low temperature qualification testing of materials for use in CNG fuel storage containers? Please explain why or why not. One such test could involve applying a load to a sample of container material at a low temperature to assess the ductility of the material.

2. If there is a sufficient safety problem, what specific test should be required, and what materials and temperatures should be addressed? Please specify.

3. Please comment specifically on the practicality of using the impact test contained in the American National Standards Institute's (ANSI) standard addressing the basic requirements for CNG vehicle fuel containers: AGA NGV2, which was approved by ANSI on August 6, 1992, found under Section 1–12, "*DESTRUCTIVE TESTS* (d) Impact Test for Steel Containers and Liners" and the performance criteria in Section 1–13 "*ACCEPTABLE RESULTS OF TESTS* (e) Impact Test," where the average energy absorbed by the three specimens would be changed to the energy absorbed by one specimen. In the reference, within section 1–12 (d), to ASTM E 23, "Methods for Notched Bar Impact Testing of Metallic Materials," only the Charpy test procedure would be used and only the impact energy would be measured.

Test pressure—fuel tank. NHTSA is proposing that CNG fuel storage containers be tested at 100 percent of service pressure.

In the ANPRM, NHTSA discussed which level of fuel storage pressure would be appropriate for the CNG fuel

storage tank during the barrier crash test. Standard 301 specifies that a vehicle fuel tank is to be filled to 90 to 95 percent of capacity during a crash test of vehicles with liquid fuel. Transport Canada's fuel system integrity standard for CNG vehicles requires the fuel containers to be pressurized to 100 percent of service pressure. This is the pressure at which the container is designed to operate when filled with the gaseous fuel at 20 degrees Celsius (68 degrees Fahrenheit).

NFPA, Flexible, GM, Ford, and Chrysler stated either that a fill level of 90 to 95 percent was appropriate or that they would not object to such a level. Poway and Thomas stated that, for school buses, testing should be performed with the fuel system at maximum pressure.

NHTSA is proposing that CNG fuel storage containers be tested at 100 percent of service pressure for several reasons. Specifying that test condition would be consistent with the level which Transport Canada's standard specifies. Further, as explained below, NHTSA believes that differences between liquid fuels, such as gasoline, and gaseous fuels including CNG, make departure from the current Standard No. 301 level appropriate.

During tests of a fuel system that is designed to use liquid fuels, particularly during a static rollover test, gravity plays a key role in determining the amount of fuel leakage. Other factors, such as the vehicle's attitude, size of the tank rupture, and weight of the liquid fuel also affect the amount of fuel leakage. For liquid fuels, these factors affect leakage independent of the amount of fuel in the tank and therefore, the fuel level is not a critical test procedure specification.

Leakage of gaseous fuels, however, is determined almost wholly by the level of pressure inside a ruptured fuel system instead of vehicle attitude or gravity. Therefore, NHTSA believes it is appropriate to test CNG vehicles with the CNG storage containers at the maximum fill level (i.e., 100 percent service pressure). Without this specification, the test would not simulate a reasonable worst case for CNG vehicles.

Test gas. NHTSA is proposing that nitrogen (N_2) be specified as the test gas.

In the ANPRM, NHTSA discussed possible gases which could be used during compliance tests for CNG vehicles. NHTSA sought a test gas which adequately represents CNG, is safe during crash tests and provides a common baseline from which to derive all leakage measurements. Transport Canada's standard for CNG fuel system integrity specifies the use of nitrogen as a test gas.

NFPA, Ocean Phoenix, Flexible, Ford, Navistar, and GM supported the use of nitrogen as a test gas. No commenter opposed its use, although three commenters suggested the use of dry air, helium, or an inert gas. Ford stated that nitrogen is heavier than CNG and would impose greater loads during testing, but added that the benefits of using nitrogen would exceed the weight. Ford listed nitrogen's ready availability, comparative safety, extensive handling experience, and relatively low cost as benefits to be considered.

NHTSA has tentatively concluded that nitrogen is the most appropriate test gas for this proposed standard for several reasons. Although nitrogen is denser than CNG, both nitrogen and CNG are lighter than air. Since both gases are lighter than air, both would disperse upward into the air through any rupture in the fuel system rather than pooling in cavities of the fuel system or falling to the ground. NHTSA believes that for a given temperature and absolute pressure change in a fuel system, a volume of nitrogen, leaked as a test gas, can be assumed to be equal to the same volume of CNG that would leak under those conditions. NHTSA further agrees with commenters that nitrogen would be safer for crash tests because it is neither flammable nor toxic. Finally, as air is composed of 78 percent nitrogen, nitrogen is readily available for use as a test gas.

Nonetheless, NHTSA requests comment on the potential use of dry air as a test gas, and the consequences of such use.

4. Other Issues

Modified requirements. If commenters believe that any of the proposed requirements are inappropriate for CNG vehicles, the agency requests that they explain why and discuss whether other modifications to Standard 301 would be more appropriate.

Vehicles using LPG and other fuels. While NHTSA has tentatively concluded that the proposed requirements are appropriate for CNG vehicles, the agency is less certain about the appropriateness of today's proposal for vehicles using LPG and other fuels. NHTSA's uncertainty concerns the differences which exist between CNG and the other fuels and which were addressed by commenters on the ANPRM. For example, unlike CNG, LPG has both a liquid and gaseous component when stored in a vehicle fuel tank. Upon rupture of the fuel tank, LPG could leak out as a liquid, a vapor, or a combination of the two. Thus, a test designed for CNG may not be appropriate for LPG.

Further, the agency is uncertain that a fuel system integrity standard for LPG is necessary given that each of the 50 States has adopted some form of the NFPA Standard 58, "Standard for the Storage and Handling of Liquefied Petroleum Gases," in regulating LPG vehicles. Comments are requested on the extent to which an LPG vehicle FMVSS, similar to the one proposed for CNG vehicles, is necessary, and the extent to which it would apply to the same aspects of performance regulated by the States. The agency notes that the widespread adoption of that NFPA standard contrasts dramatically with the States' response to NFPA Standard 52 addressing CNG fuel system integrity. The CNG standard has reportedly been adopted by only one state. Moreover, NFPA Standard 52 specifies requirements that are fairly design restrictive. NHTSA has tentatively concluded therefore that the existence of NFPA Standard 52 does not make the proposed requirements for CNG vehicles unnecessary.

Notwithstanding the States' enactment of NFPA Standard 58, NHTSA requests comment on whether any of the specific requirements proposed here for CNG vehicles are inappropriate for LPG vehicles. If a commenter believes that a particular requirement would be inappropriate, the commenter is requested to recommend more appropriate alternatives.

NHTSA also requests comment on the appropriateness of making requirements similar to those proposed for CNG vehicles apply to all vehicles designed to be powered by a gaseous fuel, including such potential fuels as hydrogen. Assuming there is a need to regulate the fuel system integrity of those vehicles, one possible approach could be to limit fuel pressure drop to a level that represents the amount of fuel equivalent in energy content to the leakage permitted by Standard 301. Alternatively, the agency could allow varying amounts of fuel pressure drop, depending on the specific type of fuel being tested. There might be safety or other reasons why NHTSA might find it desirable to specify an amount of allowable fuel pressure drop that is greater than or less than the amount of fuel equivalent in energy content to the fuel leakage permitted by Standard 301. NHTSA requests that commenters discuss whether they view the approaches suggested here as appropriate for other gaseous fuel vehicles, or whether another approach

would more effectively meet safety and practicability concerns.

Detachment of Fuel Storage Containers. NHTSA has tentatively decided not to include a specific requirement for tank retention in this proposed rule. The agency's decision on this point is based on its belief that manufacturers would need to ensure tank retention in order to meet the allowable leakage limits specified for the crash tests.

In the ANPRM, NHTSA discussed the possibility of requiring that fuel storage containers remain attached to the vehicle during a barrier crash test. Transport Canada's CNG fuel system integrity standard includes such a requirement for vehicles with a GVWR of 10,000 pounds or less. Transport Canada's Motor Vehicle Test Methods do not, however, include a method for measuring compliance with this requirement.

Two commenters addressed the issue of detachment of fuel storage containers. Thomas suggested that the agency replace the rollover test with a static load performance test for fuel container and component mountings. MVMA stated that fuel storage tank retention may have been a secondary purpose for proposing a rollover test, but added that tank retention is more demandingly evaluated during barrier crash tests.

Despite NHTSA's tentative conclusion that an express tank retention requirement is not necessary to ensure that CNG containers are securely attached to a vehicle, the agency requests further comment on such a requirement. Commenters favoring the requirement are requested to comment on methods of measuring compliance with it. Further, since there are varying degrees of detachment (ranging from loosening of the container mountings to total detachment of the container from the vehicle), NHTSA requests comment on how the agency should define "container detachment" were it to adopt a prohibition against detachment.

C. Equipment Requirements

The proposed pressure cycling, burst, and bonfire test requirements for CNG fuel tanks would apply to all CNG fuel tanks (i.e., storage containers) manufactured for use on any motor vehicle, regardless of GVWR. Thus, while vehicles with a GVWR over 10,000 pounds (other than school buses) would not be subject to the fuel pressure drop limitations for CNG vehicles, the CNG tanks in those vehicles would be subject to the equipment requirements.

1. Pressure Cycling and Burst Tests

After considering the ANPRM comments, the agency has decided to propose performance-based cycling and burst requirements. The proposal is based on a CNG fuel container standard that the Natural Gas Vehicle Coalition (NGVC) submitted with its ANPRM comments and which was approved by ANSI on August 6, 1992. This standard was developed by an industry working group, under the direction of NGVC. However, NHTSA is not proposing to adopt those provisions of the standard developed by NGVC which the agency believes are too design restrictive.

NHTSA has also tentatively decided not to propose the RSPA regulations for CNG storage containers used on motor vehicles. NHTSA believes that the RSPA regulations do not address the conditions unique to the motor vehicle environment, including increased cycling due to refueling and pressure relief when the cylinder is less than full. Additionally, RSPA regulates design and materials which NHTSA prefers not to do, since the agency's statutory mandate is to provide performance-based safety standards.

Sequential testing. The proposed pressure cycling provision would require that the fuel tank withstand, without any leakage or any deformation exceeding one percent of any circumference, a cycling test at ambient temperature. In the test, the tank would be hydrostatically pressurized to the service pressure, then to not more than 10 percent of the service pressure, for 13,000 cycles. Then, the tank would be hydrostatically pressurized to 125 percent of the service pressure, then to not more than 10 percent of the service pressure, for 5,000 cycles. The cycling rate would not exceed 10 cycles per minute.

A fuel tank which withstood the cycling test without any leakage or circumferential deformation exceeding one percent would then be subjected to the burst test. In the burst test, the tank would have to withstand, again without any leakage or circumferential deformation exceeding one percent, an internal hydrostatic pressure of 3.50 times the service pressure for 60 seconds. The rate of pressurization would not exceed 1,379 Kpa gauge pressure (200 psig) per second.

NHTSA believes that the proposed cycling and burst requirements would be sufficient to establish minimum levels of safety performance for both the strength and durability of CNG fuel tanks used in motor vehicles. Both requirements are consistent with provisions in the drafts developed by the industry working group mentioned above. The tests are also generally consistent with RSPA regulations for cylinders used to transport CNG.

The pressure cycling requirement would help to assure that a CNG tank is capable of sustaining the cycling loads imposed on the tank during refuelings. The number of cycles specified, 18,000, is representative of four refuelings per day, 300 days per year, for 15 years.

The burst test would establish the strength of the CNG container, ensuring that the container is capable of operating at the pressures for which it was designed, with a margin of safety. NHTSA has tentatively concluded that the 3.50 safety factor would not impede technological development, while assuring an acceptable level of safety. The NGVC industry working group's draft standard and the RSPA regulations use safety factors of between 2.25 to 3.50, depending on the material and design involved. However, NHTSA requests comment on whether the 3.50 safety level is appropriate for the proposed test requirement.

Deformation requirement. In both the pressure cycling and burst tests, NHTSA is proposing an allowable circumferential deformation of up to one percent in order to quantify the amount of allowable deformation. The one percent level is based on a similar Society of Automotive Engineers (SAE) requirement involving the performance of air brake reservoirs, SAE Standard J10, August 1985. NHTSA requests comment on whether the one percent level is appropriate for the proposed pressure cycling and burst test requirements.

Time interval. NHTSA is proposing that during the burst test, elevated pressure be sustained for 60 seconds. The RSPA regulations also specify a 60-second period, although the NGVC's draft standard only contains a 10-second time period. However, NGVC's draft includes additional tests to qualify CNG fuel container designs. NHTSA is not proposing those additional tests because the agency believes that they are too design-restrictive, or otherwise inappropriate. NHTSA has tentatively concluded that the test specifications contained in this proposed rule are adequate to promote safety.

2. Pressure Relief—Fuel Storage Tanks

After considering the comments on the ANPRM, NHTSA has decided to propose performance requirements for CNG tanks to address pressure relief concerns. The proposed requirements are based on the draft NGVC fuel storage container standard. That standard,

referenced above, specifies a bonfire test for testing pressure relief device effectiveness. While the draft NGVC standard specifies use of CNG during the bonfire test, NHTSA tentatively concludes that nitrogen or air is more appropriate because both are safer than CNG. The agency's proposed bonfire test requirement would have to be met through use of pressure relief devices.

One possible alternative to requiring that all fuel containers have a pressure relief device is to allow containers without pressure relief devices to pass the bonfire test if they do not vent any of their contents. Thus, the containers would either have to vent all their contents through a pressure relief device or possess sufficient strength to enable the container to sustain the heat and pressure buildup produced during the test. However, when no pressure relief device is used, fire intensity and duration become more critical and cylinder rupture in actual fires would be at a very high pressure and be very violent. Therefore, comments in support of such an approach should provide a specific test that would cover an increased fire intensity and duration, to accurately replicate the non-pressure relief situation. The agency requests comment on this option.

3 Certification.

The standard would require persons manufacturing a CNG fuel tank to certify that each tank meets the proposed equipment requirements by permanently labeling the tank with the symbol "DOT," the date of manufacture of the tank, and the name and address of the tank manufacturer. NHTSA believes labeling the tank would provide vehicle manufacturers and consumers with assurance that they are purchasing complying tanks. It would also facilitate enforcement efforts by providing a ready means of identifying the product and the tank manufacturer.

4. Other Issues.

Gas quality. In the ANPRM, NHTSA noted that gas quality (i.e., the level of impurities in the fuel) is a factor that could influence the integrity of the fuel storage tank. Specifically, NHTSA noted that certain compounds in the fuel used for CNG vehicles could lead to stress-corrosion cracking, corrosion fatigue or other harm to the integrity of the fuel storage tanks. This could lead, in turn, to failure of the CNG tanks. NHTSA has considered proposing performance requirements for CNG tanks to guard against corrosion due to poor gas quality. Further, since NHTSA is not aware of any readily available performance test which would address these modes of tank failure, the agency has tentatively decided not to propose a specific test. Despite this tentative decision, the agency requests comments on the following issues related to possible tank corrosion due to poor gas quality:

1. Should NHTSA develop performance requirements for CNG motor fuel containers to protect against corrosion due to poor gas quality? Why or why not?

2. If so, are corrosion fatigue and stress corrosion cracking the major failure modes which need to be addressed, or are there other corrosion concerns due to poor gas quality? Please specify.

3. What specific tests and performance levels should be required to address (a) corrosion fatigue, (b) stress corrosion cracking, and (c) other corrosion? Please specify. Should these tests involve (a) performance requirements for material specimens, (b) performance requirements of the entire CNG fuel container, or (c) both? Please specify.

4. Is there one test or performance requirement which could be used to address all corrosion concerns due to poor gas quality? Please specify.

5. Please comment specifically on the practicality of using the corrosion resistance test contained in the ANSI standard addressing the basic requirements for CNG vehicle fuel containers: AGA NGV2 (approved by ANSI on August 6, 1992) found under Section 1–18 "*DESIGN QUALIFICATION TESTS* (d) Pressure Cycling Tests (2) Environmental Cycling Test," where the first sentence would be changed to say "One representative container free of any protective coating shall be cycle tested as follows, and shall not leak or permanently deform more than one percent of any circumference of the tank."

6. If it is believed that a corrosion test such as the one described in question five or another test should be used, please comment on as an additional pass/fail criterion, conducting a wet-fluorescent magnetic particle inspection of the internal surface of the bisected test cylinder for any indication of stress corrosion cracking.

Shielding. Ford recommended that NHTSA allow shielding against heat and pressure buildup during any bonfire test. NHTSA recognizes that CNG vehicles may be equipped with shielding to protect CNG containers. However, the bonfire test is a test of the containers themselves. NHTSA believes that there will be CNG fuel storage containers sold in the aftermarket. Since the presence or amount of shielding could vary depending upon vehicle make and model, NHTSA believes that any requirements concerning pressure and heat buildup should involve a test without the sorts of shielding that may be found on vehicles. However, NHTSA does not wish to discourage vehicle manufacturers from including shielding in CNG vehicles as an added safety feature.

Rupturing Without Fragmenting. Ford also recommended that NHTSA consider allowing pressure relief through rupture of a CNG container without fragmenting. NHTSA does not believe that such a provision would meet the need for motor vehicle safety. The goal in pressure relief and control is to contain the pressure inside a CNG fuel storage container or relieve it at a controlled rate. However, the agency requests comment on this point. NHTSA requests that commenters supporting Ford's suggestion address how the agency would define the term "without fragmenting" for regulatory and compliance purposes.

Venting. NHTSA also considered including in this proposed rule other possible pressure-related requirements that were discussed in the ANPRM or addressed by commenters. First, NHTSA considered requiring that all pressure relief mechanisms be vented to the outside of the vehicle, away from the passenger, luggage, or other compartments which could expose vehicle occupants to the gaseous fuel. NHTSA discussed this option in the ANPRM. NFPA, Chrysler, Ocean Phoenix, GM, Navistar, and Flexible supported such a requirement. However, Ford asserted that design restrictive regulation of vent locations could be detrimental and is not practicable.

After considering the comments, NHTSA has decided against proposing to specify pressure relief vent locations on CNG vehicles. NHTSA agrees with Ford that such a requirement would be difficult to enforce and unnecessarily design restrictive in view of the wide variations among vehicle designs and models. Further, NHTSA does not have such a requirement for vehicles using liquid fuels, such as gasoline. Although the presence of gaseous fuel could be less obvious to vehicle occupants than that of a liquid fuel, CNG used in motor fuel applications is expected to have an odor that would warn vehicle occupants of the presence of escaping gas. Finally, NHTSA anticipates that vehicle manufacturers will take all necessary steps to assure proper venting because of product liability concerns.

Leak detection. NHTSA is, however, considering requiring an instrument on

the vehicle (such as a sensing device) which would detect gaseous leakage of unacceptable levels from the fuel system and provide an appropriate warning to occupants or bystanders. Accordingly, the agency requests responses to the following questions:

1. Should the agency require some type of warning device, such as an audible warning device, to detect and warn of gaseous fuel leakage from a CNG vehicle when parked? Should detection and warning be required during vehicle operation? At what level of leakage should the warning device be required to operate? Please specify.

2. If a warning device is needed, what types of warning devices should be allowed? What are the costs of such devices? Are such devices commercially available or would they need to be developed? Are such devices reliable? Please specify.

Refueling connections. Commenters suggested that NHTSA propose requirements concerning the standardization of CNG refueling connections. Commenters stated that CNG refueling connections for CNG tanks of different service pressures, such as 16,547, 20,684, and 24,821 Kpa gauge pressure (2,400, 3,000 and 3,600 psig), should be of different sizes to prevent over-pressurization during refueling. Commenters stated that there could be a safety problem if, for example, a 24,821 kPa gauge pressure (3,600 psig) refueling nozzle is used to fill a 16,547 kPa gauge pressure (2,400 psig) vehicle fuel system. Commenters also stated that there is a need to (1) prevent flow from the refueling nozzle to the vehicle unless there is a positive connection between the nozzle and vehicle receptacle, (2) allow safe release of high pressure CNG, at the nozzle-to-vehicle interface, before disconnecting the refueling nozzle, and (3) prevent attempts by vehicle operators to tamper with or try to adapt refueling connections (in the absence of standardized connections).

After considering the comments, NHTSA has decided not to propose the recommended requirements. First, NHTSA believes that the potential safety risks associated with over-pressurization of the fuel storage containers are addressed through the proposed bonfire test requirements discussed above. Second, NHTSA believes that voluntary actions by industry will address most, if not all, of the problems raised by commenters. Finally, NHTSA does not believe that the issues commenters raise, with the exception of overfilling the fuel storage containers, present significant safety concerns.

III. Benefits of Proposed Rule

According to a NHTSA technical report on motor vehicle fires in traffic crashes and the effect of FMVSS 301, it is estimated that Standard 301 has reduced fires in all passenger car crashes by 14 percent. ("Motor Vehicle Fires in Traffic Crashes and the Effects of Fuel System Integrity Standard," DOT HS 807 675, November 1990.) Evidence exists that fire rates in injury crashes may be lower for post-standard vehicles, but information was insufficient for definitive statistical conclusions. In fatal passenger car crashes, there was no significant reduction in the fire rate for post-standard vehicles. Data were insufficient to develop reliable estimates of the effect of FMVSS 301 for school buses. In addition, no significant reduction in crash fires was found for post-standard light trucks.

The National Fire Protection Association (NFPA) submitted data on 1984–1988 annual average automobile fire rates to the docket (Docket No. 73–20–N15–027). These data contain information on the number of fires in passenger cars by type of material first ignited (gasoline, LP-gas, or natural gas). However, the data do not indicate whether or not the material was used to fuel the vehicle. The fuel that ignited may not have been in the fuel tank, but may have been on-board the vehicle in a gas can, propane tank, or may not have been in the vehicle at the time of the crash. Thus, these data cannot be used, since they are not sufficient to enable the agency to determine the fire rate of CNG and LPG vehicles in comparison to gasoline fueled vehicles.

The agency can, however, estimate the number of fires in CNG vehicles and LPG vehicles, assuming they have the same fire rate as gasoline powered vehicles. Based on FMVSS 301 fire rates and on one Department of Energy scenario of projected on-road alternative fuel vehicles, by fuel type, there could be 1,690 fires in CNG vehicles and 3,280 fires in LPG vehicles in the year 2010.

IV. Costs of Proposed Rule

NHTSA estimates that testing associated with the proposed vehicle requirements, if adopted in a final rule, would cost approximately $58,530–$63,080 per CNG body style. These costs are separated by CNG container testing costs and vehicle testing costs as follows: The costs for CNG container testing to perform the pressure cycling, burst, and bonfire tests range from a low of $2,250 to $6,800. In addition, the cost of the container is $600 (three containers are required for a total cost of $1,800). Thus, the container testing costs will range from approximately $4,050 to $8,600.

The cost to perform a frontal, lateral and rear impact test is $5,000 (total cost of $15,000 for three tests). The cost of the vehicle, which is destroyed during the test, is approximately $13,160 ($39,480 for the three vehicles to be used in the tests). Thus, the total vehicle testing costs will be approximately $54,480.

The agency does not have any information on potential hardware costs of complying with the proposed requirements. NHTSA requests comments on those costs from vehicle and CNG fuel tank manufacturers.

V. Leadtime

NHTSA is proposing to make the equipment requirements in this proposed rule effective on September 1, 1994. The agency considers this a reasonable time period in light of the agency's belief that manufacturers would at most have to make minor modifications in container design. This belief is based on the similarity between the proposed requirements and RSPA standards currently in effect.

NHTSA is proposing to make the vehicle requirements effective on September 1, 1994 because the agency believes that this would provide a reasonable time period for manufacturers to make any vehicle modifications necessitated by the proposal. NHTSA believes that the proposed dynamic vehicle crash test requirements rule could make it necessary for vehicle manufacturers to make significant design modifications in order to comply. According to the agency's information, most CNG vehicles are currently manufactured in accordance with NFPA Standerd 52, which specifies design-oriented requirements and does not specify a barrier crash test. This proposed rule contains provisions including crash tests that simulate actual crash situations, and is thus more stringent than NFPA Standard 52. NHTSA is proposing these more stringent requirements because it believes they are necessary to ensure the integrity of CNG fuel systems, thereby affording the passengers of CNG vehicles a comparable level of protection to that provided by Standard 301.

Although NHTSA has tentatively concluded that an effective date of September 1, 1994, for both the vehicle and equipment requirements provides sufficient leadtime, NHTSA requests comment on this date.

The proposed rule would not have any retroactive effect. Under section

103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

VI. Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposed rule and determined that it is not "major" within the meaning of Executive Order 12291. However, NHTSA has determined that the proposed rule is "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the significant public and Congressional interest in the rulemaking. NHTSA has estimated the costs of the proposed amendments in a Preliminary Regulatory Evaluation which is included in the docket for this rulemaking. As discussed above, NHTSA estimates that testing associated with the proposed vehicle requirements, if adopted in a final rule, would cost approximately $58,530–$63,080 per CNG body style. NHTSA estimates that the costs associated with the equipment requirements, including the cost of the containers, would range from $4,050–$8,600.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Information available to the agency indicates that currently there are very few businesses converting passenger cars or light trucks to CNG use. Some businesses are converting transit buses or delivery trucks to CNG, but many of these vehicles would not be covered by the vehicle requirements of the proposed rule because the vehicles' GVWRs exceed 10,000 pounds. The agency further believes that as the market expands for CNG vehicles, original vehicle manufacturers will begin to produce these vehicles because they will be able to do so at less expense than converters, i.e., final-stage manufacturers and alterers. Few, if any, original vehicle manufacturers which manufacture CNG vehicles would be considered small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. According to the information available to the agency, only one state has adopted NFPA Standard 52 for the regulation of CNG fuel system integrity.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that this proposed rule, if adopted as a final rule, would have no adverse impact on the quality of the human environment. On the contrary, because NHTSA anticipates that ensuring the safety of CNG vehicles would encourage their use, NHTSA believes that the proposed rule would yield positive environmental consequences because CNG burns cleaner than gasoline or diesel fuels.

VII. Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket at the above address. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and NHTSA recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. A new safety standard, § 571.303, Standard No. 303, *CNG fuel system and fuel tank integrity*, would be added to part 571, to read as follows:

§ 571.303 Standard No. 303; CNG fuel system and fuel tank integrity.

S1. *Scope.* This standard specifies requirements for the integrity of motor vehicle fuel systems using compressed natural gas (CNG), including the CNG fuel systems of dedicated and dual fuel CNG vehicles, and for the integrity of CNG fuel tanks.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel leakage during and after motor vehicle crashes.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses that use CNG as a motor fuel, and to containers designed to store CNG as motor fuel on-board any motor vehicle.

S4. *Definitions.*

CNG fuel tank means a container designed to store CNG as motor fuel on-board a motor vehicle.

Dedicated CNG vehicle means a vehicle equipped with one fuel system and designed to operate on CNG.

Dual-fuel CNG vehicle means a vehicle equipped with two independent fuel systems, one of which is designed to supply CNG and the other gasoline or diesel fuel.

Fuel system means all components used to store or supply CNG to a vehicle's engine.

Service pressure means the internal pressure of a CNG fuel tank when filled to design capacity with CNG at 20 degrees Celsius (68 degrees Fahrenheit).

S5. *General requirements.*

S5.1 *Vehicle requirements.*

S5.1.1 *Vehicles with GVWR of 10,000 pounds or less.* Each passenger car, multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less that uses CNG as a motor fuel and that is manufactured on or after September 1, 1994 shall meet the requirements of S6, except S6.4.

S5.1.2 *Schoolbuses with a GVWR greater than 10,000 pounds.* Each schoolbus with a GVWR greater than 10,000 pounds that uses CNG as a motor fuel and that is manufactured on or after September 1, 1994 shall meet the requirements of S6.4.

S5.1.3 Each passenger car, multipurpose passenger vehicle, truck, and bus that uses CNG as a motor fuel shall be equipped with a CNG fuel tank that meets the requirements of S7.

S5.2 *Equipment requirements; CNG fuel tanks.* Each CNG fuel tank manufactured on or after September 1, 1994 shall meet the requirements of S7.

S5.3 *Fuel system pressure drop: barrier crash.*

(a) For vehicles except for dual-fuel CNG vehicles, the fuel system pressure drop, expressed in kiloPascals (kPa), in any fixed or moving barrier crash shall not exceed:

(1) $13.72(T/V_{FS})$ from impact until motion of the vehicle has ceased;

(2) $68.6(T/V_{FS})$ during the five minute period following cessation of motion; and

(3) $13.72(T/V_{FS})$ in any one-minute interval during the 10 minute period following the five minute period specified in paragraph (a) (2) of this section, where T is the temperature of the test gas in degrees Kelvin, stabilized to ambient temperature before testing, and V_{FS} is the internal volume in liters of the fuel system from which CNG is leaked.

(b) For dual-fuel CNG vehicles, allowable combined CNG and gasoline or diesel fuel leakage in any fixed or moving barrier crash test shall not exceed:

(1) 1,336 kiloJoules (kJ) (1,266.25 Btu), in energy content from impact until motion of the vehicle has ceased;

(2) 6,680 kJ (6,331.25 Btu) during the five minute period following cessation of motion; and

(3) 1,336 kJ (1,266.25 Btu) in any one-minute interval during the 10 minute period following the five-minute period specified in paragraph (b) (2) of this section.

S6. *Test requirements: fuel system integrity.* Each vehicle with a GVWR of 10,000 pounds or less shall meet the requirements of any applicable barrier crash test. A particular vehicle need not meet further requirements after having been subjected to a single barrier crash test.

S6.1 Frontal barrier crash. When the vehicle traveling longitudinally forward at any speed up to and including 30 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, with 50th percentile test dummies as specified in part 572 of this chapter at each front outboard designated seating position and at any other position whose protection system is required to be tested by a dummy under the provisions of Standard No. 208, under the applicable conditions of S8, the fuel pressure drop shall not exceed the limits of S5.3.

S6.2 *Rear moving barrier crash.* When the vehicle is impacted from the rear by a barrier moving at 30 mph, with test dummies as specified in part 572 of this chapter at each front outboard designated seating position, under the applicable conditions of 58, the fuel pressure drop shall not exceed the limits of S5.3.

S6.3 *Lateral moving barrier crash.* When the vehicle is impacted laterally on either side by a barrier moving at 20 mph with 50th percentile test dummies as specified in part 572 of this chapter at positions required for testing to Standard No. 208, under the applicable conditions of S8, the fuel pressure drop shall not exceed the limits of S5.3.

S6.4 *Moving contoured barrier crash.* When the moving contoured barrier assembly traveling longitudinally forward at any speed up to and including 30 mph impacts the test vehicle (schoolbus with a GVWR exceeding 10,000 pounds) at any point and angle, under the applicable conditions of S8.1 and S8.4, the fuel pressure drop shall not exceed the limits of S5.3.

S7. *Test requirements: fuel tank integrity.*

Each CNG fuel tank shall be capable of meeting the requirements of S7.1 through S7.4. However, a particular fuel tank (i.e., test specimen)—

(a) Tested to meet the requirements of S7.2 shall first meet the requirements of S7.1.

(b) Tested for compliance with S7.1 and S7.2 need not meet the requirements of S7.3.

(c) Shall meet the requirements of S7.3 under either Test 1 or Test 2 in S9.

S7.1 *Pressure cycling test.* Each CNG fuel tank shall not leak or permanently deform, more than 1 percent of any circumference of the tank, when tested in accordance with S7.1.1 through S7.1.4.

S7.1.1 The CNG fuel tank is hydrostatically pressurized to the service pressure, then to not more than 10 percent of the service pressure, for 13,000 cycles.

S7.1.2 After being pressurized as specified in S7.1.1, the CNG fuel tank is hydrostatically pressurized to 125 percent of the service pressure, then to not more than 10 percent of the service pressure, for 5,000 cycles.

S7.1.3 The cycling rate does not exceed 10 cycles per minute.

S7.1.4 The cycling is conducted at ambient temperatures.

S7.2 *Burst test.* Each CNG fuel tank shall not leak or permanently deform, more than 1 percent of any circumference of the tank, when subjected to an internal hydrostatic pressure of 3.50 times the service pressure for 60 seconds. The rate of pressurization shall not exceed 1,379 kPa gauge pressure (200 psig) per second.

S7.3 *Bonfire test.* When the CNG fuel tank is exposed to fire under the applicable conditions of S9, for the duration specified in S9.2.1, it shall vent its contents through a pressure relief device.

S7.4 *Labeling.* Each tank shall be permanently labeled with the information specified in paragraphs (a) through (c). The information specified in paragraphs (a) through (c) of this section shall be in English and in letters and numbers that are at least one half inch high.

(a) The tank manufacturer's name and address.

(b) The statement: "Manufactured in _____," inserting the month and year of manufacture of the tank.

(c) Maximum service pressure _____kPa (_____psig)

(d) The symbol DOT, constituting a certification by the tank manufacturer that the tank conforms to all requirements of this standard.

S8. *Test conditions: fuel system integrity.* The requirements of S5 and S6

shall be met under the following conditions. Where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

S8.1 *General test conditions.* The following conditions apply to all tests.

S8.1.1 The fuel storage tank(s) is filled to 100 percent of service pressure with nitrogen, N_2.

S8.1.2 After the fuel storage container(s) is filled as specified in S8.1.1, the fuel system other than the fuel storage container(s) is filled with nitrogen, N_2, to normal operating pressures. Any shutoff valve at the fuel tank is in the open position.

S8.1.3 In meeting the requirements of S6.1 through S6.4, if the vehicle has an electrically driven fuel pump that normally runs when the vehicle's electrical system is activated, it is operating at the time of the barrier crash.

S8.1.4 The parking brake is disengaged and the transmission is in neutral, except that in meeting the requirements of S6.4, the parking brake is set.

S8.1.5 Tires are inflated to manufacturer's specifications.

S8.1.6 The vehicle, including test devices and instrumentation, is loaded as follows:

(a) A passenger car, with its fuel system filled as specified in S8.1.1 and S8.1.2, is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the necessary test dummies as specified in S6, restrained only by means that are installed in the vehicle for protection at its seating position.

(b) A multipurpose passenger vehicle, truck, or bus with a GVWR of 10,000 pounds or less, whose fuel system is filled as specified in S8.1.1 and S8.1.2, is loaded to its unloaded vehicle weight, plus the necessary test dummies as specified in S6, plus 136.1 kilograms (kg.) (300 pounds (lb.)), or its rated cargo and luggage capacity weight, whichever is less, secured to the vehicle and distributed so that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR. If the weight on any axle, when the vehicle is loaded to unloaded vehicle weight plus dummy weight, exceeds the axle's proportional share of the test weight, the remaining weight shall be placed so that the weight on that axle remains the same. Each dummy shall be restrained only by means that are installed in the vehicle for protection at its seating position.

(c) A schoolbus with a GVWR greater than 10,000 pounds, whose fuel system is filled as specified in S8.1.1 and S8.1.2, is loaded to its unloaded vehicle weight, plus 54.4 kg. (120 lb.) of unsecured weight at each designated seating position.

S8.2 *Lateral moving barrier crash test conditions.* The lateral moving barrier crash test conditions are those specified in S8.2 of Standard No. 208, 49 CFR 571.208.

S8.3 *Rear moving barrier test conditions.* The rear moving barrier test conditions are those specified in S8.2 of Standard No. 208, 49 CFR 571.208, except for the positioning of the barrier and the vehicle. The barrier and test vehicle are positioned so that at impact—

(a) The vehicle is at rest in its normal attitude;

(b) The barrier is traveling at 30 mph with its face perpendicular to the longitudinal centerline of the vehicle; and

(c) A vertical plane through the geometric center of the barrier impact surface and perpendicular to that surface coincides with the longitudinal centerline of the vehicle.

S8.4 *Moving contoured barrier test conditions.* The following conditions apply to the moving contoured barrier crash test.

(a) The moving barrier, which is mounted on a carriage as specified in Figure 1, is of rigid construction, symmetrical about a vertical longitudinal plane. The contoured impact surface, which is 629 millimeters (mm) (24.75 inches (in.)) high and 1,981 mm (78 in.) wide, conforms to the dimensions shown in Figure 2, and is attached to the carriage as shown in that figure. The ground clearance to the lower edge of the impact surface is 133±12.7 mm (5.25±0.5 in.) The wheelbase is 3,048±50.8 mm (120±2 in.).

(b) The moving contoured barrier, including the impact surface, supporting structure, and carriage, weighs 1,814.4±22.7 kg (4,000±50 lb.) with the weight distributed so that 408.2±11.3 kg (900±25 lb.) is at each rear wheel and (499.0±11.3 kg (1100±25 lb.) is at each front wheel. The center of gravity is located 1,372±38.1 mm (54.0±1.5 in.) rearward of the front wheel axis, in the vertical longitudinal plane of symmetry, 401 mm (15.8 in.) above the ground. The moment of inertia about the center of gravity is:

I_x = 367±18.4 kg m² (271±13.6 slug ft.²)

I_z = 4,711±236 kg m² (3475±174 slug ft.²)

(c) The moving contoured barrier has a solid nonsteerable front axle and fixed rear axle attached directly to the frame rails with no spring or other type of suspension system on any wheel. (The moving barrier assembly is equipped with a braking device capable of stopping its motion.)

(d) The moving barrier assembly is equipped with G78–15 pneumatic tires with a tread width of 152±25.4 mm (6.0±1 in.), inflated to 165 kPa (24 psi).

(e) The concrete surface upon which the vehicle is tested is level, rigid, and of uniform construction, with a skid number of 75 when measured in accordance with American Society of Testing and Materials Method E–274–65T at 40 mph, omitting water delivery as specified in paragraph 7.1 of that method.

(f) The barrier assembly is released from the guidance mechanism immediately prior to impact with the vehicle.

S9. *Test conditions: fuel tank integrity.*

S9.1 The requirements of S7.3 shall be met under the conditions of S9.2 and under those of S9.3.

S9.2 *Test 1.* The following conditions apply:

S9.2.1 The tank is exposed to fire until it is completely vented.

S9.2.2 Time-pressure readings are recorded at 30 second intervals, beginning when the fire is lighted and continuing until the tank is completely vented.

S9.2.3 The tank is positioned so that its longitudinal axis is either vertical or horizontal.

S9.2.4 The tank is filled with either Nitrogen, or Air.

S9.2.5 The fuel tank is filled to 100 percent of service pressure.

S9.2.6 The tank is tested with the pressure relief device(s) in place.

S9.2.7 The tank is positioned so that no flame contacts any pressure relief device.

S9.2.8 The fire is generated by No. 2 diesel fuel.

S9.2.9 The lowest part of the tank shall be 102 mm (4 in.) above the liquid surface of the diesel fuel at the beginning of the test.

S9.2.10 The quantity of fuel specified in S9.2.8 is contained in a pan, of the dimensions specified in paragraph S9.2.11, at a depth of not less than 100 cm (39.4 in.).

S9.2.11 The dimensions of the pan specified in S9.2.10 are such that:

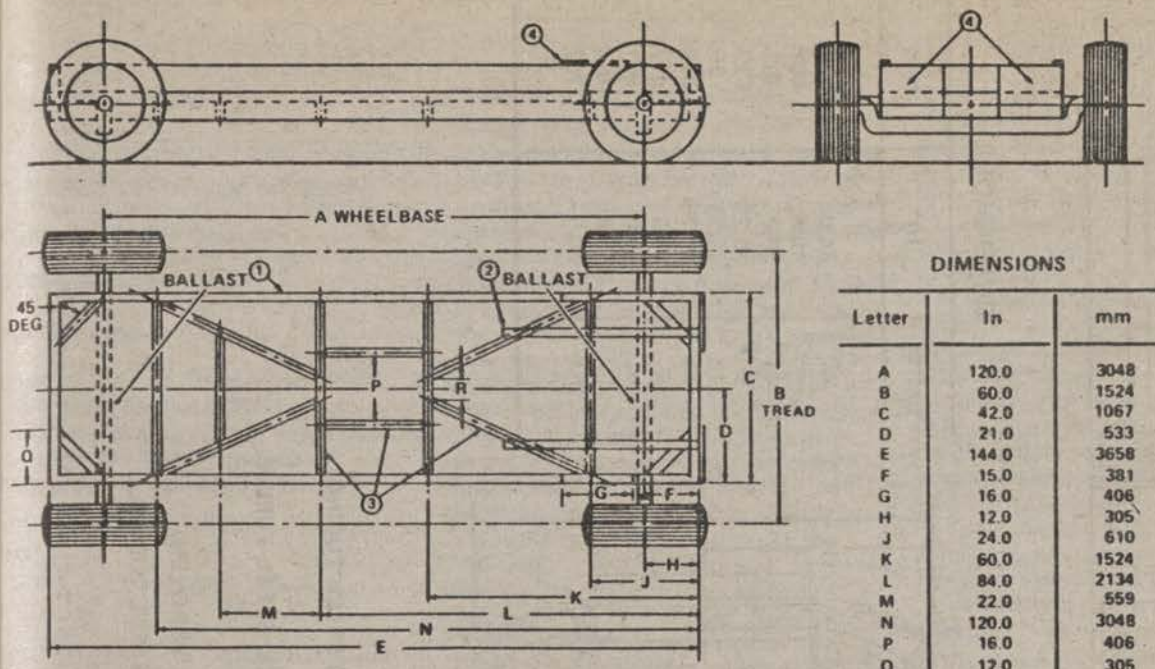
(a) The length and width of the pan each exceed that of the vertical projection of the fuel container on a horizontal plane below the container by not less than 20 cm (7.9 in.), nor more than 50 cm (19.7 in.).

(b) The sidewalls of the pan project above the level of the fuel by not more than 2 cm (0.8 in.).

S9.3 *Test 2.* The conditions are those specified in S9.2.1 through 9.2.11, except that the fuel container is filled to 25 percent of service pressure.

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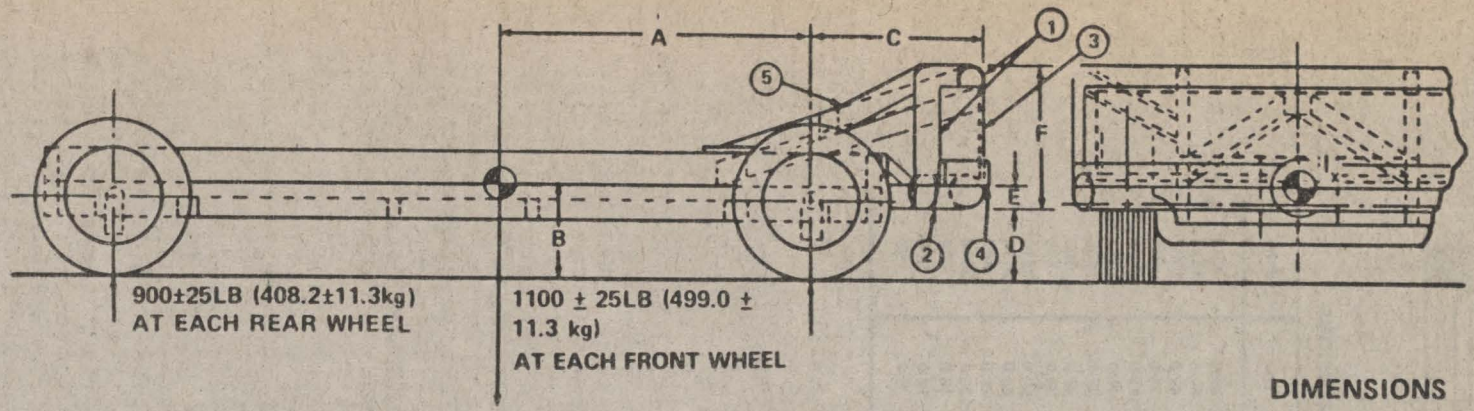
DIMENSIONS

Letter	In	mm
A	120.0	3048
B	60.0	1524
C	42.0	1067
D	21.0	533
E	144.0	3658
F	15.0	381
G	16.0	406
H	12.0	305
J	24.0	610
K	60.0	1524
L	84.0	2134
M	22.0	559
N	120.0	3048
P	16.0	406
Q	12.0	305
R	6.0	152

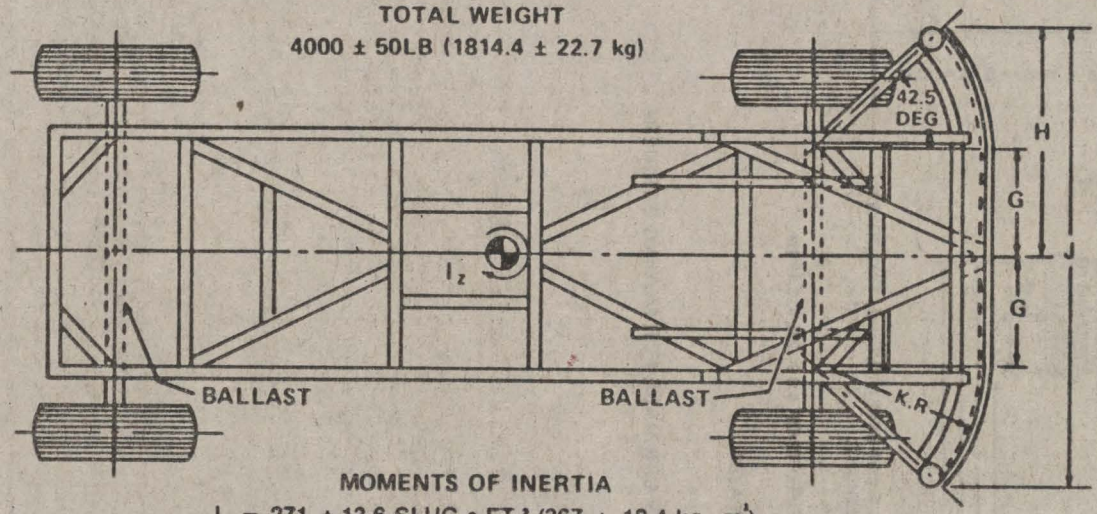
NOTES:

1. OUTER FRAME 6.0 X 2.0 X 0.19 IN (152 X 51 X 5 mm) STEEL TUBING, TWO PIECES WELDED TOGETHER FOR A 12.0 IN (305 mm) HEIGHT.
2. BALLAST TIE DOWNS.
3. ALL INNER REINFORCEMENTS AND FRAME GUSSETS OF 4.0 X 2.0 X 0.19 IN (102 X 51 X 5 mm) STEEL TUBING.
4. REINFORCE AREAS FOR BOLTING ON FACE PLATES.

FIG. 1–COMMON CARRIAGE FOR MOVING BARRIERS



TOTAL WEIGHT
4000 ± 50LB (1814.4 ± 22.7 kg)



MOMENTS OF INERTIA

I_x = 271 ± 13.6 SLUG • FT² (367 ± 18.4 kg • m²)

I_z = 3475 ± 174 SLUG • FT² (4711 ± 236 kg • m²)

DIMENSIONS

Letter	In	mm
A	54.0	1372
B	15.8	401
C	30.0	762
D	5.25	133
E	3.75	95
F	24.75	629
G	18.0	457
H	39.0	991
J	78.0	1981
K	30.0	762

NOTES:

1. UPPER FRAME 4.0 IN DIA X 0.25 IN WALL (102 mm DIA X 6 mm WALL) STEEL TUBING (THREE SIDES).
2. LOWER FRAME 6.0 IN DIA X 0.50 IN WALL (152 mm DIA X 13 mm WALL) STEEL TUBING.
3. FACE PLATE 0.75 IN (19 mm) THICK COLD ROLLED STEEL.
4. LEADING EDGE 1.0 X 4.0 IN (25 X 102 mm) STEEL BAND, SHARP EDGES BROKEN.
5. ALL INNER REINFORCEMENTS 4.0 X 2.0 X 0.19 IN (102 X 51 X 5 mm) STEEL TUBING.

FIG. 2–COMMON CARRIAGE WITH CONTOURED IMPACT SURFACE ATTACHED

BILLING CODE 4910–59–C

Issued on January 13, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–1232 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petitioned Action and a Proposed Rule Pertaining to Three Species of Kangaroos in Mainland Australia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding; proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to remove all populations of the red kangaroo and of the western gray kangaroo, and populations of the eastern gray kangaroo in mainland Australia, from the list of threatened species under the U.S. Endangered Species Act (Act). The Service also announces that it is deferring a decision on a December 20, 1989, petition to reimpose a ban on the commercial importation of products from three species of kangaroos from mainland Australia. This Federal Register notice announces a finding that the requested action to delist the three kangaroo species is warranted and proposes a rule to accomplish the delisting. The existing special rule applicable to threatened kangaroo populations is proposed for recision.

DATES: Comments on the proposed rule must be submitted by March 22, 1993. Public hearing requests must be received by March 8, 1993.

ADDRESSES: Comments, information and questions should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (FAX number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition, findings, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, at the above address, or by phone (703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3) of the Act, as amended in 1982 (Act), requires that, within 12 months of receipt of a petition to add a species to, or remove a species from, the Lists of Endangered and Threatened Wildlife and Plants, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. If the finding is that the action is warranted, section 4(b)(3) also requires prompt publication in the Federal Register of a proposed regulation to implement such action. The Service now announces a 12-month finding on a November 6, 1990, petition by the Wildlife Legislative Fund of America to remove the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginous*) and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), from the list of threatened species under the Act. The Service also announces it is deferring a decision on a December 20, 1989, petition by Greenpeace USA to reimpose an importation ban on kangaroos and kangaroo products. The term "kangaroo" in the present notice refers to all populations of the three species of macropods, identified above, except *M. g. tasmaniensis*. The three species of kangaroos were listed in 1974 as threatened pursuant to the Act (39 FR 44990), and the commercial importation of kangaroos, their parts, and products was banned. A special rule to allow such importations into the United States after development of adequate State management plans, accompanied the listing. The Service accepted the management programs for four Australian States and lifted the importation ban in 1981 (46 FR 23929), after kangaroo management plans and population survey techniques had been strengthened. The Service allowed continuation of the commercial importation of kangaroos in 1983 (48 FR 34757) and in 1984 withdrew a proposed rule to delist the three species of kangaroos because of the severe and widespread drought of 1982–3 (49 FR 17555).

The Service was petitioned on December 20, 1989, by Greenpeace USA, with subsequent support from other groups, "to reinstate the ban on commercial importation of kangaroos and of kangaroo products." The petitioners contended that Australia's management of kangaroos was inherently flawed and that Australian States did not have adequate and effective conservation programs that ensured the protection of the threatened species. The Service, in order to respond to the December 20, 1989, petition in a meaningful manner, sent three representatives to Australia in March 1990 to investigate the population status of the three kangaroo species (survey methods, numbers and trends), and the implementation of management programs. In addition, the team received comments about the conservation benefit of management plans that allowed the harvest of kangaroos. The Service team spent 12 days meeting with selected members of Parliament, representatives of various nongovernmental organizations, scientists, State and federal natural resource managers, enforcement personnel, grain growers, and ranchers. The team also visited parks, open range, chillers, faunal dealers, ports and exporters. The team presented their findings in a June 5, 1990, report (Nichols, J.D., S.R. Singer, and J.S. Smith. 1990. Review of Kangaroo Management, Australia, March 1990). The Service, in a Federal Register notice of August 8, 1990 (55 FR 32276), announced the receipt of the Greenpeace petition and the availability of the June 5, 1990, Service report and requested comments on the status of the three species of kangaroos in Australia. The comment period on the status review of the December 20, 1989, petition extended to November 6, 1990.

The Wildlife Legislative Fund of America submitted a petition dated November 6, 1990, which was received by the Service on the following day. That petition requested that all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginous*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), be removed from the list of threatened species under the Endangered Species Act.

The Wildlife Legislative Fund petition presented the June 5, 1990, report prepared by Service personnel as the principal basis for their petition. Among other things, the petitioners cited the conservative estimates of the 1987 kangaroo populations (red kangaroos—7.5 million, western gray kangaroos—1.7 million, and eastern gray kangaroos—4.7 million) and the fact that kangaroo conservation programs exist within individual range states as reasons for delisting the species.

The Service, in a Federal Register notice of June 12, 1991 (56 FR 26971), found that the action requested in the

November 6, 1990, petition may be warranted and requested additional comments as part of a continuing status review of kangaroos and kangaroo management in Australia. The comment period was reopened until September 10, 1991. That comment period was later extended to September 24, 1991, in a **Federal Register** notice dated September 17, 1991 (56 FR 47060).

The present assessment of the status of the three kangaroo species in mainland Australia finds that New South Wales, Queensland, South Australia, and Western Australia have developed and implemented adequate and effective conservation programs that ensure the protection of these macropod species. The Service directly evaluated kangaroo management in Australia by sending Service representatives to Australia in March 1990 and July 1992, and by requesting and evaluating information about kangaroo management obtained from Commonwealth and State governments. The three species are protected by appropriate legislation, have populations regularly monitored by direct and indirect procedures, and are managed by a complex licensing system which regulates the extent of the legal harvest. The Service announces it is deferring a decision on the December 20, 1989, petition by Greenpeace USA to reimpose the ban on kangaroos and kangaroo products. The Service with this Notice also finds that the action requested in the Wildlife Legislative Fund's November 6, 1990, petition to delist the three kangaroo species in mainland Australia is warranted. Kangaroo populations are high and management is good so it is unlikely that these kangaroos will become endangered in the foreseeable future. This **Federal Register** notice provides a proposed rule to effect the delisting action as well as a recision of the special published rule allowing imports of kangaroo products into the United States. The Service notes that the delisting action, if finalized, would lead to the dismissal of the Greenpeace petition on procedural grounds because there would not be any mechanism for the imposition of the importation ban under the Act (i.e., if the species is no longer listed as threatened, the Service has no authority to impose an importation ban).

The Service also notes that a decision that these kangaroos should not be on the list of endangered and threatened fauna under the Act seems consistent with listing decisions made by other bodies. The species are not on the Appendices to the Convention in International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition the three species of kangaroos are described as abundant by the Australian Conservation Foundation. The species are not on lists published by the International Union for Conservation of Nature and Natural Resources (IUCN), the Council of Nature Conservation Ministers, World Wide Fund for Nature Australia (WWF), or Fund for Animals Ltd., that variously identify species of Australian fauna they find to be endangered, threatened, or vulnerable.

Summary of Comments and Recommendations

The Service received over 32,000 cards and letters bearing about 35,000 signatures from citizens of more than 40 countries in response to the August 8, 1990, and June 12, 1991, requests for comments. Virtually all correspondents supported the request to ban the importation of kangaroo products into the U.S. and/or advocated the retention of threatened status for the species.

Many of the more lengthy comments pertain to a perceived illogic in the kangaroo management programs of Western Australia, South Australia, New South Wales, and Queensland. Each State has legislation protecting macropods and each State has management programs implementing the extensive culling of kangaroos. Actions to harvest protected species are considered incongruous activities by many persons. The commercial kill of macropods (mostly of red and gray kangaroos) in the four States could total 5.2 million kangaroos in 1992. Many persons questioned whether harvests of this magnitude could possibly represent sustainable yields. Other comments received by the Service questioned the assessments made in the Nichols *et al.* report, cited perceived flaws in the kangaroo management programs of individual States, suggested that the kangaroo skin and meat industries (rather than killing to prevent or mitigate for agricultural damage) were driving the kangaroo harvests, and hinted at nefarious activities and political corruption within governmental bodies. Comments submitted on several occasions by the Australian Commonwealth and Australian State governments have described the kangaroo management programs in detail. The substance of some of the more lengthy comments are addressed in some detail below.

Comment 1.—Some comments criticized the report "Review of Kangaroo Management—Australia, March 1990" prepared by the Service team because the review suggested the Service consider delisting the three kangaroo species without having evaluated the three species using the criteria of the Endangered Species Act. These comments further argued that the petition submitted by the Wildlife Legislative Fund should not have been accepted by the Service because its basis was an inappropriate suggestion in the Service report.

Service Response.—The Service agrees that the recommendation for delisting presented in the "Review . . ." was not in and of itself adequate to support a delisting finding. However, the Service accepted the November 6, 1990, petition because it presented sufficient information that the action "may be warranted." A status review was initiated in the August 8, 1990, notice (55 *Federal Register* 32276) and continued in the June 12, 1991, notice (56 *Federal Register* 26971). A status review was also relevant to a decision on the December 1989 petition to ban imports (for example, no separate ban is necessary if the species were found to be endangered and no ban could be imposed by the Service under the ESA or any other authority if the species were found to be neither endangered nor threatened).

Comment 2.—Several comments considered the Service report "Review of Kangaroo Management—Australia, March 1990" to be flawed either because the information the Service team obtained and reported was incorrect or because the Service team did not adequately interpret that information.

Service Response.—The Service notes that the Australian inspection was a brief and intense effort to obtain on-site information about population monitoring procedures, product tagging procedures, law enforcement practices and the implementation of management programs. It is an important listing of that information and a useful assessment of kangaroo management in Australia.

Comment 3.—The Service should not delist the three species because the commercial harvest system is driven by commercial greed rather than conservation interests.

Service Response.—Whether the harvest system is driven by greed, conservation, or any other motivation is not a listing issue. Species are evaluated under the Act on the basis of five prescribed listing criteria. This evaluation for the three kangaroo species is described later in this **Federal Register** notice. The listing criteria consider, among other things, whether causes and extent of mortalities (overutilization) endanger or threaten

the species. The nature of the commercial harvest system is important to this evaluation under the Act because the commercial harvest is the greatest source of human-induced mortality impacting the kangaroos. The Service notes that the commercial harvest is a licensed and managed operation conducted within the bounds of a harvest quota system. Harvest quotas are determined on the basis of population information, seasonal conditions and the perceived requirements by rural persons for damage mitigation. Quotas comprise that portion of the current living kangaroo population that can apparently be safely harvested without threatening the welfare of the species. The commercial industry is the mechanism by which a substantial portion of the quota is harvested and utilized. About 70 percent of the quota has been commercially harvested in recent years.

Comment 4.—The Service should not delist the three species because the harvest quota system is insensitive to environmental or other conditions that may adversely impact kangaroos during an annual period.

Service Response.—The harvest quota system has a capability to be sensitive to short-term changes that may impact kangaroo populations. Additional aerial surveys, ground surveys and property and chiller inspections can be accomplished at any time within a state if there are indications that kangaroo populations may be undergoing unexpected changes throughout the year. The harvest in any state can be expanded, restricted or terminated by cancelling, withholding or placing restrictions on the issuance of licenses and by limiting the numbers of animals that can be taken.

Comment 5.—The Service should retain threatened status for the three kangaroo species because Commonwealth, State and Territorial Governments have not fully implemented the 27 recommendations of the Australian Senate Select Committee and because Queensland has not yet fully implemented the terms of the 1990 Settlement Agreement between Greenpeace Australia, Queensland and the Commonwealth of Australia.

Service Response.—The Commonwealth has indicated (ANPWS 1991 A) that it has considered all the recommendations of the Senate Select Committee. Many of the recommendations are relevant at the State level and they have been implemented where applicable and possible. Additional funding has been sought from the Commonwealth Government to implement recommendations relevant at the Federal level. Queensland National Parks and Wildlife Service has implemented basic changes in its kangaroo management system to respond to some of the commitments in the Settlement Agreement (ANPWS 1991 A). Some issues require research, experimentation or basic changes in policy and will require time before full implementations occurs. The fact that recommedations of the Senate Select Committee and the Settlement Agreement may not have been fully implemented at this time may be grounds for further negotiations in Australia but are not grounds for making a listing decision under the Act.

The Service team received written comments supporting current kangaroo management programs when they made their March 1990 inspection. Those comments were incorporated in the team's June 5, 1990, report "Review of Kangaroo Management-Australia, March 1990". The Service also recieved comments from Australian authorities during the open comment periods. One comment from the Australian Embassy was in response to a query about the killing of kangaroos in Hattan-Kulkyne National Park in Victoria. The Commonwealth has no legislative involvement in kangaroo management in Victoria because Victoria does not export kangaroo parts and products and thus has not developed a kangaroo management plan for Commonwealth approval. Victoria has determined that the Hattah-Kulkyne National Park still retains elements of endemic woodlands and considers the park to be a biosphere reserve of this endemic woodland. The goal for the Park is principally to redevelop the endemic woodland, and excess kangaroos apparently need to be culled so herbivore damage to revegetation is minimized. The Service fully accepts this explanation.

The Australian National Parks and Wildlife Service (ANPWS) provided comments and attachments in response to the August 8, 1990, **Federal Register** notice and in response to the "Review of Kangaroo Management-Australia, March 1990". The ANPWS submission identified the parties responsible for wildlife management in Australia and discussed: the abilities of the individual States to reduce harvest within a resonable time period in order to cope with changed environmental conditions or population parameters; the abilties to detect illegal trade in skins and meat; the magnitude of the non-commercial kill; research proposals to further evaluate kangaroo populations in Queensland; information about the effect of recent floods in Queensland and New South Wales on the kangaroo populations and harvest; and actions taken on recommendations made by the Australian Senate Select Committee on Animal Welfare. The submission also included information pertaining to the review of the Queensland Kangaroo Management Program by the Administative Appeals Tribunal, the kangaroo cull in Hattah-Kulkyne National Park and extensive response to recommendations and criticisms made in the report "Review of Kangaroo Management-Australia, March 1990" and in the Greenpeace USA petition of December 20, 1989. ANPWS also provided comments in response to the June 12, 1991, **Federal Register** notice wherein it described objectives for kangaroo management, the regulatory mechanisms for enforcing trade restrictions in kangaroo products, the response of the Australian Government to the 27 recommendations in the Australian Senate Select Committee report, how Queensland National Parks and Wildlife Service responded to recommendations in the Settlement Agreement, and the nature of population and habitat surveys in Western Australia. ANPWS and the National Parks and Wildlife Services of Queensland and New South Wales also provided information to Service personnel in July 1992 pertaining to current population and harvest statistics and the current management plans for the four States allowing commercial harvests.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the lists or deleting species from the lists of endangered and threatened wildlife. A species shall be listed or reclassified on the basis of the best scientific or commercial data available after conducting a review of the species' status with regard to the five following evaluation factors: (A) The present or threatened destruction, modification or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and, (E) other natural or manmade factors affecting its continued existence.

The present findings and the proposed recision of the special rule are based on an assessment of the five listing criteria within the Act. The assessment considers the present

biological status of the three kangaroo species in mainland Australia. The assessment does not evaluate whether the commercial utilization of kangaroos violates their protected status as listed in domestic legislation or the legitimacy of the commercial kangaroo industry. Those are Australian domestic issues. The Service assumes that kangaroo products are a legitimate product of the land if kangaroos are managed as a sustainable resource, and if Australian society approves of the harvest. The Service's evaluation focuses on whether the commercial enterprise threatens the existence of kangaroos and whether governments adequately manage the kangaroo resource.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Extensive kangaroo habitats have been lost or seriously degraded where urbanization and several forms of intensive agriculture have occurred. The eastern gray kangaroo has lost important habitats to development and agriculture in eastern Queensland, New South Wales (NSWNPWS 1991 A) and throughout Victoria. The species, however, is considered abundant and widespread over large areas of eastern Australia where rainfall exceeds 250 mm but has little seasonal trend or where summer rains exceed winter rains (ANPWS 1991). That publication summarizes habitats for the eastern gray kangaroo as including semi-arid mallee scrub, woodland, and forest. The densities of eastern gray kangaroos are frequently low in the more arid portion of their potential range, where they may be confined to narrow belts of woodland bordering watercourses, and are sometimes high elsewhere. The 1991 density of gray kangaroos, for example, was estimated at about 1 per km sq in arid extreme northwestern New South Wales and averaged more than 10 per km sq on about 125,000 km sq of habitat in mesic northcentral New South Wales (NSWNPWS 1991 B). Caughley, *et al.* (1987) listed densities for eastern gray kangaroos that were greater than 20 kangaroos per km sq on some transects in extreme southcentral Queensland as determined from 1980–1982 aerial surveys. The western border of the range of the species has apparently moved westward since European settlement because of the establishment of numerous semi-permanent watering points for stock. Pastoral development is considered to have generally favored the eastern gray kangaroo (NSWNPWS 1991 A).

The red kangaroo is considered abundant over much of inland Australia in areas receiving less than 500 mm annual rainfall (ANPWS 1991). The species occurs in mulga and mallee scrub, shrubland, woodland, grassland, and desert. The species seems to prefer open plains with scattered trees or shrubs. The 1991 density of red kangaroos was estimated at less than 3 per km sq in central NSW but at more than 14 per km sq on about 125,000 km sq of habitat in arid extreme northwestern NSW (NSWNPWS 1991 A). Caughley, *et al.* (op. cit.) listed densities greater than 20 per km sq for the red kangaroo on some transects determined from 1980–1982 aerial surveys. Red kangaroos occur in almost a continuous distribution but at varying densities over all the pastoral areas and a large portion of the interior of South Australia. The red kangaroo favors the open but better watered country inside the 2000 km dingo proof fence in lands used primarily for sheep grazing. Red kangaroo densities are much lower outside the fence (SANPWS 1991). The habitat changes associated with sheep grazing such as closely spaced stock water, the production of shrubland with ephemeral grasses, and the exclusion of the dingo are considered favorable for the red kangaroo.

The western gray kangaroo occurs across the south of the continent from Western Australia to extreme southcentral Queensland but generally not east of the great divide. This distribution generally corresponds to the area where winter rainfall predominates. Caughley, *et al.* (op. cit.) listed densities greater than 10 per km sq for transects in a relatively small area of southwestern New South Wales as determined from 1980–1982 aerial surveys. The increase of watering points to aid the pastoral industry has been beneficial to the western gray kangaroo but intensive agriculture has adversely impacted some habitats. Arnold (1990), for example, indicated that the sizes of some populations of western gray kangaroos have declined significantly where habitat fragmentation to favor intensive agriculture has occurred in southwestern Western Australia. Arnold (op. cit.) further believes losses to kangaroo populations will continue in these areas as the remnant native vegetation continues to be degraded. The western gray kangaroo occurs widely through the southern agricultural area of South Australia and extends into the central pastoral areas. This macropod is considered to be basically a dweller of scrublands and woodlands that grazes at the edges of adjacent grasslands. That portion of the gray kangaroo's range in the pastoral zone of South Australia has been favored by management actions beneficial to sheep production. A portion of the gray kangaroo's range in the southern agricultural zone has been degraded or destroyed by extensive habitat destruction caused by the clearing of native vegetation for agricultural and industrial purposes and for urban and suburban developments (SANPWS 1991).

The three species of kangaroos occur over a vast region of Australia. Census lines representative of about 2.25 million km sq of habitat are routinely surveyed by air to estimate kangaroo numbers. Kangaroos are abundant in major portions of this habitat. As indicated below, an extensive series of Parks and Reserves totaling over 400,000 km sq has been and is being developed which will contribute directly to the conservation of macropods throughout their natural range. Current kangaroo populations could exceed those present before European man arrived on the continent. This seems possible because kangaroos have a reproductive capability efficiently attuned to the boom or bust nature of the usual precipitation-range forage cycle on arid lands and because kangaroos have been an impressive and inadvertent beneficiary of the sheep management system which included the clearing of woodlands, production of watering points, and the control of predators. Kangaroos that inhabit vast areas of Australia in impressive numbers can not be considered threatened because of habitat and range conditions even though much native range is severely degraded. Kangaroos do well when habitats are in adequate condition due to sufficient rainfall and more poorly when droughts occur. This cyclic or fluctuating pattern in response to the vegetative condition of rangelands is a normal periodicity in the arid land system and does not in itself comprise a threat to the species.

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

The intent of kangaroo conservation in Australia is to maintain viable populations of the three species of kangaroos over their existing range and minimize the deleterious effects that high densities of these species may have on agricultural and pastoral products. Management is an art in the arid-zone ecosystems that comprise much of interior Australia where lands normally cycle in productivity in response to a variable rainfall. Viable kangaroo populations need to be maintained when range productivity and carrying

capacities are low, but kangaroos can represent a usable range resource when populations and range productivities are increased. The Australian National Parks and Wildlife Service and the Parks and Wildlife Services of the individual states regularly monitor population trends of red and gray kangaroos. The species are protected on National Parks and Reserves which total about 5 percent of the continental land area (over 400,000 km sq). Some of these lands represent important kangaroo habitats. The species can be legally killed, but not commercially utilized, by permitted actions in many urban, suburban and agricultural areas for damage mitigation reasons. A major commercial harvest of kangaroos occurs in large designated areas of Queensland, New South Wales, South Australia, and Western Australia. The magnitude and characteristics of this commercial harvest are regulated by the ANPWS as a wildlife management strategy. The total commercial is conducted within the framework of a harvest quota system. The commercial quota is the maximum number of kangaroos of a designated species that may enter domestic or international commerce during a specific year after having been taken in accordance with approved State management plans.

Kangaroo population trends are estimated from large-scale aerial and/or ground surveys. These population trends reflect all forms of mortality acting on kangaroos. Commercial harvest quotas are determined from estimates of the living population and are intended to regulate the harvest which is the principle human-caused form of mortality. The commercial harvesting of kangaroos is directly controlled through the licensing of shooters and their operations.

The population surveys are accomplished during winter (June–August), annually in South Australia, New South Wales, and Queensland and triennially in Western Australia. The raw data from surveys represent index values that can be compared to develop trends, or they can be expanded by the use of suitable correction factors to provide estimates of kangaroo populations. Correction factors strive to account for differences in the behavior of kangaroo species regarding their sightability and the ability to sight kangaroos in different habitats. Research is ongoing to further enhance the quality of surveys and correction factors. Population trends in Western Australia, where aerial surveys are only accomplished at 3-year intervals, are estimated from monthly reports of the commercial harvest, the intermittent aerial surveys and ground surveys and patrols by appropriate staff (WADCLM 1991 A and B).

Harvest quotas are determined on the basis of population information, estimates of habitat quality, and the perceived or estimated requirements for damage mitigation. Conservation interests are considered to drive the establishment of harvest quotas because quotas are usually fixed as conservative proportions of the estimated populations. Individual States could temporarily set quotas at high rates if their stated management goal was to reduce statewide or localized kangaroo populations to more sustainable levels.

The 1991 harvest quota for red kangaroos in Western Australia was 290,000, or 12 percent of the 1990 estimated population of 2,370,000 (WADCLM 1991 A), and the 1991 harvest quota for gray kangaroos was 45,000, or 4 percent of the 1990 estimated population of 1,073,000 (WADCLM 1992 B). About 185,000 red kangaroos and 38,000 gray kangaroos were commercially killed in 1991 in Western Australia, which equaled about 8 percent and 4 percent, respectively, of that State's 1990 population estimates. The 1991 harvest quota for red kangaroos in the commercial utilization zone of South Australia was 408,000, or 21 percent of the 1990 estimated population of 1,950,000, and the 1991 harvest quota for gray kangaroos was 31,700, or 16 percent of the 1990 estimated population of 194,000. About 214,000 red kangaroos (11 percent) and 15,000 gray kangaroos (8 percent) were apparently killed for the commercial trade in South Australia in 1991. The 1991 harvest quota for red kangaroos in the commercial utilization zone of New South Wales was 706,000, or 16 percent of the 1990 estimated population of 4,500,000, and the 1991 harvest quota for gray kangaroos was 804,000, or 20 percent of the 1990 estimated population of 4,050,000. About 496,000 red kangaroos and 360,000 gray kangaroos were commercially killed in 1991 in New South Wales, which equaled about 11 percent and 9 percent, respectively, of that State's 1990 population estimates. The 1991 harvest quota for red kangaroos in the commercial utilization zone of Queensland was 480,000, or 26 percent of the 1990 estimated population of 1,820,000, and the 1991 harvest quota for gray kangaroos was 1,300,000, or 58 percent of the 1990 estimated population of 2,230,000. Queensland authorities believe the 4,050,000 estimate for red and gray kangaroos is a conservative and substantial underestimation of the true population because currently used correction factors apparently are unable to adequately depict populations, especially of gray kangaroos, within the dense tree and scrub cover in the southcentral mulga zone. One intent of the harvest program in Queensland is apparently to reduce kangaroo numbers, especially those of the eastern gray kangaroo, to what is viewed as more sustainable levels. The Service notes that Queensland has not described what that more desirable level might be but that Queensland is committed to the retention of viable populations of macropods of each species throughout their existing range. The total national commercial quota in 1991 for red and gray kangaroos was 4,065,000, which was 22 percent of the estimated 1990 red and gray kangaroo population of 18,187,000. The 1991 commercial kill was 2,798,000, which was 69 percent of the commercial quota and 15 percent of the stated 1990 population estimate. The 1991 commercial kill would be an even smaller proportion of the total population if the Queensland kangaroo population was significantly underestimated. An additional 99,300 red and gray kangaroos (less than 1 percent of the national population estimate) were reported killed during 1991 for damage mitigation purposes outside the commercial harvest quotas.

Queensland has received criticism in past years for its harvest management system. That system has been substantially modified in the past two years (QNPWS 1992). Queensland now establishes its kangaroo harvest quota in the following manner. Survey data from fixed-wing aircraft, helicopters and ground surveys are utilized to provide population estimates. A conservative possible harvest quota is formulated from this mid-winter survey information. This statewide potential quota is reviewed by the Area Director, Regional Director, and the Manager-Wildlife Management, Queensland. The potential quota is then passed before the Macropod Management Committee (a State Ministerial committee) to receive public input from the rural community, pastoralists, graziers, shooters, dealers, the Department of Primary Industries, conservation groups, and politicians whose constituents are impacted by kangaroos. The committee advises on the acceptability of the proposed quota and may make recommendations about the quota. The proposed quota and the comments are passed to the Queensland Minister, who determines the final quota to be submitted to the Commonwealth for approval. Commonwealth approval may be gained

after the proposal has been reviewed by ANPWS and the Commonwealth Minister's Scientific Advisory Committee on Kangaroos.

The commercial utilization area (CUA) in South Australia occurs on about 282,000 km sq of pastoral landscape, which comprises about 28 percent of the State's land area. The harvest quota in South Australia is based on the winter aerial survey of the commercial utilization area and is developed for each of 10 kangaroo management zones within the CUA. The commercial quota is set as a best estimate of the maximum number of each species that may need to be killed to contain deleterious effects on stock, crops or property without jeopardizing the viability of kangaroo populations (SANPWS 1991). The proposed quota has to be approved by the appropriate South Australian Minister before its submission to the Commonwealth. The Commonwealth Minister subjects the proposed quota to review by ANPWS and the Minister's Scientific Advisory Committee on Kangaroos before any implementation of the kangaroo management program can occur.

The commercial utilization zone covers the western two-thirds of New South Wales. The harvest quota in the State is based on population estimates from the most recent annual surveys, recent trends in population numbers and distribution, harvest monitoring data, information about non-harvest mortality and non-commercial harvest mortality, climatic conditions over at least the past year, current land use, the proportion of the population not subject to damage mitigation culling, and the demand for agricultural damage mitigation culling (NSWNPWS 1991 A). The proposed quota is subject to peer review and must be approved by the appropriate New South Wales Minister before its submission to the Commonwealth. The quota must be approved by the Commonwealth Minister, after its review by ANPWS and the Minister's Scientific Advisory Committee on Kangaroos, before the harvest program can be implemented.

The commercial harvest zone may total about one-half of Western Australia. Parks, reserves, and State forest lands occupied by and providing protective status to western gray and/or red kangaroos may total 100,000 km sq within this vast state. The harvest quota in Western Australia is conservatively established on the basis of current population trends, seasonal conditions, the review of previous annual harvests, the proportion of the habitat and population not subject to harvesting, current land use practices, and the significance of the take outside the commercial quota (WADCLM 1991 A and B). The proposed quota is subject to peer review and must be approved by the appropriate Western Australian Minister before being forwarded to the Commonwealth Government. The Commonwealth Minister (after review by ANPWS and the Minister's Scientific Advisory Committee on Kangaroos) must approve the quota before the harvest program can be implemented.

Individual states have the capability to monitor their kangaroo harvest. For example, Queensland has recently established a Macropod Management System which is a new and large computerized database containing information about shooters' records, dealers' records' location of kill, date of kill, sex and species of kill, etc. The database has the capability to track harvest information to assure managers that certain populations are not being overharvested. A computerized database in Western Australia, built on harvest data, allows for the analysis of total commercial take by management area, trends in the sex ratio of the commercial take, trends in the average weight of kangaroos in the commercial take, and trends in the commercial take per unit effort (WADCLM 1991 A and B). South Australia is collecting, but not yet utilizing in its kangaroo management program, monitoring data about catch per unit of effort, sex ratio of the kill, and average weight of carcass by sex for each species (SANPWS 1991). New South Wales obtains specific information from trappers, chillers, and faunal dealers to determine catch per unit effort, average carcass weight by sex per species, sex ratios of kill, and the distribution of the harvest. This information is available by management zone and on a statewide basis (NSWNPWS 1991 A).

The monitoring and assessment of population trends and harvest returns as specified in the approved kangaroo management programs is intended to ensure the conservation of the species. The monitoring of the harvest presumably provides continual assessment of the health of the macropod populations so overutilization will not occur.

The States and Commonwealth governments have the capability to police and regulate the commercial take of kangaroos so overutilization will not occur. State governments control any illegal trade in kangaroos through regular and random field inspections of shooter and dealer operations and checks on the returns required from them. Law enforcement staff may also respond to reports of illegal activities. The primary focus in law enforcement activities at the State or Territory level is to detect illegal trade long before material may be proposed for export. This is feasible because of the relatively small number of people involved in the commercial kangaroo industry and the kangaroo meat or skins in a secretive manner. There is also little incentive to become involved in illegal activities when quotas are not being reached (on average only about 70 percent of the total quotas have been taken in recent years) (ANPWS 1992).

The Commonwealth capability to control illegal trade rests primarily with Customs officers and the Australian Federal Police. Checks on permitted exports of kangaroo products by Customs officers usually are restricted to the inspection of paperwork associated with the export. Customs officers will conduct more detailed inspections and enforcement activities where intelligence indicates that illegal activities may be occurring (ANPWS 1992). The Wildlife Enforcement Squad within the ANPWS is intended to coordinate enquiries/investigations into allegations of illegal trade in wildlife.

Annual surveys are good indicators that kangaroo populations are not being overutilized. For example, population estimates for red and grey kangaroos (with numbers commercially harvested listed in parentheses) for New South Wales from 1987–1991 total, respectively, 5.4 million (0.47 million), 5.5 million (0.42 million), 7.6 million (0.50 million), 8.6 million (0.63 million), and 9.1 million (0.86 million). Population estimates for 1987 and 1988 are only for the western plains while those in 1989–1991 are based on populations in both the western plains and the tablelands. The total population in NSW apparently increased at least during the years 1989–1991. Index numbers for Queensland for the same period (with numbers commercially harvested listed in parentheses) are estimated at 4.8 million (1.60 million), 4.7 million (1.65 million), 4.1 million (1.62 million), 4.1 million (1.58 million), and 3.0 million (1.49 million). The 1992 index estimate was about 4.1 million which is similar to the 1989 and 1990 levels. Queensland considers its population figure to be an index rather than an estimate because a greater but yet unknown correction factor may be necessary to expand raw data from aerial surveys into population estimates, to account for difficulties in making aerial counts of eastern gray kangaroos in woodland habitats. Mulga woodlands comprise about 190,000 km sq in Queensland and are especially difficult to census from the air. Brigalow

woodlands are also difficult to census but many of these lands have been extensively modified to favor agriculture. Comparable data for annual populations are apparently not available for South Australia and Western Australia. South Australia had an estimated population of 963,000 red and 208,000 western gray kangaroos in 1987 and 1,950,000 red and 194,000 western gray kangaroos in 1990. Western Australia had an estimated population of 2,329,000 red and 652,000 western gray kangaroos in 1987 and 2,178,000 red and 1,070,000 gray kangaroos in 1990. A combined total of about 0.30–0.45 million red and gray kangaroos were commercially harvested annually between 1987–1991, from South Australia and Western Australia.

Drought events can directly affect kangaroo numbers. Data from New South Wales for the 1980s provides a best illustration of population fluctuations associated with droughts. The data unfortunately provide an imperfect comparison because both census procedures and evaluation areas changed during the decade. The trend seems clear, however, a population build up to 1982, a major population reduction measured in 1983 and 1984 in response to the severe drought in summer 1982–1983, and a gradual population recovery to 1990. The population estimated from 1981, with commercial kill numbers in parentheses, are 7,046,000 (489,000); 9,400,000 (664,000); 5,500,000 (400,000); 2,738,000 (229,000); 4,155,000 (326,000); 4,662,000 (445,000); 5,425,000 (473,000); 5,498,000 (421,000); 7,582,000 (500,000); and 8,550,000 (633,000). The sheep range may be entering a drought period in 1992, so both kangaroo numbers and harvest numbers could be expected to diminish in future years.

The major problem in the sheep range is too little herbage and too many herbivores. Efforts to implement a total grazing management policy call for the elimination of feral herbivores and introduced rabbits coupled with reductions in numbers of sheep and kangaroos. The Service notes it is administratively easy to attain reductions of kangaroo numbers through implementation of the commercial harvest but it is also essential to significantly reduce sheep numbers. The Service supports efforts to enhance the value of kangaroos so that graziers may find reasons to manage kangaroos as assets rather than liabilities.

Kangaroo populations are relatively high and range conditions may be deteriorating at this time because of a continuing drought. The Service recognizes that a high 1992 harvest goal of 4,942,000 red and gray kangaroos is an attempt to reduce kangaroo numbers to levels close to their long-term averages in order to minimize economic losses to graziers and so extensive starvation and increased range degradation may not occur. This is a valid management strategy if accompanied by reductions in numbers of domestic herbivores and if reduced harvest quotas occur in the future, should kangaroo populations decline significantly during this ongoing drought event. The Service finds that red and gray kangaroo populations are not being overutilized in mainland Australia at this time.

C. Disease or Predation.

There is no evidence that kangaroos at this time are threatened by disease or predation. Predation by dingos may have been an important limiting factor before the arrival of Europeans. Dingo predation has been severely curtailed to enhance sheep husbandry, and kangaroos have inadvertently benefitted from this action. Mortality of red and gray kangaroos, believed caused by an unidentified post-flood agent, was observed in southwestern Queensland following the April 1990 floods. The impact was short-term (ANPWS 1990), however, presumably because regenerating vegetation stimulated increases in subsequent kangaroos populations.

D. The Inadequacy of Existing Regulatory Mechanisms

Red and gray kangaroos have protected status in all parts of their respective distributional ranges throughout Australia under relevant State or Territory legislation. The responsibility for wildlife conservation rests with individual State or Territorial governments through their faunal conservation authorities (ANPWS 1991). The decision to provide for a commercial harvesting industry is determined by State or Territory government policy and legislation. The Commonwealth has no power in law to influence how States and Territories manage red and gray kangaroos except for those populations subject to export or international agreements. The commonwealth would be powerless, for example, to directly intervene should any individual State or Territory, with no export program, develop or operate an intrastate program that was counter to the Commonwealth views of conservation and management. The ANPWS, however, is aware of the level of protection provided in mainland States and Territories that do not seek to export kangaroo products and the Commonwealth is satisfied that management in those mainland and States and Territories (Victoria, Northern Territory, Australian Capital Territory) is in significant agreement with Commonwealth views of conservation and management (ANPWS 1992).

The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the harvest of kangaroos. Each of these four States has a kangaroo management program which includes provision for the reduction of harvests, if necessary, and each State has the responsibility to implement the provisions of its individual kangaroo management programs. The largest populations of red and gray kangaroos occur in the four States, and the Commonwealth Government does have a mechanism to enhance the protection of those populations. That mechanism exists through the Wildlife Protection (Regulation of Exports and Imports) Act of 1982 [WP(REI)A]. The WP(REI)A consolidated wildlife controls into a single act so the Commonwealth could more effectively implement the objectives of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Commercial trade is permitted only if it has been conclusively established that the native species will not become threatened because of the inadequate control of exports or through the import of some non-native species. The Commonwealth Minister for the Arts, Sport, the Environment and Territories can approve or disapprove of proposed management programs for individual species after having been advised of their merit by the ANPWS and the Minister's Scientific Advisory Committee on Kangaroos. State governments in Western Australia, South Australia, New South Wales, and Queensland have each developed kangaroo management plans that have been approved by the Commonwealth so that an export trade in kangaroo products is allowed from each of those States. The kangaroo management plan for each State has a monitoring provision for both population trends and harvest returns to ensure that conservation of the species is the foremost objective.

An approved kangaroo management program specifies that kangaroo products for export must be from kangaroos taken in a specified and approved manner. An approved kangaroo management program must contain sufficient biological information

so it can be evaluated. There also needs to be ample proof that the biological information has been considered in developing the program, and discussions must have occurred between the State and Commonwealth governments so the management program attain acceptable standards. The management program must ensure that taking in the wild will not be detrimental to the survival of the species, will be carried out at minimal risk to the continuing role of that species in the ecosystem, will occur in a humane manner, and that adequate periodic monitoring and assessment of the effects of the taking of specimens will occur to ensure the long-term survival of the species.

The kangaroo management programs are generally based on multiple-use tenets and are designed to ensure the continued survival of kangaroos throughout their range. The program assume that kangaroos are successful native herbivores whose numbers frequently need to be controlled. The programs are based on population monitoring and use a licensing system to control the legal culling of animals. The individual States have the responsibility to ensure that the killing of kangaroos does not significantly affect the distribution and abundance of the species.

The general objectives of the kangaroo management programs are to (1) maintain viable populations of kangaroos throughout their natural range, (2) minimize the effects of kangaroos on pastoral and agricultural development, (3) maintain populations of kangaroos at levels that will not produce long-term adverse impacts to habitat, and (4) manage the species as a renewable resource. Implementation to achieve objectives includes enabling legislation and an administering organization with sufficient funding to accomplish appropriate research, management, and monitoring activities.

The New South Wales National Parks and Wildlife Service controls the harvest of kangaroos through the National Parks and Wildlife Act 1974. All kangaroos entering commercial trade must be legally taken in accordance with this Act, and it is an offense to kill kangaroos or have them in possession without an appropriate license. Landholders have to approach the NSWNPWS for a permit to kill kangaroos on their property, and tags are issued if the killing is found to be warranted. Shooters, commercial dealers, and tannery operators are each licensed so controls exist at several levels of the commercial harvest. The total allowable commercial kill occurs within the framework of the commercial quota. The development of the quota has been described in a general manner under factor B above.

The legislation protecting and conserving nature in Queensland is the Faunal Conservation Act 1974, soon to be replaced by the Nature Conservation Act 1992. The Nature Conservation Act 1992 creates classes of protected areas; designates classes of wildlife; and provides for development of conservation plans to protect, use and manage protected areas, critical habitats, and classes of wildlife. The Queensland kangaroo management program describes how the activities of shooters and dealers are regulated, how the size and/or composition of the population is to be monitored, the regulations and checks to prevent illegal harvest or over-harvest, and other measures to ensure the conservation of the species. The approval of Queensland's kangaroo management program by the Commonwealth Government indicates an assurance that commercialism will not threaten the survival of kangaroo populations throughout their range.

Kangaroos and all native fauna in South Australia are protected under the National Parks and Wildlife Act 1972. A permit is required to take any animal for damage mitigation purposes and any kangaroo that enters the commercial trade must be tagged with a species-specific tag. Quotas are developed after the direct monitoring of populations on an annual basis, and individual properties may be monitored through ground surveys and property inspections before receiving a quota. Quotas are released in stages so management can respond to changes in climatic conditions. Kangaroo shooters are licensed to shoot on individual properties.

The Department of Conservation and Land Management has the responsibility for the conservation and protection of all flora and fauna under the Western Australia Conservation and Land Management Act of 1984. The Department has authority under the Wildlife Conservation Act 1950 and associated regulations to control the killing of red and gray kangaroos. Landowners and their agents may take kangaroos non-commercially for damage mitigation purposes in open-season areas. Kangaroos can only be taken under a damage license specifically issued to particular properties in non open-season areas. The harvest is monitored by using species-specific tags and by monitoring monthly reports from licensed shooters and dealers. Population trends are monitored on a triennial basis because of the State's vast area and because kangaroo densities are frequently low.

Critics of the kangaroo management program in Australia cite the incongruity of legislation granting protection to the species and the presence of a commercial industry that is responsible for the harvest of several million kangaroos per year. Critics also state that few studies substantiate claims that kangaroos are major depredators of range and agricultural crops, so that arguments that kangaroos are harvested to reduce damage especially to range products are specious, especially when sheep numbers remain too high for fragile ranges. The Service believes that any perceived incongruity in domestic laws needs to be resolved domestically and is not a reason for an ESA listing decision. It is additionally not necessary for the Service to address the argument that the commercial killing of kangaroos is solely for damage mitigation purposes to make a decision on a listing status. Kangaroos incidentally prosper at this time because of land management accomplished for other purposes. Active kangaroo management essentially only regulates kind and level of take so that overutilization does not occur and so that sustainable populations are maintained throughout their range. Regulatory mechanisms in place are adequate to perform this function.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Kangaroo populations fluctuate in response to environmental and climatic conditions. Appropriate wildlife management agencies routinely evaluate kangaroo populations over a wide area and monitor current harvest statistics to track population trends. This activity is intended to provide a sufficient understanding so that harvest activities, can be slowed or terminated if that becomes necessary. This may be appropriate, especially during drought, when kangaroo populations may become reduced and are most vulnerable to population control activities.

There is great concern among critics that management programs both for individual States and the Commonwealth are insensitive to the plight of kangaroos during environmental stress periods as during the 1982–1983 drought. The perceived insensitivity at that time was an apparent inability or unwillingness to reduce the commercial harvest of kangaroos in what critics considered a timely manner during an environmental stress period. The critic argue that demands from the pastoral industry and

the commercial kangaroo industry superseded important kangaroo management decisions. The present concern with insensitivity is that many kangaroo habitats are experiencing droughts during 1992 at a time when a record macropod harvest quota of 5.2 million animals (including 4,942,000 red and gray kangaroos) has been established. The Commonwealth indicates (ANPWS 1992) that the determination of quotas during a dry period as during a normal period is on the basis of estimated kangaroo populations. Droughts are quite variable in their duration and distribution and kangaroo populations do not automatically decline in response to dry seasonal conditions. The 1983 harvest quotas were set at high levels because kangaroo populations measured during the June–August 1982 winter period were still high. The actual harvest during 1983 was considerably less than the actual quota and the quotas in 1984 and 1985 were maintained below 2 million animals as populations recovered. Kangaroo populations have risen across Australia since that time and quotas have correspondingly increased. The 1992 quota also reflected high kangaroo population estimates during the winter of June–August 1991. The future harvest quota is expected to diminish if kangaroo populations diminish because of the 1992 drought event. Quotas are expected to be maintained at the lower level until populations again recover. It is a proper management tenet to progressively destock the land as a dry season develops into a drought. Wild animal populations can only be reduced in such circumstances by killing animals or leaving them to die from lack of feed or water. Harvesting of kangaroos going into a drought ensures that limited resources are maintained for a longer period as populations decline.

States have additional regulatory mechanisms to reduce actual harvest to levels below the commercial quota. Licenses to take animals may be amended to restrict the numbers taken in a particular area, to limit harvesting to certain species, or to cease hunting altogether. Thus, management may progressively restrict and then cease all harvesting of kangaroos in response to declining populations. Following the 1982–83 drought in New South Wales, a moratorium on harvesting was applied to some of the worst affected areas to enable populations to recover. Should a severe drought occur during the 1990's, States can be expected to respond in an appropriate manner to changes in the kangaroo populations. The ultimate assurance that conservation of the species will be given primary consideration is the approval and review of ongoing operations of State management programs by the Commonwealth Government (ANPWS 1992).

Control over the methods used to kill kangaroos rests with State and Territory management personnel and is determined by relevant State and Territory legislation. Thus, new harvest technologies that could threaten kangaroo populations cannot be introduced without governmental approval.

Summary of Petition Findings

The Service's regulations at 50 CFR 424.11(d) allow a species to be delisted by reason of extinction, recovery or because the original listing data was in error, if the best scientific and commercial information available indicates the species is neither threatened nor endangered. The Service proposes to delist these three species of kangaroos on the basis of their successful recovery. Recovery in this instance pertains to the fact that present kangaroo populations are substantial and kangaroo management programs have been developed and implemented that are sufficient to maintain sustainable kangaroo populations throughout their present range.

The Service proposed on April 1, 1974 (39 FR 11903) to list the three species of kangaroos as endangered foreign wildlife. The Service, at that time, noted that reductions in kangaroo habitat and range were evident due to the expansion of human activities, the replacement of native vegetation by exotic plant species, and man's alterations of habitat for a number of reasons. The Service also suggested that: Commercial exploitation in combination with natural losses might exceed the kangaroo's reproductive capability; the information base was inadequate to develop kangaroo management plans; regulations were inconsistent between States, and no coordinated management plan existed; the control and monitoring of the kangaroo harvest was inadequate; no indications existed that harvest quotas were designed to ensure sustained yields; the funding and staffing for conservation activities were inadequate; only limited quantities of land had been set-aside for conservation reserves; and the impacts of periodic droughts and floods had not been adequately considered in kangaroo management. The Service with the publication of the April 1, 1974, proposed rule sought additional information about kangaroos and kangaroo management. The Service, after evaluation the additional information received in response to the proposed rule, determined on December 30, 1974 (39 FR 44900), that the three species of kangaroos were more appropriately classified as threatened. The Service, at that time, also prohibited the importation of kangaroos for commercial purposes. The Service stated in that **Federal Register** notice that while substantial acreages of kangaroo habitat had been lost, those acreages were small relative to the total available kangaroo habitat and range. The Service further noted there was no evidence to suggest overutilization, on a species population basis, nationwide. All states were acknowledged as having harvest quotas, and trends throughout Australia indicated the enhanced regulation of kangaroo harvests. The Service noted that: inadequacies existed in attaining population data for survey and monitoring actions; regulations and management policies were not uniform between States; and no national coordination existed in kangaroo management activities. Both acreages of lands set aside for native wildlife and law enforcement capabilities were found to be deficient. The Service determined that management was sufficient, however, so the species were not likely to become extinct. The Service declared that prohibitions against commerce in kangaroos and kangaroo products from the three threatened species could be lifted, in the future, upon receiving appropriate certification from the Australian Government. That certification for an individual Australian State would declare that the individual State had developed an effective sustained yield management program for the kangaroo species, and that the taking of kangaroos in that individual State would not be detrimental to the survival of the species.

The Service in a **Federal Register** notice of April 29, 1981 (46 FR 23929) indicated that Western Australia, South Australia, Queensland, and New South Wales had developed effective sustained yield programs for the three species of kangaroos and had adequately indicated that the taking of the three species of kangaroos would not be detrimental to the survival of the species. That notice additionally established a special rule (50 CFR 17.40(a)) which permitted the importation of red, eastern gray and western gray kangaroos, and their parts and products, into the United States. The Greenspeace USA petition of December 20, 1989, sought to reinstate the ban on commercial importation of

kangaroos prodı cts by asking for repeal of the special rule at 50 CFR 17.40(a).

The Service in two **Federal Register** notices of April 8, 1983, proposed to delist the three species of kangaroos (48 FR 15428) and to continue the commercial importation of kangaroos (48 FR 15434). The final rule allowing the continuation of the importation of kangaroos was published on August 1, 1983 (48 FR 34757). The proposed rule to delist the three kangaroo species provided an estimate of about 18 million kangaroos in the surveyed areas of Western Australia, South Australia, Queensland and New South Wales. The proposed rule also indicated that kangaroos are legally protected species and their legal taking is only by permitted actions. Law enforcement was viewed as adequate, the Commonwealth Government was noted to have a mechanism to regulate the export of kangaroo products, survey and monitoring procedures were being developed, a nature conservation reserve system was being established, and kangaroo management programs were being developed and implemented. The declared intent of kangaroo management was to reduce agricultural damage and not necessarily to provide sustained yields of kangaroo products. It was additionally pointed out that the status of kangaroos had not been affected by the lifting of the ban on the commercial importation of kangaroo products into the United States. The Service withdrew the proposed rule to delist the three kangaroo species on April 24, 1984 (49 FR 17555) after receiving new data from the Australian Government that the severe drought in the summer of 1982–3 had caused significant reductions in kangaroo populations. It was noted that the drougt was broken in winter 1983, that kangaroos were again beginning to breed, but the ability of kangaroo populations to recover from the major 1982–3 population fluctuation was unknown. It was further noted that the delisting action could be reconsidered after the Service had a better understanding of how kangaroo populations recover from drought events.

The present proposed rule notes that conditions the Service found to justify a delisting action in 1983 are measurably improved in 1992. Kangaroo populations are now managed on a sustained yield basis, and a better understanding exists of how kangaroo populations fluctuate with and recover from drought events. The sensitivity of Australian Commonwealth and State Governments to the management and control of harvest during drought events seems to be improved. The basic for this delisting action is the successful recovery of kangaroo populations. The present kangaroo populations may realistically be about what they were when the species were first listed as threatened in 1974, but kangaroo populations are considered recovered because management by Commonwealth and State governments has achieved a level of proficiency that reasonably guarantees the well-being of kangaroos throughout their present range. Kangaroos in mainland Australia are managed at least as well and may be as numerous as are deer of the genus *Odocoileus* in North America.

The Service finds that extensive kangaroo habitats remain in mainland Australia, that management for pastoral industries may favor kangaroo production, and that an extensive series of National Parks and Reserves have been established (some of which are important to kangaroos). The Service also finds that adequate kangaroo management plans have been developed and implemented. Kangaroo populations are systematically and periodically assessed, and population data, environmental conditions, and public consultation inputs are weighed in the development of harvest quotas. The harvest operation is found to be a licensed action that occurs on individual properties at the request and permission of landholders. Authorities within the States have the responsibilities and capabilities to monitor the harvest so that overutilization will not threaten the substantial kangaroo population existing within individual states. Disease and/or predation do not threaten these kangaroos species. The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the kangaroo harvest. The Commonwealth has the capability to approve, disapprove or require modification of kangaroo management programs from those States wishing to export kangaroo products so a consistency in planning and implementing management actions occurs within mainland Australia. The States have the responsibility to regulate all aspects of the kangaroo harvest, to provide adequate law enforcement, to conduct appropriate management and research, to monitor populations especially during drought events, and the States have the ability to modify harvests if environmental or other variables unexpectedly impact kangaroo populations. It is the present good condition of kangaroo management in mainland Australia that causes the Service to find the action recommended by the petition to delist the three species of kangaroos, filed by the Wildlife Legislative Fund of America, to be warranted.

The Monitoring of Recovered Kangaroo Species

Requirements of the Act for monitoring of recovered species also apply to foreign species. Those requirements include the implementation of a monitoring program to ensure that the species continues to fare well after the delisting action is finalized. The Service is primarily dependent on input from the foreign country in the monitoring of recovered species in foreign lands.

Monitoring plans frequently address population parameters, distribution, the health of the species, the conditions of the habitat for the species, and any new threats identified as relevant to the species. The monitoring plan for the 3 kangaroos would require that the Commonwealth Government provide an annual report to the Service, by the end of the calendar year, for each of the five years following the finalization of this rule. The monitoring plan would need to contain information describing:

1. Estimated populations for each species within each harvest State using best technologies currently available;
2. Details of commercial and non-commercial mortalities, using best technologies currently available;
3. Current distribution of the species, using best technologies currently available;
4. Extent of lands set-aside for parks and reserves that provide protected and useful habitats for kangaroos;
5. Changes in regulatory programs that impact the well-being of the species;
6. New threats to the species; and
7. Progress towards the successful implementation of the Total Grazing Management Policy (TGMP) that strives to balance the forage demands of all herbivore consumers with available range resources to enhance the conservation of range ecosystems. Programs that enhance the value of kangaroos so they are managed as important wildlife resources are important aspects of a TGMP. It is anticipated that a successful TGMP will have long-term population goals for kangaroo species in different ecosystems. The Service recognizes that short-term population fluctuations in response to drought or some other environmental event are not evidence

that long-term population goals are not being achieved.

The Service has the responsibility to annually review the monitoring reports and to access the continued recovery of the species. Three alternatives exist after the 5-year monitoring program has been concluded. They are: (1) If the species no longer meet the 5-factor test for recovery then they should be relisted using the emergency listing procedures; (2) if the species are stable but threats are increasing then the monitoring efforts should continue; and (3) if the species are stable or increasing and the 5-factor test is still met, then the monitoring effort can be discontinued. The Service can invoke emergency listing procedures at any time in response to a significant threat to the well being of any of the three species.

Effects of this Proposed Rule

Individuals of any species listed as Threatened can be imported into the United States, with suitable permits, for scientific purposes, enhancement of propagation or survival of the species, educational purposes, zoological exhibition, or special purposes consistent with the purposes of the Act. A special regulation was published at the time that the red, eastern gray, and western gray kangaroos were listed as Threatened in 1974 that made it unlawful to import these species, or their parts or products, into the United States for commercial purposes until the Australian States could assure the United States that they had effective management plans for the kangaroos, and that taking would not be detrimental to their survival. On April 29, 1981, the Australian States met those conditions, and a special regulation was published in the Federal Register (46 FR 23938) which made it lawful to import the three species of kangaroos for commercial purposes provided they were tagged or otherwise identified as removed from the wild in accordance with the management plans of the Australian States. The Service published a Final Rule on August 1, 1983 (48 FR 34757) permitting the commercial importation of kangaroos to continue.

The effect of this delisting action will be negligible because the restrictive activities associated with the Threatened classification have already been permitted by the Special Rule at 50 CFR 17.40(a)(1)(i)(B). If the present proposed rule is made final then the eastern gray kangaroo (*Macropus giganteus*, all subspecies except *tasmaniensis*), the red kangaroo (*M. rufus*), and the western gray kangaroo (*M. fuliginous*) will be removed from the list of Endangered and Threatened Wildlife as codified in 50 CFR 17.11, and as is presently the case, none of the restrictions, regulations, or prohibitions of the Act would apply to them.

The subspecies *M. g. tasmaniensis* is retained on the list of endangered species in 50 CFR 17.11 because no assessment of this subspecies or of kangaroo management in Tasmania was undertaken in this evaluation.

The special rule in 50 CFR § 17.40(a)(1)(i)(B) which allowed the import of eastern gray, red, and western gray kangaroos, including parts and products of such wildlife which have been tagged or otherwise identified as removed from the wild, in accordance with the management plans of Australian States, into the United States without permits for individual shipments, otherwise required by 50 CFR part 17(a), would be rescinded. *M. g. tasmaniensis* is restricted to Tasmania, and Tasmania has not prepared a kangaroo management plan for this subspecies so the Commonwealth government has not allowed any export of *M. g. tasmaniensis* or their parts and products. The proposed rescinding of § 17.40(a) will therefore not be relevant to this non-traded but endangered subspecies.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments should be related to factors A–E described above.

Final promulgation of the regulations on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal, must be in writing, and should be directed to the party named in the above ADDRESSES section.

National Environmental Policy Act

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

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NSWNPWS 1991 B. Proposed kangaroo quotas for 1992 for New South Wales. New South Wales National Parks and Wildl. Serv., Sydney. 24pp.

QNPWS 1992. 1992–1994 management program for the commercially taken macropods in Queensland. Queensland National Parks and Wildl. Serv., Brisbane. 13pp + Appendices.

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WADCLM, 1991 A. Management program for the western grey kangaroo in Western Australia 1992–1994. Western Australia Dept. Conserv. and Land Mgmt., Perth. 11pp + 2 Figs. + App. A.

WADCLM. 1992 B. Management program for the red kangaroo in Western Australia 1992–1994. Western Australia Dept. Conserv. and Land Mgmt., Perth. 11pp + 2 Figs. + App. A.

Author

Dr. Henry L. Short, Office of Scientific Authority, U.S. Fish and Wildlife

Service, Washington, DC 20240 (703–358–1708).

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.

List of Subjects in 50 CFR Part 17

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

Proposed Rule

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by removing the entries for the eastern gray kangaroo (*Macropus giganteus*, all subspecies except *tasmaniensis*), the red kangaroo (*M. rufus*) and the western gray kangaroo (*M. fuliginous*) from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

3. It is proposed to remove and reserve paragraph (a) of § 17.40.

Dated: January 14, 1993.

Bruce Blanchard,

Deputy Director.

[FR Doc. 93–1363 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 12
Thursday, January 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-191-1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of November 1992. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245. For copies of the list or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of November 1992. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 13th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-1306 Filed 1-19-93; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Decision Notice (DN) and Finding of No Significant Impact (FONSI) for the California Spotted Owl Interim Guidelines Environmental Assessment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that on January 13, 1993, Regional Forester Ronald E. Stewart for the Pacific Southwest Region approved the Decision Notice (DN) and Finding of No Significant Impact (FONSI) for the California Spotted Owl Interim Guidelines Environmental Assessment. It is his decision to adopt the findings of a technical team of wildlife biologists for approximately two years or until a longer term strategy to maintain viability of the owl is adopted. The DN amends the Regional Guide and ten forest plans, which include the Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus and Tahoe National Forests, as well as the Lake Tahoe Basin Management Unit.

The Decision Notice and Finding of No Significant Impact are available upon request from the Regional Forester, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, phone (415) 705-2870.

Dated: January 13, 1993.

Richard O. Benjamin,

Acting Regional Forester.

[FR Doc. 93-1262 Filed 1-19-93; 8:45 am]

BILLING CODE 3410-11-M

Food Safety and Inspection Service

[Docket No. 93-001N]

National Advisory Committee on Microbiological Criteria for Foods; Subcommittee Meetings

Notice is hereby given that subcommittee meetings of the National Advisory Committee on Microbiological Criteria for Foods will be held on Tuesday through Friday, February 2-5, 1993. The meetings will be held at the Sheraton World Resort, 10100 International Drive, Orlando, Florida 32821, telephone (407) 352-1100. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing practices.

Schedule sessions are as follows:

(1) Tuesday, February 2, 8:30 a.m. to 4:30 p.m.—Concurrent sessions of the Meat and Poultry and Seafood Subcommittee.
(2) Wednesday, February 3, 8:30 a.m. to 4:30 p.m.—Seafood Subcommittee; 8:30 a.m. to 12 noon—Meat and Poultry Subcommittee; 1 p.m. to 4:30 p.m.—Risk Analysis Subcommittee.
(3) Thursday, February 4, 8:30 a.m. to 4:30 p.m.—HACCP Subcommittee.
(4) Friday, February 5, 8:30 a.m. to 4:30 p.m.—Campylobacter Subcommittee.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Mr. Bill Dennis, Assistant to the Administrator, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please refer to docket number 93–001N. Background materials are available for inspection by contacting Mr. Craig Fedchock, Advisory Committee Specialist, on (202) 720–9150.

Done at Washington, DC, on January 14, 1993.

Donald L. White,

Associate Administrator Food Safety and Inspection Service.

[FR Doc. 93–1307 Filed 1–19–93; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 2106–01 and 2106–02]

Roman Trzaskowski; Decision and Order

In the matter of: Roman Trazaskowski, individually and doing business as Rotra Trading Co. with addresses at 32–38 Cromwell Street Collingwood, Victoria Australia and 51–55 Johnson Street Fitzroy, Victoria Australia, Respondents.

On March 3, 1992, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), issued a Charging Letter against Roman Trzaskowski, individually and doing business as Rotra Trading Co. (hereinafter collectively referred to as Respondents), alleging that Respondents violated the provisions of § 787.6 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991)) (the Act),[1] in that on or about September 12, 1987 and on or about November 18, 1987, Respondents reexported U.S.-origin electronic equipment from Australia to Austria, without obtaining from the Department the reexport authorization required.

Respondents filed an answer to the Charging Letter. After the answer was filed, the Department and Respondents entered into a Consent Agreement pursuant to § 788.17(a) of the Regulations, whereby they agreed to settle the matter by the Department's imposing a civil penalty of $5,000, the payment of $2,500 of which is suspended, and the Department's denying Respondents export privileges for five years, two and one-half years of which is suspended, as set forth below.

The Administrative Law Judge has recommended that I approve the terms of the Consent Agreement and I approve those terms.

Therefore, it is ordered:

1. A civil penalty in the amount of $5,000 is assessed against Respondents. The sum of $2,500 shall be paid within 30 days from the date of entry of this Order. As authorized by § 788.16(c) of the Regulations, payment of the remaining balance of $2,500 shall be suspended for a period of five years and shall thereafter be waived, provided that, during the period of suspension, Respondents have committed no violation of the Act or any regulation, order or license issued under the Act. Payment shall be made in the manner specified in the attached instructions.

2. All outstanding individual validated licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

3. Roman Trzaskowski, individually and doing business as Rotra Trading Co., with addresses at 32–38 Cromwell Street, Collingwood, Victoria, Australia, and 51–55 Johnson Street, Fitzroy, Victoria, Australia, and all successors, assigns, officers, partners, representatives, agents and employees, for a period of five years from the date of the entry of this Order, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

4. As authorized by § 788.16(c) of the Regulations, the denial period herein provided for shall be suspended for a period of two and one-half years beginning two and one-half years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Respondents have committed no violation of the Act or any regulation, order or license issued under the Act. The suspended portion of the denial period is also contingent upon Respondents' timely payment of the civil penalty, as provided for herein. If Respondents fail or refuse to pay the civil penalty imposed, the suspended portion of the denial period will be reinstated.

5. Trzaskowski has agreed that he will reasonably cooperate with the Department's continuing investigation into the facts and circumstances that gave rise to the allegations set forth in the Charging Letter. Trzaskowski's failure or refusal to reasonably cooperate shall result in the revocation of the suspended portion of the civil penalty and the suspended period of denial of export privileges.

6. After notice and opportunity for comment, any person, firm, corporation, or business organization related to

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)), continuing in effect the Regulations, and, to the extent permitted by law, the provisions of the Act.

Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

7. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(b) In any reexport thereof; or

(c) In any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

8. The Charging Letter and the Consent Agreement shall be made available to the public. A copy of this Order shall be served upon Respondents and published in the **Federal Register**.

This constitutes the final agency action in this matter.

Dated: January 12, 1993.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

[FR Doc. 93–1233 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 71–91]

Foreign-Trade Zone 56—Oakland, CA; Withdrawal of Application for Subzone Status for Apple Computer Plant

Notice is hereby given of the withdrawal of the application submitted by the City of Oakland, California, grantee of FTZ 56, requesting authority for subzone status for the electronic data processing and communications equipment manufacturing plant of Apple Computer, Inc., in Fremont, Alameda County, California. The application was filed on November 5, 1991 (56 FR 58354, 11/19/91).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: January 13, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–1347 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 625]

Approval of Export Manufacturing Activity (Luggage, Bags, and Cases) Within Foreign-Trade Zone 9, Honolulu, HI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the Foreign-Trade Zones (FTZ) Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Department of Business, Economic Development and Tourism of the State of Hawaii, grantee of FTZ 9, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of the Hawaii Bag Company, Inc., to manufacture leather and plastic luggage, bags and cases for export under zone procedures within FTZ 9, Honolulu, Hawaii (filed 11/22/92, A(32b1)-4-92; Doc. 40–92, assigned 12/29/92);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 11th day of January, 1993, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–1348 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 626]

Resolution and Order Approving the Application of the Greater Metropolitan Foreign Trade Zone Commission for Special-Purpose Subzone Status for Export Activity Davisco International, Inc. (Intermediate Dairy Products) St. Peter, Nicollet, and Le Sueur, MN

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Metropolitan Foreign Trade Zone Commission, grantee of Foreign-Trade Zone 119, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on January 10, 1992, and amended on October 6, 1992, requesting special-purpose subzone status for export activity at the intermediate dairy products manufacturing facilities of Davisco International, Inc., in St. Peter, Nicollet, and Le Sueur, Minnesota, adjacent to the Minneapolis-St. Paul Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, subject to a restriction requiring that all foreign-origin dairy products admitted to the subzone shall be reexported, as indicated in the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Davisco International, Inc., St. Peter, Nicollet, and Le Sueur, Minnesota

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C.

81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Metropolitan Foreign Trade Zone Commission, Grantee of Foreign-Trade Zone No. 119, for authority to establish a special-purpose subzone for export activity at the intermediate diary products manufacturing facilities of Davisco International, Inc., in St. Peter and Nicollet, Minnesota, was filed by the Board on January 10, 1992, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1–92, 57 FR 3163, 1–28–92);

Whereas, the applicant amended the application on October 6, 1992, to request subzone status for an additional Davisco plant site located in Le Sueur, Minnesota (57 FR 47042, 10–14–92); and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application for export processing is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 119A) at the Davisco International, Inc., facilities in St. Peter, Nicollet, and Le Sueur, Minnesota, at the four locations described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 11th day of January, 1993, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–1349 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 627]

Expansion of Foreign-Trade Zone 130; Blaine, WA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Port of Bellingham of Whatcom County (Washington), Grantee of Foreign-Trade Zone No. 130, for authority to expand its general-purpose zone in Blaine, Washington, within the Blaine Customs port of entry, was filed by the Board on November 6, 1991, and notice inviting public comment was given in the **Federal Register** on January 16, 1992 (Docket 84–91, 57 FR 1897);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Blaine, Washington, area; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on November 6, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of January, 1993.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–1350 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–357–405]

Barbed Wire and Barbless Fencing Wire From Argentina; Determination Not To Revoke the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on barbed wire and barbless fencing wire from Argentina.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for five consecutive annual anniversary months and no interested party objects to the revocation (19 CFR 353.25(d)(4)(iii) (1992)). We had not received a request to conduct an administrative review of the antidumping duty order on barbed wire and barbless fencing wire from Argentina (48 FR 49126, November 13, 1986) for the last four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 5, 1992, we published in the **Federal Register** a notice of intent to revoke the antidumping duty order and served written notice of the intent to revoke to each interested party on the Department's service list.

On November 30, 1992, Keystone Consolidated Industries, Inc., Insteel Industries, Inc. and Oklahoma Steel & Wire Co., interested parties under 19 CFR 353.2(k), objected to our intent to revoke this antidumping duty order. Therefore, because interested parties object to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: January 6, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–1343 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–819]

Final Determination of Sales at Less Than Fair Value: Ferrosilicon From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0371.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination

on November 5, 1992 (57 FR 52759), the following event occurred.

On November 23, 1992, petitioners filed a case brief regarding the Department's use of best information available (BIA) in the preliminary determination.

On January 8, 1993, a "reseller" of ferrosilicon from the People's Republic of China (PRC) filed a request for postponement of the final determination for 60 days.

On January 12, 1993, petitioners submitted comments to the Department objecting to any postponement of the final determination.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Tariff Act of 1930, as amended, (the Act), that the use of BIA is appropriate for sales of the subject merchandise in this investigation. In deciding to use BIA, section 776(c) provides that the Department of Commerce (the Department) may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of ferrosilicon from the PRC did not respond to any request for information.

As outlined in the preliminary determination, the Department made several attempts to obtain information from the American Embassy in Beijing, the Embassy of the PRC, from the Ministry of Foreign Economics, Relations, and Trade, and from the Chamber of Commerce. However, the Department received no information from any of these sources. Consequently, we based our preliminary determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Fair Value Comparisons

To determine whether sales of ferrosilicon from the PRC were made at less than fair value, we compared the United States price, (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on BIA, which was information supplied by petitioners. Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon for the period September 1991 to February 1992. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Foreign Market Value

We based FMV on BIA, which was information supplied by the petitioner. Petitioners calculated FMV on the basis of the valuation of the factors of production for AIMCOR, a U.S. producer of ferrosilicon. In valuing the factors of production, petitioners used India as a surrogate country. For purposes of the initiation, we accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used AIMCOR's factors for raw material and processing material inputs, electricity, and labor. The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. However, petitioners made an adjustment to the labor factor to account for more labor-intensive ferrosilicon operations existing in the PRC. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1991 wage rates and energy rates in India. Petitioners based on the value of raw material costs for steel scrap, quartzite, coke, bituminous coal, diesel fuel, and water on Indian values. Petitioners based the value of raw material costs for electrode paste on a delivered import price from Italy to India. Petitioners based raw material costs for charcoal and woodchips, and other processing materials on AIMCOR's average costs from October 1990 through September 1991.

Pursuant to section 773(c) of the Act, petitioners added the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

Interested Party Comment

A reseller of ferrosilicon from the PRC, asserting that it accounts for a significant percentage of ferrosilicon imported from the PRC in 1991, requested that the Department postpone the final determination for 60 days in order to study the situation regarding ferrosilicon from the PRC, to consult with its PRC suppliers and U.S. customers and to decide whether to retain counsel for purposes of evaluating its procedural and legal rights in this investigation.

Petitioner responded that the Department should not postpone the final determination because such an extension is not available to the party requesting postponement for purposes of 19 CFR 353.20(b), there is no

evidence that this party was a reseller of a major portion of ferrosilicon from the PRC during the POI, and under the circumstances of this investigation, the requested extension would serve no purpose.

DOC Position

We agree with petitioner. We declined to postpone the final determination because the party requesting postponement does not qualify as a "reseller" in this investigation, pursuant to 19 CFR 353.2(s), because its sales were not used to calculate either FMV or USP. Therefore, the party in question cannot request a postponement under 19 CFR 353.20(b).

Moreover, insofar as the requesting party wanted the additional time to consult with its suppliers, any new information obtained therefrom could not be utilized by the Department in its less than fair value calculation because the deadline for submission of factual information, pursuant to 19 CFR 353.31, had passed. Therefore, it would have been futile to postpone the final determination.

Accordingly, the Department denied the request to postpone the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ferrosilicon from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin (percent)
All manufacturers/producers/exporters	137.73

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only remainder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: January 12, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1344 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–802]

3.5 Inch Microdisks and Coated Media Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from one respondent, Hitachi Maxell, Ltd. (HML), the Department of Commerce has conducted an administrative review of the antidumping duty order on 3.5 inch microdisks and coated media thereof (microdisks) from Japan. The review covers one manufacturer/ exporter of this merchandise to the United States, HML, and the period April 1, 1991 through March 31, 1992.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1992, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (57 FR 11934) of the antidumping duty order on microdisks from Japan (54 FR 13406, April 3, 1989). On April 29, 1992, one respondent, HML, requested an administrative review. We initiated the review, covering April 1, 1991 through March 31, 1992, on May 22, 1992 (57 FR 21769). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on November 15, 1991 (56 FR 58040). An amendment of those results was published in the **Federal Register** on December 23, 1991 (56 FR 66430) to correct clerical errors.

Scope of the Review

Imports covered by the review are shipments of 3.5 inch microdisks and coated media thereof from Japan, currently classifiable under Harmonized Tariff Schedule (HTS) item number 8523.20.0000. The HTS item number is provided for convenience and for Customs purposes. The written descriptions remain dispositive.

A 3.5 inch microdisk is a treated or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. These microdisks are used to record and store encoded digital computer information for access by a 3.5 inch floppy disk drive. The 3.5 inch microdisk includes single-sided, double-sided, or high-density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. The 3.5 inch microdisk is intended for use specifically in a 3.5 inch floppy disk drive.

The review covers one Japanese manufacturer/exporter of this merchandise to the United States, HML, and the period April 1, 1991 through March 31, 1992.

Such or Similar Comparisons

Pursuant to section 771(16) of the Tariff Act, we established two categories of "such or similar" merchandise: (1) 3.5 inch mircodisks and (2) coated media.

In order to determine whether there were sufficient sales of microdisks and coated media in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within the such or similar category to the volume of third-country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Tariff Act.

HML had sufficient home market sales of 3.5 inch microdisks to serve as a basis for calculating FMV for microdisks.

There were no sales of coated media in the home market or in any third country during the period of review (POR). Therefore, the basis of FMV for coated media sales to the United States is constructed value (CV).

United States Price

We calculated the United States price based on exporter's sales price (ESP) in accordance with section 772(c) of the Tariff Act.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, discounts, rebates, credit expenses, indirect selling expenses, and U.S. brokerage and handling. In accordance with section 772(d)(1)(C) of the Tariff Act, we added uncollected duties and taxes, which would have been collected if the merchandise had not been exported.

In accordance with section 772(e)(2) of the Tariff Act, we made further deductions, where appropriate for advertising. We also made deductions for commissions and indirect selling expenses, including inventory carrying costs, and indirect selling expenses associated with U.S. sales that were incurred in Japan.

For microdisks manufactured in the United States from Japanese coated media, we also deducted all value-added in the United States, pursuant to section 772(e)(3) of the Tariff Act. The value-added consists of the cost associated with the production and sale of the complete microdisk, other than the cost associated with the imported media, and a proportional amount of profit or loss related to the value-added. Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling cost incurred by the company for the microdisk. The total profit or loss was then allocated proportionately to all components of cost.

In determining the cost incurred to produce the microdisk, the Department included (1) the cost of manufacture (COM), (2) movement and packing expenses, and (3) selling and administrative expenses, R&D expenses, and interest expenses.

Foreign Market Value

We calculated FMV based on home market sales prices or CV in accordance with section 773 of the Tariff Act.

We calculated FMV for comparison to U.S. ESP sales of microdisks based on packed, delivered prices of identical merchandise in the home market. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, selling expenses, indirect selling expenses, packing, discounts, inventory carrying costs and imputed credit.

The deduction for indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56(b) of the Department's regulations. We added U.S. packing costs to the FMV in accordance with section 773 of the Tariff Act. We made an upward adjustment to the tax-exclusive home market prices for the uncollected duties and taxes we computed for the U.S. price in accordance with section 772(d)(1)(C) of the Tariff Act. We computed the value added tax (VAT) adjustment based on a price net of all movement charges.

All coated media sold in the United States was further manufactured by Maxell Corporation of America into microdisks. There were no sales of coated media in the home market or in any third country during the POR. Because there were no sales of such or similar merchandise, we used the CV of the imported coated media in order to calculate the MFV of the coated media in accordance with sections 773(a)(2) and 773(e) of the Tariff Act.

Therefore, for coated media sold in the United States for further manufacture, we calculated FMV based on CV, in accordance with section 773(e) of the Tariff Act. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit, and packing.

We used actual general expenses in accordance with section 773(e)(1)(B)(i) of the Tariff Act, because these expenses exceeded the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Tariff Act, because the actual amount was less than the statutory minimum of eight percent. Then we added U.S. packing costs to FMV.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period April 1, 1991 through March 31, 1992:

Manufacturer/producer/exporter	Margin (percent)
Hitachi Maxell Ltd	8.83

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of the review the Department will issue appraisement instructions on HML directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of Japanese 3.5 inch microdisks and coated media entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for HML will be 8.83 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate shall continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters shall be 8.83 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs from interested parties may be submitted not later than 14 days before the date of the hearing. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 7 days after the submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 13, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93-1345 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Modification of Scientific Research Permit (P278C).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 579 issued to Dr. Brent S. Stewart, Hubbs Marine Research Center, 1700 South Shores Road, San Diego, California 92109 (52 FR 3037), has been modified to extend the effective date through March 31, 1993. This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910; and Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: January 12, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1266 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTIONS: Issuance of Scientific Research Permit (P524).

On November 20, 1992, notice was published in the **Federal Register** (57 FR 54771) that an application had been filed by The University of Hawaii at Manoa, Kewalo Basin Marine Mammal Laboratory, 1129 Ala Moana Boulevard, Honolulu, Hawaii 96814, to approach, up to four times each, up to 2000 humpback whales (*Megaptera novaeangliae*) annually in Hawaiian waters over a five-year period during the course of photo-identification, observational, and acoustic recording studies, and aerial surveys for purposes of scientific research.

Notice is hereby given that on January 12, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (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 to the above applicants to harass the species/numbers of marine mammals described above, subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on the findings that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This permit was also 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.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: January 12, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1267 Filed 1–19–93; 8:45 am]

BBILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P319C).

On November 16, 1992, notice was published in the **Federal Register** (57 FR 54051) than an application had been filed by Randall S. Wells, Ph.D., Dolphin Biology Research Institute, c/o Mote Marine Laboratory, 1600 Thompson Parkway, Sarasota, FL 34236, to approach up to 3000 Atlantic bottlenose dolphins (*Tursiops truncatus*) for photo-identification, censuses, behavioral observations, and underwater acoustic recordings.

Notice is hereby given that on January 13, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain Conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

The Permit and supporting documentation are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: January 13, 1993.

Michael F. Tillman, Ph.D.,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1268 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

January 13, 1993.

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

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted to reflect

new base limits for the July 1, 1992 through June 30, 1993 agreement year. These adjustments were agreed to in an exchange of letters dated November 16 and December 30, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 24597, published on June 10, 1992.

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

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 13, 1993.

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, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1992 and extends through June 30, 1993.

Effective on January 25, 1993, you are directed to amend further the directive dated June 5, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	6,289,232 square meters.
313	11,598,879 square meters.
314	40,418,783 square meters.
317/617/326	17,562,221 square meters of which not more than 2,640,240 square meters shall be in Category 326.
625/626/627/628/629	18,697,807 square meters.
331/631	1,289,684 dozen pairs.
340/640	1,107,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30 1992.

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,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1271 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Egypt

January 13, 1993.

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

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements to require manufacturer's identification.

EFFECTIVE DATE: February 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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 existing export visa arrangement between the Governments of the United States and the Arab Republic of Egypt is being amended, for goods produced or manufactured in Egypt and exported from Egypt on and after February 15, 1993, 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 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 circular visa 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 Egypt. However, for goods exported during the period February 15, 1993 through March 14, 1993, the importer may type this information on the front of the original visa document. For goods exported on or after March 15, 1993 without the M.I.D. on the export visa document, a new visa containing this information must be obtained.

See 52 FR 48857, published on December 28, 1987.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 13, 1993.

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 December 21, 1987, as amended, 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 Egypt which were not properly visaed by the Government of the Arab Republic of Egypt.

Effective on February 15, 1993, for goods produced or manufactured in Egypt and exported from Egypt on and after February 15, 1993, 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 be placed on the textile visa document. This information shall appear on the export visa document prior to export from Egypt. However, for goods exported during the period February 15, 1993 through March 14, 1993, the importer may type this information on the front of the original visa document.

Shipments entered for consumption, or withdrawn from warehouse for consumption 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 this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-1269 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations With Indonesia on Certain Cotton, Wool, and Man-Made Fiber Textile Products

January 13, 1993.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6704. For information on embargoes and quota re-openings, call (202) 482-3715. For information on categories on which consultations have been requested, call (202) 482-3740.

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).

On December 30, 1992, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended and extended, between the Governments of the United States and Indonesia, the United States Government requested consultations with the Government of Indonesia with respect to robes and dressing gowns in Categories 350/650 and men's and boys' trousers, breeches and shorts in Category 447.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 350/650 and 447, the Government of the United States has decided to control imports during the ninety-day period which began on December 30, 1992 and extends through March 29, 1993.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 350/650 and 447, produced or manufactured in Indonesia and exported during the prorated period beginning on March 30, 1993 and extending through June 30, 1993, of not less than 23,328 dozen (Categories 350/650) and 3,679 dozen (Category 447).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 350/650 and 447, under the agreement with Indonesia, or to comment on domestic production or availability of products included in Categories 350/650 and 447, is invited to submit 10 copies of such comments or information to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Indonesia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 350/650 and 447. Should such a solution be reached in consultations with the Government of Indonesia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Indonesia

Category 350/650—Cotton and Man-made fiber robes and dressing gowns

December 1992

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber robes and dressing gowns, Category 350/650, from Indonesia reached 84,184 dozen in year ending October 1992, 24 percent above the 67,761 dozen imported in the year ending October 1991. During the first ten months of 1992, Category 350/650 imports from Indonesia reached 68,762 dozen, an increase of 15 percent over the January-October 1991 level.

The sharp and substantial increase in Category 350/650 imports from Indonesia is causing a real risk of disruption in the U.S. market for cotton and man-made fiber robes and dressing gowns.

Import Penetration and Market Share

U.S. production of cotton and man-made fiber robes and dressing gowns, Category 350/650, declined from 3,385,000 dozen in 1987 to 1,599,000 dozen in 1991, a 53 percent decline. This decline continued in 1992, with U.S. production falling to 586,000 dozen during the first six months of 1992, 13 percent below the January-June 1991 level. In contrast, U.S. imports of cotton and man-made fiber robes and dressing gowns, Category 350/650, increased from 1,342,000 dozen in 1987 to 1,983,000 dozen in 1991, an increase of 48 percent. Category 350/650 imports continued to increase in 1992, up 12 percent in the first ten months of 1992 over the January-October 1991 level.

The ratio of imports to production tripled, increasing from 40 percent in 1987 to 124 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 153 percent during January-June 1992. The domestic manufacturers' share of the U.S. market fell from 72 percent in 1987 to 45 percent in 1991, a decline of 27 percentage points. This decline continued, with the domestic manufacturers' share of the U.S. market falling to 39 percent during the first half of 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 350/650 imports from Indonesia during the year ending October 1992 entered the U.S. under HTSUSA number 6208.91.1010—women's cotton bathrobes and dressing gowns. These bathrobes and dressing gowns entered

the U.S. at landed duty-paid values below U.S. producers' prices for comparable bathrobes and dressing gowns.

Market Statement—Indonesia

Category 447—Men's and boys' wool trousers, breeches and shorts

December 1992

Import Situation and Conclusion

U.S. imports of men's and boys' wool trousers, slacks and shorts, Category 447, from Indonesia reached 17,824 dozen in the year ending October 1992, more than double the 7,680 dozen imported during the year ending October 1991. During the first ten months of 1992, imports of men's and boys' wool trousers, slacks and shorts, Category 447, from Indonesia reached 16,647 dozen, nearly three times the 6,014 dozen imported during the January-October 1991 period. Indonesia became the sixth largest supplier of men's and boys' wool trousers, slacks and shorts to the U.S. market, accounting for 6 percent of total Category 447 imports in the first ten months of 1992. During the comparable period in 1991, Indonesia ranked eighth among the major suppliers, accounting for 3 percent of total Category 447 imports.

The sharp and substantial increase in Category 447 imports from Indonesia is causing a real risk of disruption in the U.S. market for men's and boys' wool trousers, slacks and shorts.

Import Penetration and Market Share

U.S. production of men's and boys' wool trousers, slacks and shorts, Category 447, has declined in every year since 1988, falling from 858,000 dozen in 1988 to 350,000 dozen in 1991, a 59 percent decline. Production continues to decline in 1992, falling from 175,000 dozen during the first half of 1991, to the 173,000 dozen produced during January-June 1992. Imports for men's and boys' wool trousers, slacks, and shorts, Category 447, declined in 1989 and 1990, then increased to 279,000 dozen in 1991, 12 percent above the 1990 level. Imports are surging in 1992, up 20 percent in the first ten months of 1992 over the January-October 1991 level. The ratio of imports to domestic production increased from 54 percent in 1987 to 80 percent in 1991. This increase continued in 1992, with the ratio of imports to production reaching 95 percent for the first half of 1992. The domestic manufacturers' share of the men's and boys' wool trousers, slacks, and shorts market declined from 65 percent in 1987, to 56 percent in 1991, a decline of 9 percentage points. This decline continued in 1992, with the domestic manufacturers' share of the U.S. market falling to 51 percent during the first half of 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 99 percent of Category 447 imports from Indonesia during the year ending October 1992 entered the U.S. under HTSUSA number 6203.41.1010—men's wool trousers and breeches. These men's wool trousers and breeches entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable men's wool trousers and breeches.

Committee for the Implementation of Textile Agreements

January 13, 1993.

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

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended and extended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 25, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 350/650 and 447, produced or manufactured in Indonesia and exported during the period beginning on December 30, 1992 and extending through March 29, 1993, in excess of 27,744 dozen (Categories 350/650), and 4,768 dozen (Category 447).[1]

Textile products which have been exported to the United States on and after July 1, 1992 in Categories 350/650 shall remain subject to the Group II limit, and in Category 447 shall remain subject to the subgroup limit in Group II established in the directive dated June 5, 1992 for the period July 1, 1992 through June 30, 1993.

Textile products in Categories 350/650 and 447 which have been exported to the United States prior to December 30, 1992 shall not be subject to the limits established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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

[1] The limits have not been adjusted to account for any imports exported after December 29, 1992.

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1272 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With United Arab Emirates on Certain Cotton and Man-Made Fiber Textile Products

January 13, 1993.

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

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on categories for which consultations have been requested, call (202) 482–3740.

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).

On December 28, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of United Arab Emirates with respect to cotton and man-made fiber textile products in Category 219, produced or manufactured in United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 219, produced or manufactured in United Arab Emirates and exported during the twelve-month period which began on December 28, 1992 and extends through December 27, 1993, at a level of not less than 619,476 square meters.

A summary market statement concerning Category 219 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 219, or to comment on domestic production or availability of products included in Category 219, is invited to submit 10 copies of such comments or information

to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of United Arab Emirates.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 219. Should such a solution be reached in consultations with the Government of United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements

Market Statement—United Arab Emirates

Category 219—Duck fabric

December

Import Situation and Conclusion

U.S. imports of duck fabric, Category 219, from United Arab Emirates reached 619,476 square meters during the year ending October 1992. United Arab Emirates is a new supplier of duck fabric with imports beginning in January 1992. In just ten months (January October 1992) United Arab Emirates has become the twelfth largest supplier of duck fabric to the U.S., accounting for nearly one percent of total Category 219 imports for the January-October 1992 period.

The sharp and substantial increase in Category 219 imports from United Arab Emirates is disrupting the U.S. market for duck fabric.

Import Penetration and Market Share

U.S. production of duck fabric dropped from 63,436,000 square meters in 1989 to 49,534,000 square meters in 1991, a 22 percent decline. Production continued to decline in 1992 falling to 24,100,000 square meters during the first half of 1992, 10 percent below the January-June 1991 level. In contrast, U.S. imports of duck fabric, Category 219, increased from 70,962,000 square meters in 1989 to 80,275,000 square meters in 1991, a 13 percent increase. Category 219 imports surged in 1992, increasing by 19 percent in the first ten months of 1992 over the January-October 1991 level.

The U.S. producers' share of the U.S. duck fabric market dropped 9 percentage points, falling from 47 percent in 1989 to 38 percent in 1991. The drop in the U.S. producers' market share continued in 1992, falling to 33 percent during the first half of 1992. The ratio of imports to domestic production increased from 112 percent in 1989 to 162 in 1991, and reached 201 percent during the first half of 1992.

Duty-Paid Value and U.S. Producers' Price

All of Category 219 imports from United Arab Emirates during the first ten months of 1992 entered the U.S. under HTSUSA number 5209.19.0060—85 percent or more by weight, unbleached cotton duck fabric other than plain weave, weighing more than 200 grams per square meter. These fabrics entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable duck fabrics.

[FR Doc. 93–1270 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment and First Meeting of the Department of Defense (DoD) Depot Maintenance Consolidation Study Group

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, "Federal Advisory Committee Act," notice is hereby given that the DoD Depot Maintenance Consolidation Study Group is being established.

The DoD Depot Maintenance Consolidation Study Group is being established under severely restrictive time constraints to provide advice and recommendations to the Chairman of the Joint Chiefs of Staff and the Secretary of Defense on the existing and future depot maintenance structure in each of the Military Services and the Coast Guard of the Department of Transportation. The principal objective of the Study Group is to determine how best to organize Defense depots to meet peacetime and warfighting requirements, and to identify excess capacity and duplication in the DoD depot maintenance systems. The Study Group will launch an intensive Ad hoc effort to develop alternatives to existing depot maintenance structures that will support acceptable readiness requirements, sustain forces during crisis response and contingency operations, and return equipment to necessary readiness standards upon redeployment. It is expected that the Study Group will complete all tasks in less than a year.

The Study Group will be comprised of a well-balanced team of approximately ten senior experts in depot maintenance operations, and will include representatives from the Military Services, industry, and the private sector. The Group composition reflects consideration for the functions to be performed and the interest groups potentially affected

Because of the urgency to initiate the study as soon as possible, less than the normally allotted time is being taken for this notice of establishment and first meeting. The Study Group recommendations must be made and reviewed in sufficient time to dovetail with other retrenchment recommendations for consideration by the Secretary of Defense, and potential submission to the Base Realignment and Closure Commission, which is due to commence hearings again early this year. Moreover, the Study Group will convene in an open meeting on January 26, 1993 at 1 p.m. in room 2E 827, the Pentagon, Washington, DC.

For further information regarding the DoD Depot Maintenance Consolidation Study, contact Col. John T. Burton, 703–697–1137.

Dated: January 14, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–1322 Filed 1–14–93; 2:15 pm]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Defense Nuclear Agency (DNA)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Nuclear Agency will meet in closed session on January 28–29, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the technology base program and technology application programs of the Defense Nuclear Agency (DNA) to determine the impact on national security of the possible cessation of underground nuclear weapons effects testing, and the planned reduction in developing new nuclear-survivable weapon systems.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: January 14, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–1323 Filed 1–19–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Armaments, Munitions, and Chemical Command (AMCCOM) Contractor Performance Certification Program (CP) 2

AGENCY: U.S. Army Armament, Munitions and Chemical Command, DoD.

ACTION: Notice.

SUMMARY: The AMCCOM (CP) 2 is a voluntary program open to all contractors who have had or anticipate having AMCCOM, Armament Research Development Engineering Center (ARDEC), or Chemical Biological Defense Agency (CBDA) contracts.

Under this program, contractors who exhibit a total commitment to maintaining an effective design/development process, and producing a quality product; have implemented and utilize process control, employment preventive/proactive audit procedures, demonstrate aggressive and continuous efforts to improve quality and productivity, and stand behind their product are formally recognized. The certification process is rigorous—often taking two years to complete. However, there are significant benefits that result from this effort. For certified facilities, government oversight is reduced and certain requirements, which may be required for non-certified contractors, are waived due to the decreased risk to the Government. Additional emphasis is anticipated in future contracting as we continue our pursuit of best value contracting.

FOR FURTHER INFORMATION CONTACT: For further information concerning design/development for non-chemical items contact: Bob Scott or Ron Moore, ARDEC, SMCAR-QR, Dover, NJ 07806–5000, (201) 724–02550 or (201) 724–2141.

For further information concerning design/development for chemical items contact: Jim Pennington or Bud Lilly, CBDA, SCBRD-ODQ-Q, Edgewood, MD 21010–5423, (410) 671–1151 or (410) 671–2441.

For further information concerning production certification contact: David D. House or Celia M. Hadden, AMCCOM, AMSMC–QAD–P, Rock Island, IL 61299–6000, (309) 782–6467.

SUPPLEMENTARY INFORMATION: Contractors voluntarily initiate the certification process by expressing a total commitment to quality and formally requesting acceptance into the program. An extensive initial review of the contractor's facility is conducted jointly with the contractor and areas which require improvement are identified. Once the contractor meets improvement thresholds and passes a final audit, he/she is formally recognized as a (CP) 2 certified contractor. Contractors who become (CP) 2 certified gain the advantages inherent in producing quality designs/products. Production advantages include reduced scrap and rework costs, reduced contractor inspection (since the processes are controlled), reduced inventory requirements, and reduced paperwork (due to the reduction in defective material and the corresponding reports). These advantages should enable, but do not guarantee, a more competitive bid price posture in response to solicitations. Additionally, certain testing and reporting requirements which are normally imposed on non (CP) 2 contractors, are waived for (CP) 2 contractors. We are constantly pursuing methods of expanding the certification process in order to increase the mutual benefits of certification. The ANSI Q90 series qualify program requirements forms the basis for the design/development criteria and we are currently assuring the (CP) 2 production certification criteria appropriately accommodates the ANSI Q90 series as well as MIL–Q–9858A, Quality Program Requirements. Additionally, we are investigating means of assuring the benefits of dealing with certified contractors are factored into the contract award process. It is anticipated that the benefits of certification will continue to increase in future contracting.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–1226 Filed 1–19–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Draft Remedial Investigation/Feasibility Study-Environmental Impact Statement for Remedial Action at the Chemical Plant Area of the Weldon Spring Site, Weldon Spring, Missouri

AGENCY: Department of Energy (DOE).

ACTION: Extension of public comment period.

SUMMARY: DOE, after consultation with the Environmental Protection Agency Region VII (EPA), has decided to extend to February 19, 1993, the public comment period on the draft remedial investigation/feasibility study-environmental impact statement (RI/FS-EIS) for remedial action at the Chemical Plant Area at the Weldon Spring Site, Weldon Spring, Missouri (DOE/EIS-0185D, EPA EIS No. 920463).

DATES: Comments on the draft RI/FS-EIS should be postmarked by February 19, 1993, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Comments or requests for copies of the draft RI/FS-EIS should be addressed to: Stephen McCracken, Project Manager, Weldon Spring Site Remedial Action Project (WSSRAP), U.S. Department of Energy, 7295 Highway 94 South, St. Charles, Missouri 63304. Telephone: (314) 441-8978. Fax number: (314) 447-0739.

FOR FURTHER INFORMATION CONTACT: For further information on WSSRAP, contact Stephen McCracken at the above address. For further information on DOE's National Environmental Policy Act (NEPA) procedures, contact: Carol Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-4600 or (800) 472-2758. For further information on DOE's Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA) procedures, contact: Kathleen Taimi, Director, Office of Environmental Compliance, EH-22, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-2113.

SUPPLEMENTARY INFORMATION: On November 27, 1992, the Environmental Protection Agency published a notice in the **Federal Register** (57 FR 56339) announcing the availability of DOE's draft RI/FS-EIS (DOE/EIS-0185D, EPA EIS No. 920463) and the close of the public comment period on January 20, 1993. DOE's draft RI/FS-EIS for remedial action at the Chemical Plant Area at the Weldon Spring Site integrates NEPA values with the requirements of CERCLA. In response to requests from several parties to extend the comment period, and to ensure that all interested parties have the opportunity to comment, DOE, after consultation with EPA, is extending the comment period to February 19, 1993. Comments should be postmarked by February 19, 1993, to ensure consideration; comments postmarked after that date will be considered to the extent practicable.

Issued in Washington, D.C., January 14, 1993.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93-1506 Filed 1-19-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP93-144-000, et al.]

High Island Offshore System, et al.; Natural Gas Certificate filings

January 11, 1993.

Take notice that the following filings have been made with the Commission:

1. High Island Offshore System

[Docket No. CP93-144-000]

Take notice that on January 4, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to section (7)(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for Transcontinental Gas Pipe Line Corporation (Transco).

In its application, HIOS proposes to terminate the firm transportation service which HIOS is rendering in accordance with HIOS' Rate Schedule T-4, as well as associated Interruptible Overrun Transportation Service volumes rendered in accordance with HIOS' Rate Schedule I. HIOS proposes to terminate these services at the end of the primary term of Rate Schedule T-4, effective June 10, 1993, in accordance with the terms of such rate schedule and in accordance with timely notices given by Transco to HIOS.

HIOS requests that the abandonment be conditioned upon Transco remaining subject to and liable for any transition costs, exit fees, or other similar charges that are imposed as a result of HIOS' restructuring pursuant to Order Nos. 636, *et seq.*

Comment date: February 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corp.

[Docket No. CP93-146-000]

Take notice that on January 6, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93-146-000, an application pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate approximately 13.3 miles of 16, 20, and 24-inch mainline pipeline as replacements for 13.3 miles of aged and deteriorated 12, 16, and 20-inch pipeline in various counties in Ohio, West Virginia, and Pennsylvania.

Specifically, Columbia intends to construct and operate approximately, 1.1 miles of 16-inch pipeline in two sections to replace approximately 1.1 miles of 12-inch pipeline designated as Columbia's L Line in Medina County, Ohio.

Also, Columbia proposes to construct and operate approximately 8.2 miles of 16 and 20-inch pipeline in three sections to replace approximately 8.2 miles of 16-inch pipeline designated as Columbia's 1570 Line in Marion, Wetzel and Monongalia Counties, West Virginia and Green County, Pennsylvania.

Columbia states that the third project involves the construction and operation of 4.0 miles of 24-inch pipeline as replacement of approximately 4.0 miles of 20-inch pipeline designated as Columbia's KA Line in Mercer and Summers Counties, West Virginia.

The proposed construction is estimated to cost $11,366.

Comment date: February 1, 1993, in accordance with Standard Paragraph F at the end of the notice.

3. Equitrans, Inc.

[Docket No. CP93-140-000]

Take notice that on December 31, 1992, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in Docket No. CP93-140-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon field sales services to certain customers under Rate Schedules W-1 and W-3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that no service has been performed under Rate Schedule W-1 and no revenue has been earned since September, 1972, and that no service has been performed under Rate Schedule W-3 and no revenue has been earned since November, 1966. In the interim as indicated by Equitrans, the underlying contracts expired. As a result, Equitrans seeks authorization to abandon the sales service and to terminate Rate Schedules W-1 and W-3 on the basis that the underlying contracts have expired and that there is no contractual obligation to continue the sales.

Comment date: February 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the

matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1240 Filed 1-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST93-477-000; ST93-1389-000]

Acadian Gas Pipeline System; Self-Implementing Transactions

January 13, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-477	Acadian Gas Pipeline System.	Natural Gas P/L Co. of Am., et al.	11-02-92	C	5,000	N	I	10-06-92	Indef.
ST93-478	CNG Transmission Corp	Texas Ohio Gas, Inc	11-02-92	G-S	5,000	N	I	10-06-92	Indef.
ST93-479	CNG Transmission Corp	Transport Gas Inc	11-02-92	G-S	1,100	N	I	10-03-92	Indef.
ST93-480	Gulf Energy Pipeline Co	Natural Gas P/L Co. of America.	11-02-92	C	1,500	N	I	10-01-92	Indef.
ST93-481	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co.	11-02-92	C	200	N	I	10-01-92	Indef.
ST93-482	Gulf Energy Pipeline Co	Natural Gas P/L Co. of America.	11-02-92	C	1,000	N	I	10-01-92	Indef.
ST93-483	Arkla Energy Resources	Western Gas Resources	11-02-92	G-S	50,000	N	I	10-23-92	Indef.
ST93-484	Arkla Energy Resources	Tidewest Trading & Transport Co.	11-02-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-485	Arkla Energy Resources	Anthem Energy Co., L.P	11-02-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-486	Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-02-92	C	12,000	N	I	10-17-92	Indef.
ST93-487	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-02-92	C	5,000	N	I	10-17-92	Indef.
ST93-488	Delhi Gas Pipeline Corp	Ozark Gas Transmission System.	11-02-92	C	375,000	N	I	10-17-92	Indef.
ST93-489	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-02-92	C	3,000	N	I	10-16-92	Indef.
ST93-490	Delhi Gas Pipeline Corp	ANR Pipeline Co	11-02-92	C	375,000	N	I	10-14-92	Indef.
ST93-491	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-02-92	C	2,000	N	I	10-15-92	Indef.
ST93-492	Gulf Coast Natural Gas Co.	Trunkline Gas Co	11-02-92	C	25,000	N	I	10-03-92	Indef.
ST93-493	Gulf Coast Natural Gas Co.	Transcontinental Gas P/L Corp.	11-02-92	C	50,000	N	I	09-08-92	Indef.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-494	Gulf Coast Natural Gas Co.	Tennessee Gas Pipeline Co.	11-02-92	C	10,000	N	I	10-10-92	Indef.
ST93-495	Sabine Pipe Line Co	IGM Pipeline Co	11-02-92	G-S	22,500	N	F	10-01-92	Indef.
ST93-496	Sabine Pipe Line Co	Natural Gas P/L Co of America.	11-02-92	G	100,000	N	I	10-01-92	Indef.
ST93-497	Colorado Interstate Co	Texaco Gas Marketing Inc.	11-02-92	G-S	8,000	N	I	10-13-92	04-30-93
ST93-498	Natural Gas P/L Co of America.	Superior Natural Gas Corp.	11-02-92	G-S	50,000	N	I	10-02-92	Indef.
ST93-499	Natural Gas P/L Co of America.	Northern American Resources Co.	11-02-92	G-S	10,000	N	F	10-06-92	10-31-92
ST93-500	Panhandle Eastern Pipe Line Co.	American Central Gas Cos.	11-02-92	G-S	57,688	N	F	10-01-92	10-31-92
ST93-501	Tennessee Gas Pipeline Co.	Woodward Marketing, Inc.	11-02-92	G-S	200,000	N	I	10-02-92	Indef.
ST93-502	Tennessee Gas Pipeline Co.	Providence Gas Co	11-02-92	B	15,000	N	I	10-01-92	Indef.
ST93-503	Tennessee Gas Pipeline Co.	Essex County Gas Co	11-02-92	B	900	N	F	10-01-92	Indef.
ST93-504	Kern River Gas Transmission Co.	Nevada Cogeneration Assoc. #2.	11-02-92	G-S	13,000	N	F	10-02-92	Indef.
ST93-505	Transcontinental Gas P/L Corp.	Commonwealth Gas Pipeline Corp.	11-02-92	B	265,000	N	I	07-27-90	Indef.
ST93-506	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	11-02-92	B	3,000	N	I	10-12-89	Indef.
ST93-507	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11-02-92	B	300,000	N	I	06-18-90	Indef.
ST93-508	Transcontinental Gas P/L Corp.	City of Greenwood	11-02-92	B	50,000	N	I	07-27-90	Indef.
ST93-509	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	11-02-92	B	75,000	N	I	07-23-90	Indef.
ST93-510	Transcontinental Gas P/L Corp.	Spindletop Gas Distribution System.	11-02-92	B	125,000	N	I	06-15-92	Indef.
ST93-511	Transcontinental Gas P/L Corp.	City of Richmond	11-02-92	B	265,000	N	I	06-16-90	Indef.
ST93-512	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-02-92	B	700,000	N	I	08-06-90	Indef.
ST93-513	Transcontinental Gas P/L Corp.	Mid Louisiana Gas Co	11-02-92	B	76,000	N	I	05-14-90	Indef.
ST93-514	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-02-92	B	275,000	N	I	07-27-90	Indef.
ST93-515	Transcontinental Gas P/L Corp.	Delmarva Power & Light Co.	11-02-92	B	150,000	N	I	07-27-90	Indef.
ST93-516	Transcontinental Gas P/L Corp.	City of Greenwood	11-02-92	B	150,000	N	I	08-06-90	Indef.
ST93-517	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc	11-02-92	B	110,000	N	I	09-17-91	Indef.
ST93-518	Transcontinental Gas P/L Corp.	Long Island Lighting Co	11-02-92	B	75,000	N	I	07-27-90	Indef.
ST93-519	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc	11-02-92	B	265,000	N	I	07-18-90	Indef.
ST93-520	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-02-92	B	700,000	N	I	08-10-90	Indef.
ST93-521	Transcontinental Gas P/L Corp.	Philadelphia Gas Works	11-02-92	B	120,000	N	I	08-06-90	Indef.
ST93-522	Transcontinental Gas P/L Corp.	Public Service of NC, Inc	11-02-92	B	125,000	N	I	07-25-90	Indef.
ST93-523	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-02-92	B	15,000	N	I	05-30-89	Indef.
ST93-524	Transcontinental Gas P/L Corp.	City of Laurens	11-02-92	B	90,000	N	I	09-12-90	Indef.
ST93-525	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-02-92	B	290,000	N	I	07-11-90	Indef.
ST93-526	Kern River Gas Transmission Co.	Pacific Gas and Electric Co.	11-03-92	G-S	200,000	N	I	10-04-92	Indef.
ST93-527	Trunkline Gas Co	Interstate Gas Supply, Inc.	11-03-92	G-S	10,000	N	I	10-05-92	Indef.
ST93-528	Enogex Inc	Black Marlin Pipeline Co	11-03-92	C	100,000	N	I	10-01-92	Indef.
ST93-529	Enogex Inc	Arkla Energy Resources	11-03-92	C	100,000	N	I	10-02-92	Indef.
ST93-530	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-03-92	B	700,000	N	I	08-06-90	Indef.
ST93-531	Transcontinental Gas P/L Corp.	Long Island Lighting Co	11-03-92	B	700,000	N	I	05-05-89	Indef.
ST93-532	Transcontinental Gas P/L Corp.	Polaris Pipeline Corp	11-03-92	B	95,000	N	I	01-15-92	Indef.
ST93-533	Transcontinental Gas P/L Corp.	Corpus Christi Transmission Co.	11-03-92	B	250,000	N	I	05-23-91	Indef.
ST93-534	Transcontinental Gas P/L Corp.	Public Service Co of NC, Inc.	11-03-92	B	800,000	N	I	05-25-90	Indef.
ST93-535	Transcontinental Gas P/L Corp.	Baltimore Gas and Electric Co.	11-03-92	B	600,000	N	I	06-19-90	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-536	Trunkline Gas Co	Stellar Gas Co	11-04-92	G-S	30,000	N	I	10-15-92	Indef.
ST93-537	Trunkline Gas Co	Philbro Distributors Corp	11-04-92	G-S	100,000	N	I	10-23-92	Indef.
ST93-538	Trunkline Gas Co	Tejas Hydrocarbons Co	11-04-92	G-S	100,000	N	I	10-07-92	Indef.
ST93-539	Trunkline Gas Co	Energy Development Corp.	11-04-92	G-S	75,000	N	I	10-24-92	Indef.
ST93-540	Trunkline Gas Co	Phillips Petroleum Co	11-04-92	G-S	20,000	N	I	10-10-92	Indef.
ST93-541	Trunkline Gas Co	Marathon Oil Co	11-04-92	G-S	30,000	N	I	10-08-92	Indef.
ST93-542	Trunkline Gas Co	O & R Energy, Inc	11-04-92	G-S	50,000	N	I	10-24-92	Indef.
ST93-543	Trunkline Gas Co	Amoco Energy Trading Corp.	11-04-92	G-S	50,000	N	I	10-09-92	Indef.
ST93-544	Trunkline Gas Co	Mobil Natural Gas, Inc	11-04-92	G-S	100,000	N	I	10-07-92	Indef.
ST93-545	Trunkline Gas Co	Kerr-McGee Corp	11-04-92	G-S	3,521	N	I	10-10-92	Indef.
ST93-546	Trunkline Gas Co	Stellar Gas Co	11-04-92	G-S	50,000	N	I	10-23-92	Indef.
ST93-547	Trunkline Gas Co	Stellar Gas Co	11-04-92	G-S	50,000	N	I	10-06-92	Indef.
ST93-548	Natural Gas P/L Co. of America.	CNG Producing Co	11-04-92	G-S	10,000	N	I	10-08-92	Indef.
ST93-549	Natural Gas P/L Co. of America.	Gasmark Ltd	11-04-92	G-S	100,000	N	I	10-06-92	Indef.
ST93-550	Natural Gas P/L Co. of America.	Tristar Gas Co	11-04-92	G-S	50,000	N	I	10-06-92	Indef.
ST93-551	Transcontinental Gas P/L Corp.	Texaco Gas Marketing, Inc.	11-04-92	B	170,000	N	I	10-20-92	Indef.
ST93-552	Transcontinental Gas P/L Corp.	City of Richmond	11-04-92	B	150,000	N	I	03-30-90	Indef.
ST93-553	Transcontinental Gas P/L Corp.	Atlanta Gas Light Co	11-04-92	B	70,000	N	I	08-16-90	Indef.
ST93-554	Transcontinental Gas P/L Corp.	Philadelphia Electric Co	11-04-92	B	150,000	N	I	04-16-90	10-09-90
ST93-555	Westar Transmission Co	Transwestern Pipeline Co.	11-05-92	C	25,000	N	I	10-26-92	Indef.
ST93-556	Kentucky West Virginia Gas Co.	Lindsey and Elliot	11-05-92	G-S	100	N	I	10-15-92	Indef.
ST93-557	Trunkline Gas Co	BP Gas, Inc	11-05-92	G-S	12,405	N	I	10-08-92	Indef.
ST93-558	Trunkline Gas Co	Central Illinois Public Service Co.	11-05-92	G-S	5,000	N	I	10-07-92	Indef.
ST93-559	K N Energy, Inc	BHP Petroleum, Inc	11-05-92	G-S	5,500	N	I	10-05-92	09-01-94
ST93-560	K N Energy, Inc	Texaco Exploration & Production.	11-05-92	G-S	10,000	N	I	09-01-92	Indef.
ST93-561	K N Energy, Inc	Kanco Gathering Co	11-05-92	G-S	70,000	N	I	10-09-92	12-31-08
ST93-562	Northern Natural Gas Co	Bridgegas U.S.A., Inc	11-05-92	G-S	200,000	N	F/I	10-01-92	Indef.
ST93-563	Transok Gas Trans. Co	ANR P/L Co., et al	11-05-92	C	50,000	N	I	10-27-92	Indef.
ST93-564	Texas Gas Transmission Corp.	Texaco Inc	11-05-92	G-S	100,000	A	I	10-22-92	Indef.
ST93-565	Stingray Pipeline Co	Panhandle Eastern Pipeline Co.	11-05-92	K	1,400	N	F	11-01-92	10-31-93
ST93-566	Oasis Pipe Line Co	Transwestern Pipeline Co.	11-05-92	C	100,000	N	I	09-16-92	Indef.
ST93-567	Oasis Pipe Line Co	El Paso Natural Gas Co	11-05-92	C	50,000	N	I	09-29-92	Indef.
ST93-568	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11-05-92	C	100,000	N	I	10-29-92	Indef.
ST93-569	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11-05-92	C	25,000	N	I	10-13-92	Indef.
ST93-570	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11-05-92	C	100,000	N	I	10-20-92	Indef.
ST93-571	CNG Transmission Corp	Direct Gas Supply	11-05-92	G-S	210,000	N	I	10-10-92	Indef.
ST93-572	CNG Transmission Corp	Equitable Resources	11-05-92	G-S	15,000	N	I	10-10-92	Indef.
ST93-573	CNG Transmission Corp	Equitable Resources	11-05-92	G-S	25,000	N	I	10-10-92	Indef.
ST93-574	CNG Transmission Corp	Equitable Resources	11-05-92	G-S	10,000	N	I	10-10-92	Indef.
ST93-575	CNG Transmission Corp	Equitable Resources	11-05-92	G-S	10,000	N	I	10-10-92	Indef.
ST93-576	CNG Transmission Corp	Equitable Resources	11-05-92	G-S	20,000	N	I	10-10-92	Indef.
ST93-577	CNG Transmission Corp	Transport Gas, Inc	11-05-92	G-S	1,100	N	I	10-09-92	Indef.
ST93-578	CNG Transmission Corp	Equitable Resources	11-05-92	G-S	25,000	N	I	10-10-92	Indef.
ST93-579	Houston Pipe Line Co	Black Marlin Pipeline Co	11-05-92	C	100,000	N	I	09-23-92	Indef.
ST93-580	Houston Pipe Line Co	Texas Eastern Transmission Corp.	11-05-92	C	100,000	N	I	09-01-92	Indef.
ST93-581	Houston Pipe Line Co	Florida Gas Transmission Co.	11-05-92	C	50,000	N	I	09-04-92	Indef.
ST93-582	Houston Pipe Line Co	Sabine Pipeline Co	11-05-92	C	100,000	N	I	09-01-92	Indef.
ST93-583	Houston Pipe Line Co	United Gas Pipe Line Co	11-05-92	C	50,000	N	I	09-19-92	Indef.
ST93-584	Houston Pipe Line Co	Trunkline Gas Co	11-05-92	C	50,000	N	I	09-17-92	Indef.
ST93-585	Houston Pipe Line Co	Texas Eastern Transmission Corp.	11-05-92	C	10,000	N	I	09-17-92	Indef.
ST93-586	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11-05-92	C	100,000	N	I	10-22-92	Indef.
ST93-587	Transtexas Pipeline Co	United Gas Pipe Line Co	11-06-92	C	5,000	N	I	10-06-92	Indef.
ST93-588	Colorado Interstate Gas Co.	North American Resource Co.	11-06-92	G-S	10,000	N	I	10-16-92	Indef.
ST93-589	Exxon Gas System, Inc	Enogex Services Corp	11-06-92	C	25,000	N	I	10-17-92	Indef.
ST93-590	Exxon Gas System, Inc	Energy Consultants, Inc	11-06-92	C	5,000	N	I	10-07-92	Indef.
ST93-591	Questar Pipeline Co	Kansas Public Service	11-06-92	B	40,000	N	I	10-17-92	Indef.
ST93-592	Questar Pipeline Co	Union Pacific Fuels, Inc	11-06-92	G-S	90,000	N	I	10-17-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-593	Questar Pipeline Co	Industrial Gas Resource Corp.	11-06-92	G-S	4,000	N	I	11-01-92	Indef.
ST93-594	Endevco Pipeline Co	Texas Eastern Transmission Corp.	11-06-92	C	25,000	N	I	01-01-90	Indef.
ST93-595	Endevco Pipeline Co	Texas Eastern Transmission Corp.	11-06-92	C	30,000	N	I	01-01-92	Indef.
ST93-596	Endevco Pipeline Co	Champion International Corp.	11-06-92	C	20,000	N	I	01-01-92	12-10-97
ST93-597	Kern River Gas Transmission Co.	Chevron U.S.A., Inc	11-06-92	G-S	100,000	N	F	10-10-92	Indef.
ST93-598	Tennessee Gas Pipeline Co.	ANR Pipeline Co	11-06-92	G	34,000	N	I	07-21-92	Indef.
ST93-599	Tennessee Gas Pipeline Co.	Mobil Natural Gas, Inc	11-06-92	G-S	100,000	N	I	10-23-92	Indef.
ST93-600	Mississippi River Trans. Corp.	Exxon Co., U.S.A	11-06-92	G-S	20,000	A	F	10-09-92	Indef.
ST93-601	Mississippi River Trans. Corp.	Semco Energy Services, Inc.	11-06-92	G-S	20,000	N	I	10-09-92	Indef.
ST93-602	Mississippi River Trans. Corp.	Western Gas Resources, Inc.	11-06-92	G-S	50,000	N	I	10-09-92	Indef.
ST93-603	Williams Natural Gas Co	Western Gas Interstate Co.	11-06-92	G-S	200	N	I	10-07-92	10-01-93
ST93-604	Northwest Pipeline Corp	IGI Resources, Inc	11-06-92	G-S	29,000,000	N	F	10-07-92	10-31-92
ST93-605	Trancontinental Gas P/L Corp.	City of Greenwood	11-06-92	B	65,500	N	I	11-22-88	Indef.
ST93-606	Louisiana Resources P/L Co., L.P.	Olympic Fuels	11-06-92	C	20,000	N	I	11-01-92	Indef.
ST93-607	Louisiana Resources P/L Co., L.P.	Florida Gas Transmission Co.	11-06-92	C	10,000	N	I	11-01-92	Indef.
ST93-608	Delhi Gas Pipeline Corp	Williams Natural Gas Co	11-06-92	C	13,000	N	I	10-24-92	Indef.
ST93-609	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	11-06-92	C	20,000	N	I	10-11-92	Indef.
ST93-610	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-06-92	C	6,000	N	I	10-16-92	Indef.
ST93-611	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	1,500	N	I	10-01-92	Indef.
ST93-612	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	150	N	I	10-18-92	Indef.
ST93-613	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	50	N	I	10-18-92	Indef.
ST93-614	Panhandle Eastern Pipe Line Co.	Western Gas Resources, Inc.	11-06-92	G-S	20,000	N	I	10-07-92	Indef.
ST93-615	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	250	N	I	10-01-92	Indef.
ST93-616	United Gas Pipe Line Co	Canadian Occidental of Calif., Inc.	11-06-92	G-S	524,000	N	I	10-26-92	02-23-93
ST93-617	United Gas Pipe Line Co	Pogo Producing Co	11-06-92	G-S	125,000	N	I	10-22-92	02-19-93
ST93-618	United Gas Pipe Line Co	Shell Gas Trading Co	11-06-92	G-S	209,600	N	I	10-20-92	02-17-93
ST93-619	United Gas Pipe Line Co	NGC Transportation, Inc	11-06-92	G-S	157,200	N	I	10-15-92	02-17-93
ST93-620	United Gas Pipe Line Co	Polaris Pipeline Corp	11-06-92	G-S	20,960	N	I	10-20-92	02-17-93
ST93-621	United Gas Pipe Line Co	Transco Energy Marketing Co.	11-06-92	G-S	104,800	N	I	10-21-92	02-18-93
ST93-622	United Gas Pipe Line Co	Chervon U.S.A. Inc	11-06-92	G-S	104,800	N	I	10-19-92	02-16-93
ST93-623	Algonquin Gas Transmission Co.	Distrgas of Massachusetts Corp.	11-09-92	B	52,412	N	F	10-15-92	10-31-92
ST93-624	Channel Industries Gas Co.	Northern Natural Gas Co	11-09-92	C	75,000	N	I	10-24-92	Indef.
ST93-625	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	11-09-92	G-S	40,000	N	I	10-16-92	Indef.
ST93-626	Enogex Inc	Black Marlin Pipeline Co	11-09-92	C	10,000	N	I	10-03-92	Indef.
ST93-627	Northwest Pipeline Corp	Colorado Interstate Gas Co.	11-09-92	G	2,000	N	I	10-21-92	Indef.
ST93-628	Transcontinental Gas P/L Corp.	City of Roanoke	11-09-92	B	15,000	N	I	09-11-87	Indef.
ST93-629	Tennessee Gas Pipeline Co.	Mississippi Valley Gas Co.	11-09-92	B	100,000	N	I	10-15-92	Indef.
ST93-630	Tennessee Gas Pipeline Co.	Riley Natural Gas Co	11-09-92	G-S	25,000	N	I	10-10-92	Indef.
ST93-631	United Texas Transmission Co.	Brooklyn Interstate Natural Gas.	11-09-92	G-I	12,000	N	I	10-10-92	Indef.
ST93-632	United Texas Transmission Co.	Natural Gas P/L Co. of America.	11-09-92	C	2,800	Y	I	10-17-92	Indef.
ST93-633	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp	11-09-92	G-HT	5,000	N	I	09-01-92	Indef.
ST93-634	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp	11-09-92	G-HT	10,000	N	I	11-07-90	10-24-93
ST93-635	United Gas Pipeline Co	Vesta Energy Co	11-09-92	G-S	104,800	N	I	10-15-92	02-12-93
ST93-636	United Gas Pipe Line Co	Western Gas Resources, Inc.	11-09-92	G-S	75,000	N	I	10-15-92	02-12-93
ST93-637	Gasdel Pipeline System Inc.	FMI Hydrocarbons Co	11-09-92	G-S	122,793	N	I	11-01-92	Indef.
ST93-638	Gasdel P/L System Incorp.	FMI Hydrocarbons Co	11-09-92	G-S	5,960	N	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-639	Gasdel P/L System Incorp.	Amerada Hess Corp	11-09-92	G-S	4,900	N	I	11-02-92	Indef.
ST93-640	Arkla Energy Resources	Arkla Energy Marketing Co.	11-09-92	G-S	25,000	A	F	11-01-92	Indef.
ST93-641	Arkla Energy Resources	Scana Hydrocarbons, Inc.	11-09-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-642	Arkla Energy Resources	Global Petroleum Corp	11-09-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-643	Arkla Energy Resources	NJR Energy Corp	11-09-92	G-S	2,651	N	F	11-01-92	Indef.
ST93-644	Southern Natural Gas Co.	Petroleum Source & Systems Group.	11-09-92	G-S	4,000	N	I	11-01-92	Indef.
ST93-645	Southern Natural Gas Co.	Town of Bay Springs	11-09-92	B	150	N	F	11-01-92	03-31-93
ST93-646	Southern Natural Gas Co.	Dowling Energy, Inc	11-09-92	G-S	5,000	N	I	10-29-92	Indef.
ST93-647	Southern Natural Gas Co.	Yuma Gas Corp	11-09-92	G-S	50,000	N	I	10-15-92	Indef.
ST93-648	Southern Natural Gas Co.	City of La Grange	11-09-92	G-S	2,211	N	F	10-13-92	10-01-97
ST93-649	Southern Natural Gas Co.	City of La Grange	11-09-92	G-S	4,659	N	F	10-01-92	10-01-97
ST93-650	Kern River Gas Trans. Co.	Nevada Cogeneration Associates.	11-10-92	G-S	13,000	N	F	10-12-92	Indef.
ST93-651	Transok Gas Trans. Co	ANR P/L Co., et al	11-10-92	C	25,000	N	I	11-01-92	Indef.
ST93-652	Transok Gas Trans. Co	ANR P/L Co., et al	11-10-92	C	10,000	N	I	11-02-92	Indef.
ST93-653	Transok Gas Trans. Co	ANR P/L Co., et al	11-10-92	C	50,000	N	I	11-01-92	Indef.
ST93-654	Transok Gas Trans. Co	Arkla Energy, Inc., et al	11-10-92	C	25,000	N	I	11-01-92	Indef.
ST93-655	El Paso Natural Gas Co	Amoco Energy Trading Corp.	11-10-92	G-S	50,000	N	I	10-21-92	Indef.
ST93-656	El Paso Natural Gas Co	Anthem Energy Co., L.P	11-10-92	G-S	1,030	N	I	10-31-92	Indef.
ST93-657	Five Flags Pipe Line Co	Okaloosa Gas District	11-10-92	C	13,000	N	I	04-01-92	03-31-97
ST93-658	Transcontinental Gas P/L Corp.	Victoria Gas Corp	11-10-92	G-S	220,000	N	I	10-22-92	Indef.
ST93-659	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-10-92	B	875,000	N	I	07-16-90	Indef.
ST93-660	U-T Offshore System	Panhandle Eastern Pipe Line Co.	11-10-92	K	1,000	N	I	11-01-92	10-31-93
ST93-661	Transcontinental Gas P/L Corp.	CNG Transmission Corp	11-10-92	G	725,000	N	I	10-25-92	Indef.
ST93-662	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-10-92	B	150,000	N	I	11-03-92	Indef.
ST93-663	United Gas Pipe Line Co	Western Gas Resources, Inc.	11-12-92	G-S	71,500	N	I	10-29-92	02-26-93
ST93-664	United Gas Pipe Line Co	Aquila Energy Marketing Corp.	11-12-92	G-S	52,400	N	I	10-27-92	02-24-93
ST93-665	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	44,016	N	I	10-27-92	02-24-93
ST93-666	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	85,412	N	I	10-27-92	02-24-93
ST93-667	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	83,010	N	I	10-27-92	02-24-93
ST93-668	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	60,000	N	I	10-27-92	02-24-93
ST93-669	United Gas Pipe Line Co	Stellar Gas Co	11-12-92	G-S	524,000	N	I	10-30-92	02-27-93
ST93-670	United Gas Pipe Line Co	Hadson Gas Systems, Inc.	11-12-92	G-S	20,000	N	I	10-27-92	02-24-93
ST93-671	United Gas Pipe Line Co	Prior Intrastate Corp	11-12-92	G-S	524,000	N	I	10-27-92	02-24-93
ST93-672	United Gas Pipe Line Co	NGC Transportation, Inc	11-12-92	G-S	157,200	N	I	10-27-92	02-24-93
ST93-673	United Gas Pipe Line Co	MG Natural Gas Corp	11-12-92	G-S	41,920	N	I	10-30-92	02-27-93
ST93-674	Transok, Inc	Arkla Energy Resources	11-12-92	C	50,000	N	I	10-20-92	Indef.
ST93-675	Transok, Inc	Panhandle Eastern Pipe Line Co.	11-12-92	C	50,000	N	I	10-23-92	Indef.
ST93-676	Transok, Inc	Natural Gas P/L Co. of America.	11-12-92	C	100,000	N	I	10-29-92	Indef.
ST93-677	Transok, Inc	Northern Natural Gas Co	11-12-92	C	100,000	N	I	10-17-92	Indef.
ST93-678	Transamerican Natural Gas Corp.	United Gas Pipe Line Co	11-12-92	C	10,000	N	I	09-10-92	Indef.
ST93-679	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	11-12-92	C	20,000	N	I	10-10-92	Indef.
ST93-680	Transamerican Natural Gas Corp.	United Gas Pipe Line Co	11-12-92	C	10,000	N	I	10-09-92	Indef.
ST93-681	Transamerican Natural Gas Corp.	Texas Eastern Transmission Co.	11-12-92	C	5,000	N	I	10-20-92	Indef.
ST93-682	Tennessee Gas Pipeline Co.	AGIP Petroleum Co., Inc	11-12-92	G-S	100,000	N	I	10-31-92	Indef.
ST93-683	Tennessee Gas Pipeline Co.	T.W. Phillips Gas and Oil Co.	11-12-92	G-ST	112,474	N	I	10-31-92	Indef.
ST93-684	Tennessee Gas Pipeline Co.	AGIP Petroleum Co., Inc	11-12-92	G-ST	1,000,000	N	I	10-31-92	Indef.
ST93-685	Tennessee Gas Pipeline Co.	Western Gas Marketing USA Ltd.	11-12-92	G-S	450,000	N	I	10-25-92	Indef.
ST93-686	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc	11-12-92	G-S	10,000	N	F	11-01-92	04-30-93

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-687	Great Lakes Gas Trans. L.P.	ANR Pipeline Co	11-12-92	G	19,064	N	F	11-01-92	10-31-05
ST93-688	Trunkline Gas Co	Santanna Natural Gas Corp.	11-12-92	G-S	100,000	N	I	10-29-92	Indef.
ST93-689	Panhandle Eastern Pipe Line Co.	MG Natural Gas Corp	11-12-92	G-S	21,030	N	F	10-01-92	Indef.
ST93-690	Texas Eastern Transmission Corp.	East Ohio Gas Co	11-12-92	B	21,500	N	I	10-23-92	Indef.
ST93-691	Texas Eastern Transmission Corp.	City of Belmont	11-12-92	B	19,750	N	I	10-16-92	Indef.
ST93-692	Florida Gas Transmission Co.	Procter & Gamble Cellulose Co.	11-12-92	G-S	15,050	N	I	10-13-92	Indef.
ST93-693	Florida Gas Transmission Co.	TECO Power Services	11-12-92	G-S	62,600	N	I	10-16-92	Indef.
ST93-694	Natural Gas P/L Co. of America.	Midcon Marketing Corp.	11-12-92	G-S	1,000	A	I	11-01-92	02-28-93
ST93-695	Enogex Inc	United Gas Pipe Line Co	11-12-92	C	50,000	N	I	10-27-92	Indef.
ST93-696	Enogex Inc	Ozark Gas Transmission System.	11-12-92	C	50,000	N	I	10-28-92	Indef.
ST93-697	Enogex Inc	Arkla Energy Resources	11-12-92	C	50,000	N	I	10-29-92	Indef.
ST93-698	Enogex Inc	Phillips Gas Pipeline Co	11-12-92	C	50,000	N	I	11-01-92	Indef.
ST93-699	Enogex Inc	Ozark Gas Transmission System.	11-12-92	C	50,000	N	I	11-07-92	Indef.
ST93-700	Enogex Inc	Black Marlin Pipeline Co	11-12-92	C	50,000	N	I	03-14-92	Indef.
ST93-701	Enogex Inc	Black Marlin Pipeline Co	11-12-92	C	15,000	N	I	04-29-92	Indef.
ST93-702	Enogex Inc	EL Paso Natural Gas Co	11-12-92	C	5,300	N	I	03-18-92	Indef.
ST93-703	Enogex Inc	Black Marlin Pipeline Co	11-12-92	C	100,000	N	I	04-01-92	Indef.
ST93-704	Enogex Inc	Natural Gas P/L Co. of America.	11-12-92	C	50,000	N	I	05-16-92	Indef.
ST93-705	Enogex Inc	Northern Natural Gas Co	11-12-92	C	50,000	N	I	06-01-92	Indef.
ST93-706	Enogex Inc	Natural Gas P/L Co. of America.	11-12-92	C	10,000	N	I	01-01-92	Indef.
ST93-707	Moraine Pipeline Co	Wisconsin Natural Gas Co.	11-12-92	G-S	30,000	Y	F	11-01-92	08-31-01
ST93-708	Natural Gas P/L Co. of America.	Tansok Gas Co	11-12-92	G-S	20,000	N	F	11-01-92	03-31-93
ST93-709	Mojave Pipeline Co	Southern California Edison Co.	11-12-92	G-S	100,000	N	I	10-08-92	08-30-93
ST93-710	Mojave Pipeline Co	Santa Fe Energy Resources, Inc.	11-12-92	G-S	20,000	N	F	06-15-92	06-15-07
ST93-711	Mojave Pipeline Co	Natural Gas Clearinghouse.	11-12-92	G-S	400,000	N	I	04-25-92	04-23-93
ST93-712	Mojave Pipeline Co	Meridian Oil, Inc	11-12-92	G-S	150,000	N	I	09-28-92	09-26-07
ST93-713	Mojave Pipeline Co	Mobil Natural Gas, Inc	11-12-92	G-S	20,000	N	F	04-01-92	04-01-07
ST93-714	Mojave Pipeline Co	Los Angeles Dept. of Water & Power.	11-12-92	G-S	50,000	N	I	08-22-92	08-22-07
ST93-715	Mojave Pipeline Co	Los Angeles Dept. of Water & Power.	11-12-92	G-S	50,000	N	F	08-22-92	08-22-07
ST93-716	Mojave Pipeline Co	Eron Gas Marketing, Inc	11-12-92	G-S	400,000	N	I	06-12-92	03-31-92
ST93-717	Mojave Pipeline Co	Bridgegas U.S.A., Inc	11-12-92	G-S	200,000	N	I	03-26-92	03-26-93
ST93-718	Mojave Pipeline Co	Access Energy Corp	11-12-92	G-S	100,000	N	I	03-29-92	03-29-93
ST93-719	Mojave Pipeline Co	Texco, Inc	11-12-92	G-S	185,000	N	I	03-01-92	03-01-07
ST93-720	Mojave Pipeline Co	United States Borax & Chemical Corp.	11-12-92	G-S	185,000	N	F	03-1-92	03-01-07
ST93-721	Northwest Pipeline Corp	Bonneville Fuels Marketing Corp.	11-12-92	G-S	2,400	N	F	09-01-92	Indef.
ST93-722	Northwest Pipeline Corp	Williams Gas Marketing Co.	11-12-92	G-S	100,000	A	F	10-13-92	Indef.
ST93-723	Eaton Rapids Gas Storage System.	Citizens Gas & Coke Utility.	11-12-92	G-ST	35,000	N	N/A	11-01-92	03-31-93
ST93-724	Transcontinental Gas P/L Corp.	Hadson Gas Systems	11-12-92	G-S	500,000	N	I	12-19-91	Indef.
ST93-725	Transcontinental Gas P/L Corp.	Channel Industries Gas Co.	11-12-92	B	500,000	N	I	07-31-92	Indef.
ST93-726	Transcontinental Gas P/L Corp.	Amerada Hess Corp	11-12-92	G-S	750,000	N	I	04-14-92	Indef.
ST93-727	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11-12-92	B	274,000	N	I	02-19-90	Indef.
ST93-728	Transcontinental Gas P/L Corp.	Amerada Hess Corp	11-12-92	G-S	600,000	N	I	10-23-92	Indef.
ST93-729	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	11-12-92	B	65,000	N	I	04-03-92	Indef.
ST93-730	Transcontinental Gas P/L Corp.	Energy Development Corp.	11-12-92	G-S	600,000	N	I	10-22-92	Indef.
ST93-731	Transcontinental Gas P/L Corp.	Entrade Corp	11-12-92	G-S	500,000	N	I	12-19-91	Indef.
ST93-732	Transcontinental Gas P/L Corp.	Entrade Corp	11-12-92	G-S	100,000	N	I	05-26-92	Indef.
ST93-733	Transcontinental Gas P/L Corp.	Equitable Resources Marketing Co.	11-12-92	G-S	160,000	N	I	06-05-92	Indef.
ST93-734	Transcontinental Gas P/L Corp.	Eastex Gas Transmission Co.	11-12-92	B	25,000	N	I	02-19-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-735	Transcontinental Gas P/L Corp.	North Carolina Gas Service.	11-12-92	B	105,000	A	I	10-22-87	Indef.
ST93-736	Transcontinental Gas P/L Corp.	CNG Transmission Corp	11-12-92	G	36,364	A	F	11-01-91	07-31-06
ST93-737	Transcontinental Gas P/L Corp.	Philadelphia Gas Works	11-12-92	B	290,000	N	I	02-16-90	Indef.
ST93-738	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11-12-92	B	12,317	N	I	11-01-91	Indef.
ST93-739	Transcontinental Gas P/L Corp.	Exxon Gas System, Inc .	11-12-92	B	35,000	N	I	01-16-92	Indef.
ST93-740	Transcontinental Gas P/L Corp.	Gasmark, Inc	11-12-92	G-S	1,093,000	N	I	07-23-92	Indef.
ST93-741	Transcontinental Gas P/L Corp.	Town of Wadley	11-12-92	B	3,000	A	I	04-22-89	Indef.
ST93-742	Transcontinental Gas P/L Corp.	Union Gas Co	11-12-92	B	140,000	A	I	01-08-89	Indef.
ST93-743	Transcontinental Gas P/L Corp.	Bridgeline Gas Distribution Co.	11-12-92	B	236,000	N	I	07-17-92	Indef.
ST93-744	Transcontinental Gas P/L Corp.	Louisiana Gas Marketing Co.	11-12-92	B	94,000	N	I	09-25-90	Indef.
ST93-745	Transcontinental Gas P/L Corp.	Public Service Co. of NC, Inc.	11-12-92	B	350,000	N	I	08-01-91	Indef.
ST93-746	Transcontinental Gas P/L Corp.	AGF Direct Gas Sales, Inc.	11-12-92	G-S	23,500	N	I	10-22-92	Indef.
ST93-747	Transcontinental Gas P/L Corp.	Gastantic Corp	11-12-92	G-S	20,000	N	I	08-11-92	Indef.
ST93-748	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	11-12-92	B	120,000	N	I	02-01-91	Indef.
ST93-749	Transcontinental Gas P/L Corp.	Columbia Gas Transmission Corp.	11-12-92	G	2,549,730	N	I	09-30-92	Indef.
ST93-750	Transcontinental Gas P/L Corp.	Endevco Marketing Co ..	11-12-92	G-S	4,246,420	N	I	08-10-92	Indef.
ST93-751	Transcontinental Gas P/L Corp.	Corpus Christi Transmission Co.	11-12-92	B	243,000	N	I	07-01-91	Indef.
ST93-752	Transcontinental Gas P/L Corp.	O&R Energy, Inc	11-13-92	G-S	800,000	N	I	04-23-92	Indef.
ST93-753	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-13-92	B	5,000	N	I	04-10-91	Indef.
ST93-754	Transcontinental Gas P/L Corp.	Marathon Oil Co	11-13-92	G-S	130,000	N	I	09-21-92	Indef.
ST93-755	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-13-92	G-S	200,000	A	I	09-06-91	Indef.
ST93-756	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-13-92	G-S	400,000	A	I	10-24-91	Indef.
ST93-757	Transcontinental Gas P/L Corp.	Lynchburg Gas Co	11-13-92	B	105,000	A	I	10-22-87	Indef.
ST93-758	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-13-92	B	205,000	A	I	12-03-87	Indef.
ST93-759	Transcontinental Gas P/L Corp.	Delmarva Power & Light Co.	11-13-92	B	420,000	A	I	11-01-88	Indef.
ST93-760	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co., Inc.	11-13-92	B	2,450,000	A	I	12-01-87	Indef.
ST93-761	Transcontinental Gas P/L Corp.	Public Service Co. of NC, Inc.	11-13-92	B	6,000	A	I	10-22-87	Indef.
ST93-762	Transcontinental Gas P/L Corp.	City of Madison	11-13-92	B	8,400	A	I	04-22-89	Indef.
ST93-763	Transcontinental Gas P/L Corp.	Philadelphia Gas Works	11-13-92	B	1,400,000	A	I	04-25-89	Indef.
ST93-764	Enogex Inc	Phillips Gas P/L Co	11-13-92	C	20,000	N	I	11-01-92	Indef.
ST93-765	Northern Natural Gas Co	Mobil Natural Co	11-13-92	G-S	100,000	N	F/I	10-01-92	Indef.
ST93-766	Northern Natural Gas Co	AG Processing, Onc	11-13-92	G-S	60,000	N	F/I	11-01-92	Indef.
ST93-767	Transcontinental Gas P/L Corp.	Alabama Gas Corp., et al.	11-13-92	B	425,000	A	I	10-09-92	Indef.
ST93-768	Transcontinental Gas P/L Corp.	KCS Energy Marketing, Inc.	11-13-92	G-S	55,000	N	I	03-23-92	Indef.
ST93-769	Transcontinental Gas P/L Corp.	Municipal Gas Authority .	11-13-92	B	500,000	N	I	09-03-92	Indef.
ST93-770	Transcontinental Gas P/L Corp.	Long Island Lighting Co .	11-13-92	B	600,000	N	I	02-22-90	Indef.
ST93-771	Transcontinental Gas P/L Corp.	Polaris P/L Corp	11-13-92	G-S	100,000	N	I	12-13-91	Indef.
ST93-772	Transcontinental Gas P/L Corp.	Nerco Oil & Gas, Inc	11-13-92	G-S	975,000	N	I	05-21-92	Indef.
ST93-773	Transcontinental Gas P/L Corp.	City of Lexington	11-13-92	B	58,400	N	I	02-20-90	Indef.
ST93-774	Transcontinental Gas P/L Corp.	City of Laurens	11-13-92	B	63,000	N	I	03-13-90	Indef.
ST93-775	Transcontinental Gas P/L Corp.	City of Kings Mountain ..	11-13-92	B	31,500	N	I	07-11-90	Indef.
ST93-776	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11-13-92	B	40,000	N	I	10-25-91	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-777	Transcontinental Gas P/L Corp.	City of Shelby	11-13-92	B	81,200	N	I	04-16-90	Indef.
ST93-778	Texas Gas Trans. Corp.	Citizens Gas and Coke Utility.	11-13-92	G-S	25,000	N	F	11-01-92	Indef.
ST93-779	Texas Gas Trans. Corp.	Energas Corp	11-13-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-780	Texas Gas Trans. Corp.	Energas Corp	11-13-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-781	Texas Gas Trans. Corp.	ANR P/L Co	11-13-92	G	300,000	N	I	11-01-92	Indef.
ST93-782	Texas Gas Trans. Corp.	ANR P/L Co	11-13-92	G	10,000	N	F	11-01-92	Indef.
ST93-783	Texas Gas Trans. Corp.	City of Elizabethtown	11-13-92	B	75	N	I	10-31-92	Indef.
ST93-784	Equitrans, Inc	Tejas Hydroarbons Co	11-13-92	G-S	48,425	N	I	10-31-92	Indef.
ST93-785	Arkla Energy Resources	Associated Natural Gas Co.	11-13-92	B	28,000	N	F	11-01-92	Indef.
ST93-786	Arkla Energy Resources	Arkla Energy Marketing Co.	11-13-92	G-S	25,000	A	F	11-01-92	Indef.
ST93-787	Arkla Energy Resources	Arkansas Oklahoma Gas Corp.	11-13-92	G-S	1,500	N	F	11-01-92	Indef.
ST93-788	Tennessee Gas P/L Co.	GTE Products Corp	11-13-92	G-S	3,000	N	I	10-29-92	Indef.
ST93-789	Channel Industries Gas Co.	Northern Natural Gas Co	11-13-92	C	65,000	N	I	10-15-92	Indef.
ST93-790	Williams Natural Gas Co	Anadarko Trading Co	11-16-92	G-S	1,029	N	I	11-03-92	04-01-93
ST93-791	Texas Eastern Trans. Corp.	Texas Southeastern Gas Co.	11-13-92	B	20,000	N	I	10-21-92	Indef.
ST93-792	Lone Star Gas Co	Arkla, Inc., et al	11-16-92	C	100,000	N	I	10-13-82	Indef.
ST93-793	K N Energy, Inc	Anadarko Trading Co	11-16-92	G-S	30,000	N	I	10-15-92	Indef.
ST93-794	Algonquin Gas Trans. Co.	Colonial Gas Co	11-16-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-795	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11-16-92	G-S	10,200,000	N	I	11-01-92	Indef.
ST93-796	Algonquin Gas Trans. Co.	Entrade Corp	11-16-92	G-S	200,000	N	I	11-01-92	Indef.
ST93-797	Algonquin Gas Trans. Co.	Iroquois Gas Trans. System.	11-16-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-798	Williston Basin Interest. P/L Co.	Hiland Partners	11-16-92	G-S	150	Y	F	10-16-92	10-14-93
ST93-799	Lone Star Gas Co. no information.	.....	.....		.....			.....	
ST93-800	Tennessee Gas Pipeline Co.	Pawtucket Power Associates L.P.	11-16-92	G-S	12,695	N	F	11-01-92	Indef.
ST93-801	ANR Pipeline Co	Murphy Oil USA, Inc	11-16-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-802	ANR Pipeline Co	Neenah Foundry Co	11-16-92	G-S	400	N	F	11-01-92	11-30-08
ST93-803	ANR Pipeline Co	Coast Energy Group, Inc	11-16-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-804	ANR Pipeline Co	Nebraska Public Gas Agency.	11-16-92	G-S	858	N	F	11-04-92	09-30-02
ST93-805	United Gas Pipe Line Co	Munson Operations Inc.	11-16-92	G-S	5,000	N	I	10-19-92	02-16-93
ST93-806	United Gas Pipe Line Co	Yuma Gas Corp	11-16-92	G-S	78,600	N	I	11-04-92	03-04-93
ST93-807	United Gas Pipe Line Co	Kogas, Inc	11-16-92	G-S	42,900	N	F	11-01-92	03-01-93
ST93-808	United Gas Pipe Line Co	Texaco Gas Marketing Inc.	11-16-92	G-S	41,920	N	I	10-15-92	02-12-93
ST93-809	United Gas Pipe Line Co	Texican Natural Gas Co	11-16-92	G-S	3,000	N	F	11-01-92	03-01-93
ST93-810	United Gas Pipe Line Co	KCS Energy Marketing, Inc.	11-16-92	G-S	78,600	N	I	11-06-92	03-06-93
ST93-811	United Gas Pipe Line Co	MG Natural Gas Corp	11-16-92	G-S	4,500	N	F	11-01-92	03-01-93
ST93-812	United Gas Pipe Line Co	Arkla Energy Resources	11-16-92	G-S	150,000	N	I	11-01-92	03-01-93
ST93-813	Valero Transmission, L.P	United Gas Pipe Line Co	11-17-92	C	17,500	N	I	10-21-92	Indef.
ST93-814	Valero Transmission, L.P	Florida Gas Transmission Co.	11-17-92	C	16,000	N	I	10-21-92	Indef.
ST93-815	Transtexas Pipeline	United Gas Pipe Line Co	11-17-92	C	17,500	N	I	10-21-92	Indef.
ST93-816	Transtexas Pipeline	Texas Eastern Transmission Corp.	11-17-92	C	3,117	N	I	10-24-92	Indef.
ST93-817	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	11-17-92	G-S	200,000	N	I	11-01-92	Indef.
ST93-818	Tennessee Gas Pipeline Co.	Endevco Oil & Gas Co	11-17-92	G-S	220,000	N	I	11-01-92	Indef.
ST93-819	Tennessee Gas Pipeline Co.	Texaco Gas Marketing, Inc.	11-17-92	G-S	202,800	N	I	11-01-92	Indef.
ST93-820	El Paso Natural Gas Co	Brooklyn Interstate Nat. Gas Corp.	11-17-92	G-S	50,000	N	I	11-04-92	Indef.
ST93-821	Exxon Gas System, Inc.	Moss Bluff Gas Storage Systems.	11-17-92	C	5,000	N	I	09-09-92	Indef.
ST93-822	Columbia Gas Transmission Corp.	PPG Industries, Inc	11-17-92	G-S	240	Y	F	11-01-92	03-31-93
ST93-823	Columbia Gas Transmission Corp.	USS/KOBE Steel Co	11-17-92	G-S	5,500	Y	F	11-01-92	Indef.
ST93-824	Columbia Gas Transmission Corp.	Access Energy Corp	11-17-92	G-S	2,535	Y	F	11-01-92	03-31-93
ST93-825	Columbia Gas Transmission Corp.	Schuller International, Inc.	11-17-92	G-S	200	Y	I	11-02-92	10-31-93
ST93-826	Columbia Gas Transmission Corp.	Auxier Road Gas Co., Inc.	11-17-92	B	600	Y	I	11-03-92	Indef.
ST93-827	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11-17-92	B	18,000	Y	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-828	Columbia Gas Transmission Corp.	Access Energy Corp	11-17-92	G-S	991	Y	F	11-01-92	03-31-93
ST93-829	Florida Gas Transmission Co.	Hadson Gas Systems, Inc.	11-17-92	G-S	100,000	N	I	10-23-92	Indef.
ST93-830	Black Marlin Pipeline Co	Delhi Gas Pipeline Corp	11-17-92	B	100,000	A	I	11-01-92	Indef.
ST93-831	Williams Natural Gas Co	City of Eskridge	11-17-92	G-S	120	N	I	11-01-92	11-01-93
ST93-832	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	11-17-92	G-S	750	Y	F	11-01-92	Indef.
ST93-833	Columbia Gas Transmission Corp.	W.E. Burchett, Jr., Agent	11-17-92	G-S	1,622	N	F	11-01-92	Indef.
ST93-834	Columbia Gas Transmission Corp.	Entrade Corp	11-17-92	G-S	1,452	N	F	11-01-92	03-31-93
ST93-835	Columbia Gas Transmission Corp.	J.D. Drilling Co	11-17-92	G-S	6,002	Y	F	11-01-92	Indef.
ST93-836	Williams Natural Gas Co	Vesta Energy Co	11-17-92	G-S	11,139	N	F	11-01-92	04-01-93
ST93-837	Transcontinental Gas P/L Corp.	Trinity Pipeline, Inc	11-17-92	G-S	500,000	N	I	03-09-92	Indef.
ST93-838	Transcontinental Gas P/L Corp.	Scana Hydrocarbons, Inc.	11-17-92	G-S	420,000	N	I	06-25-92	Indef.
ST93-839	Transcontinental Gas P/L Corp.	TXG Gas Marketing Co	11-17-92	G-S	200,000	N	I	11-20-90	Indef.
ST93-840	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-17-92	G-S	100,000	A	I	10-21-91	Indef.
ST93-841	Texas, Gas Transmission Corp.	Transok Gas Co	11-17-92	G-S	15,000	N	I	11-08-92	Indef.
ST93-842	Texas Gas Transmission Corp.	Louisville Gas & Elect. Co.	11-17-92	G-S	20,000	N	F	11-01-92	Indef.
ST93-843	Texas Gas Transmission Corp.	Public Service Elect. & Gas Co.	11-17-92	G-S	5,117	N	F	11-01-92	Indef.
ST93-844	Texas Gas Transmission Corp.	New Jersey Natural Gas Co.	11-17-92	G-S	10,000	N	F	11-01-92	Indef.
ST93-845	Texas Gas Transmission Corp.	KCS Energy Marketing, Inc.	11-17-92	G-S	20,000	N	I	11-01-92	Indef.
ST93-846	Texas Gas Transmission Corp.	City of Bloomfield	11-17-92	G-S	213	N	F	11-01-92	10-31-93
ST93-847	Texas Gas Transmission Corp.	City Gas Co	11-17-92	G-S	610	N	F	11-01-92	10-31-93
ST93-848	Texas Gas Transmission Corp.	Fountaintown Gas Co., Inc.	11-17-92	G-S	550	N	F	11-05-92	10-31-93
ST93-849	Texas Gas Transmission Corp.	City of Grant City	11-17-92	G-S	68	N	F	11-05-92	10-31-93
ST93-850	Texas Gas Transmission Corp.	City of Moulton	11-17-92	G-S	49	N	F	11-05-92	10-31-93
ST93-851	Texas Gas Transmission Corp.	City of Wetmore	11-17-92	G-S	30	N	F	11-01-92	10-31-93
ST93-852	Texas Gas Transmission Corp.	City of Alta Vista	11-17-92	G-S	60	N	F	11-01-92	10-31-93
ST93-853	ONG Transmission Co	Phillips Gas Pipeline Co	11-18-92	C	25,000	N	I	10-23-92	Indef.
ST93-854	Tennessee Gas Pipeline Co.	Cornerstone Production Corp.	11-18-92	G-S	150,000	N	I	10-23-92	Indef.
ST93-855	Tennessee Gas Pipeline Co.	CNG Trading Co	11-18-92	G-S	650,000	N	I	11-02-92	Indef.
ST93-856	Tennessee Gas Pipeline Co.	SCM Chemicals, Inc	11-18-92	G-S	1,750	N	F	11-01-92	Indef.
ST93-857	Transcontinental Gas P/L Corp.	Citizens Gas Supply Corp.	11-18-92	G-S	150,000	N	I	08-03-90	Indef.
ST93-858	Transcontinental Gas P/L Corp.	Coastal States Gas Transmission.	11-18-92	G-S	50,000	N	I	10-16-91	Indef.
ST93-859	Transcontinental Gas P/L Corp.	Coastal States Gas Transmission.	11-18-92	B	26,000	N	I	11-04-92	Indef.
ST93-860	Transcontinental Gas P/L Corp.	Citizens Gas Supply Corp.	11-18-92	G-S	75,000	N	I	03-12-91	Indef.
ST93-861	Transcontinental Gas P/L Corp.	Coastal Gas Marketing Co.	11-18-92	G-S	100,000	N	I	07-12-92	Indef.
ST93-862	Transcontinental Gas P/L Corp.	Coastal Gas Marketing Co.	11-18-92	G-S	100,000	N	I	01-25-91	Indef.
ST93-863	Transcontinental Gas P/L Corp.	Conoco, Inc	11-18-92	G-S	134,316	N	I	08-11-91	Indef.
ST93-864	Transcontinental Gas P/L Corp.	Eastex Hydrocarbon, Inc	11-18-92	G-S	300,000	N	I	11-01-92	Indef.
ST93-865	Transcontinental Gas P/L Corp.	CNG Transmission Corp	11-18-92	G	71,548	N	I	11-01-92	10-31-12
ST93-866	Arkla Energy Resources	Weyerhaeuser Co	11-18-92	G-S	300	N	F	11-16-92	Indef.
ST93-867	Palo Duro Pipeline Co., Inc.	Natural Gas P/L Co. of America.	11-18-92	C	50,000	Y	I	10-23-92	Indef.
ST93-868	United Texas Transmission Co.	Natural Gas P/L Co. of America.	11-18-92	C	13,000	Y	I	10-24-92	Indef.
ST93-869	Williams Natural Gas Co	Grove Municipal Service Authority.	11-18-92	G-S	5,000	N	F	11-01-92	11-01-93
ST93-870	Valero Transmission, L.P	Texas Eastern Transmission Corp.	11-18-92	C	30,000	N	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-871	Valero Transmission, L.P	Tennessee Gas Pipeline Co.	11-18-92	C	5,263	N	I	11-01-92	Indef.
ST93-872	Valero Transmission, L.P	United Gas Pipe Line Co	11-18-92	C	9,140	N	I	11-01-92	Indef.
ST93-873	Valero Transmission, L.P	Texas Eastern Transmission Co.	11-18-92	C	9,000	N	I	11-01-92	Indef.
ST93-874	Valero Transmission, L.P	Tennessee Pipeline Co .	11-18-92	C	25,000	N	I	10-13-92	Indef.
ST93-875	Florida Gas Transmission Co.	Longhorn Pipeline Co	11-18-92	B	50,000	N	I	11-01-92	Indef.
ST93-876	Florida Gas Transmission Co.	Peoples Gas System, Inc.	11-18-92	B	100,000	N	I	10-30-92	Indef.
ST93-877	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11-18-92	B	7,500	Y	I	11-01-92	Indef.
ST93-878	Columbia Gas Transmission Corp.	Interstate Natural Gas Co.	11-18-92	G-S	1,310	Y	F	11-01-92	Indef.
ST93-879	Columbia Gas Transmission Corp.	Cumberland Gas Co	11-18-92	G-S	- 220	N	F	11-01-92	Indef.
ST93-880	Columbia Gas Transmission Corp.	Coshocton Stainless Div. of Armco.	11-18-92	G-S	460	Y	F	11-01-92	Indef.
ST93-881	Columbia Gas Transmission Corp.	PPG Industries, Inc	11-18-92	G-S	210	Y	F	11-01-92	03-31-93
ST93-882	Columbia Gas Transmission Corp.	West Ohio Gas Co	11-18-92	B	3,800	Y	F	11-01-92	Indef.
ST93-883	Columbia Gas Transmission Corp.	West Ohio Gas Co	11-18-92	B	6,200	Y	F	11-01-92	Indef.
ST93-884	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11-18-92	B	2,500	Y	I	11-01-92	Indef.
ST93-885	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	11-18-92	G-S	2,145	Y	F	11-01-92	03-31-93
ST93-886	Columbia Gas Transmission Corp.	Southeastern Gas Co	11-18-92	G-S	5,092	Y	F	11-01-92	Indef.
ST93-887	Columbia Gas Transmission Corp.	Gas Access Systems, Inc.	11-18-92	G-S	6,500	Y	F	11-01-92	03-31-93
ST93-888	Columbia Gas Transmission Corp.	American Standard, Inc .	11-18-92	G-S	1,350	Y	F	11-01-92	03-31-93
ST93-889	Columbia Gas Transmission Corp.	Triangle Resource Group.	11-18-92	G-S	2,874	N	I	10-29-92	Indef.
ST93-890	Columbia Gas Transmission Corp.	Latrobe Steel Co	11-18-92	G-S	3,000	N	I	11-01-92	Indef.
ST93-891	Columbia Gas Transmission Corp.	Dayton Power and Light Co.	11-18-92	G-S	4,336	Y	I	11-01-92	Indef.
ST93-892	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc.	11-18-92	G-S	4,500	N	I	11-01-92	03-31-93
ST93-893	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc.	11-18-92	G-S	820	Y	F	11-01-92	Indef.
ST93-894	Columbia Gas Transmission Corp.	Williams Allen & Lewis Jessie, SR.	11-18-92	G-S	484	N	F	11-01-92	Indef.
ST93-895	Columbia Gas Transmission Corp.	MSL Oil & Gas Corp	11-18-92	G-S	10,000	N	I	11-10-92	Indef.
ST93-896	Lone Star Gas Co	Northern Natural Gas Co., et al.	11-19-92	C	15,000	N	I	10-23-92	Indef.
ST93-897	Lone Star Gas Co	Northern Natural Gas Co., et al.	11-19-92	C	30,000	N	I	10-24-92	Indef.
ST93-898	Transok, Inc	Panhandle Eastern Pipe Line Co.	11-19-92	C	10,000	N	I	11-07-92	Indef.
ST93-899	Transok, Inc	Panhandle Eastern Pipe Line Co.	11-19-92	C	100,000	N	I	11-01-92	Indef.
ST93-900	Transok, Inc	Williams Natural Gas Co	11-19-92	C	50,000	N	I	11-15-92	Indef.
ST93-901	Transok, Inc	Black Marlin Pipeline Co	11-19-92	C	50,000	N	I	11-01-92	Indef.
ST93-902	Transok, Inc	Phillips Gas Pipeline Co	11-19-92	C	50,000	N	I	11-01-92	Indef.
ST93-903	Transok, Inc	Phillips Gas Pipeline Co	11-19-92	C	20,000	N	I	11-02-92	Indef.
ST93-904	Oasis Pipe Line Co	Natural Gas P/L Co. of America.	11-19-92	C	100,000	N	I	10-06-92	Indef.
ST93-905	Oasis Pipe Line Co	Transwestern Pipeline Co.	11-19-92	C	100,000	N	I	10-17-92	Indef.
ST93-906	Oasis Pipe Line Co	Tennessees Gas Pipeline Co.	11-19-92	C	30,000	N	I	10-18-92	Indef.
ST93-907	Southern Natural Gas Co.	Chevron U.S.A., Inc	11-19-92	G-S	15,000	N	I	11-01-92	11-30-92
ST93-908	Southern Natural Gas Co.	Florida Gas Transmission Co.	11-19-92	G	25,000	N	I	11-01-92	Indef.
ST93-909	Sea Robin Pipeline Co ..	Freeport-McMoran Oil and Gas Co.	11-19-92	G-S	90,000	N	I	11-06-92	Indef.
ST93-910	Sea Robin Pipeline Co ..	Superior Natural Gas Corp.	11-19-92	G-S	6,587	N	I	11-07-92	10-31-93
ST93-911	Sea Robin Pipeline Co ..	Eagle Natural Gas Co ...	11-19-92	G-S	10,000	N	I	11-03-92	02-28-93
ST93-912	Sea Robin Pipeline Co ..	Sonat Marketing Co	11-19-92	G-S	7,409	Y	I	11-11-92	11-30-92
ST93-913	Natural Gas P/L Co. of America.	Midcon Marketing Corp .	11-19-92	G-S	2,009	A	F	10-20-92	10-31-92
ST93-914	Stingray Pipeline Co	Arcadian Corp	11-19-92	K-S	50,000	N	I	11-01-92	Indef.
ST93-915	Northwest Pipeline Corp	Hadson Gas Systems, Inc.	11-19-92	G-S	600,000	N	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-916	Williams Natural Gas Co	Aquila Energy Marketing Corp.	11-19-92	G-S	400	N	I	11-01-92	04-01-93
ST93-917	Tenngasco Gas Supply Co.	Tennessee Gas Pipeline Co.	11-19-92	C	20,000	N	I	10-31-92	04-01-95
ST93-918	Tennessee Gas Pipeline Co.	National Fuel Gas Supply Corp.	11-19-92	G-S	200,000	N	I	10-26-92	Indef.
ST93-919	Tennessee Gas Pipeline Co.	Paragon Gas Corp	11-19-92	G-S	40,000	N	I	11-01-92	Indef.
ST93-920	Tennessee Gas Pipeline Co.	Tenngasco Corp	11-19-92	G-S	2,000,000	N	I	11-28-92	Indef.
ST93-921	Southern Natural Gas Co.	Canton Municipal Utilities.	11-19-92	B	150	N	I	11-02-92	02-28-93
ST93-922	Southern Natural Gas Co.	Peoples Gas System	11-19-92	B	10,050	N	I	11-10-92	04-30-04
ST93-923	Houston Pipe Line Co	United Gas Pipe Line Co	11-19-92	C	25,000	N	I	10-27-92	Indef.
ST93-924	Houston Pipe Line Co	Natural Gas P/L Co. of America.	11-19-92	C	5,000	N	I	10-01-92	Indef.
ST93-925	Houston Pipe Line Co	Florida Gas Transmission Co.	11-19-92	C	20,000	N	I	10-01-92	Indef.
ST93-926	Houston Pipe Line Co	Tennessee Gas Pipeline Co.	11-19-92	C	100,000	N	I	10-18-92	Indef.
ST93-927	Houston Pipe Line Co	Seagull Interstate Corp	11-19-92	C	36,000	N	I	10-01-92	Indef.
ST93-928	Houston Pipe Line Co	Natural Gas P/L Co. of America.	11-19-92	C	20,000	N	I	10-28-92	Indef.
ST93-929	Houston Pipe Line Co	Seagull Interstate Corp	11-19-92	C	50,000	N	I	10-10-92	Indef.
ST93-930	Houston Pipe Line Co	Texas Eastern Transmission Corp.	11-19-92	C	50,000	N	I	10-22-92	Indef.
ST93-931	Transcontinental Gas P/L Corp.	Alanta Gas Light Co	11-19-92	B	6,222	A	F	06-26-92	04-30-98
ST93-932	Transcontinental Gas P/L Corp.	Alanta Gas Light Co	11-19-92	B	107,600	A	F	07-07-92	03-31-10
ST93-933	Transcontinental Gas P/L Corp.	Appalachian Gas Sales	11-19-92	B	219	A	F	08-01-91	04-25-98
ST93-934	Transcontinental Gas P/L Corp.	City of Lexington	11-19-92	B	219	N	F	09-01-91	04-06-98
ST93-935	Transcontinental Gas P/L Corp.	Columbia Gas Transmission Corp.	11-19-92	G	13,715	N	F	08-01-91	03-31-05
ST93-936	Transcontinental Gas P/L Corp.	Superior Natural Gas Corp.	11-19-92	G-S	75,000	N	I	10-07-91	Indef.
ST93-937	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-19-92	G-S	50,000	N	I	07-20-92	Indef.
ST93-938	Transcontinental Gas P/L Corp.	PSNC Production Corp	11-19-92	G-S	370,000	N	I	11-01-91	Indef.
ST93-939	Transcontinental Gas P/L Corp.	TEJAS Power Corp	11-19-92	G-S	450,000	N	I	09-20-90	Indef.
ST93-940	Transcontinental Gas P/L Corp.	Columbia Gas Transmission Corp.	11-19-92	G	2,500	N	F	08-01-91	12-04-99
ST93-941	Transcontinental Gas P/L Corp.	Consolidated Edison Co. of NY.	11-19-92	B	2,014	A	F	08-01-91	3-31-98
ST93-942	Transcontinental Gas P/L Corp.	The Brooklyn Union Gas Co.	11-19-92	B	1,902	N	F	08-01-91	11-30-98
ST93-943	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11-19-92	B	11,900	A	F	08-01-91	10-31-04
ST93-944	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-19-92	G-S	200,000	N	I	05-24-91	Indef.
ST93-945	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-19-92	G-S	365,000	A	I	11-25-91	Indef.
ST93-946	Transcontinental Gas P/L Corp.	Long Island Lighting Co	11-19-92	B	1,902	A	F	08-01-91	03-01-91
ST93-947	Transcontinental Gas P/L Corp.	City of Kings Mountain	11-19-92	B	87	N	F	09-01-91	11-30-98
ST93-948	Transcontinental Gas P/L Corp.	City of Union	11-19-92	B	262	N	F	11-01-91	05-02-98
ST93-949	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-19-92	G-S	35,000	N	I	02-19-92	Indef.
ST93-950	Transcontinental Gas P/L Corp.	City of Danville	11-19-92	B	26,000	N	F	07-28-92	04-01-99
ST93-951	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	11-19-92	G-S	112,000	N	I	02-27-92	Indef.
ST93-952	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-19-92	G-S	1,050,000	A	I	08-31-92	Indef.
ST93-953	Transcontinental Gas P/L Corp.	North Atlantic Utilities, Inc.	11-19-92	G-S	60,000	N	I	04-05-91	Indef.
ST93-954	Transcontinental Gas P/L Corp.	Valero Gas Marking, L.P	11-19-92	G-S	1,964	N	I	04-19-92	Indef.
ST93-955	Transcontinental Gas P/L Corp.	Calcasieu Gas Gathering System.	11-19-92	G-S	380,000	N	I	11-22-91	Indef.
ST93-956	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	11-19-92	G-S	96,000	N	I	10-21-91	Indef.
ST93-957	Transcontinental Gas P/L Corp.	City of Union	11-19-92	B	70,000	N	I	03-16-89	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-958	Transcontinental Gas P/L Corp.	Catex Energy, Inc	11-19-92	G-S	1,650,000	N	I	07-06-91	Indef.
ST93-959	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-19-92	G-S	600,000	A	I	10-02-91	Indef.
ST93-960	Transcontinental Gas P/L Corp.	LL & E Gas Marketing, Inc.	11-19-92	G-S	20,000	N	I	02-10-92	Indef.
ST93-961	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co .	11-19-92	B	237,638	N	F	10-01-92	Indef.
ST93-962	Transcontinental Gas P/L Corp.	Pennsylvania Gas and Water Co.	11-19-92	B	3,937	A	F	08-01-91	03-25-98
ST93-963	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11-19-92	B	1,449	N	F	08-01-91	04-04-98
ST93-964	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-19-92	B	1,449	A	F	08-01-91	04-25-98
ST93-965	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Co.	11-19-92	B	1,811	A	F	08-01-91	04-04-98
ST93-966	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co ...	11-19-92	B	1,751	N	F	12-01-91	04-04-98
ST93-967	Transcontinental Gas P/L Corp.	City of Kings Mountain ..	11-19-92	B	87	N	F	09-01-91	11-30-98
ST93-968	Transcontinental Gas P/L Corp.	Comm. of Public Works, Greer.	11-19-92	B	91	N	F	09-01-91	11-30-98
ST93-969	Transcontinental Gas P/L Corp.	Frederick Gas Co., Inc ..	11-19-92	B	4,500	N	F	08-01-91	03-31-05
ST93-970	Transcontinental Gas P/L Corp.	Southern Gas Co., Inc ...	11-19-92	B	22,000	N	I	03-01-91	Indef.
ST93-971	Transcontinental Gas P/L Corp.	Commonwealth Gas Services.	11-19-92	B	6,377	A	F	08-01-91	03-31-05
ST93-972	Transcontinental Gas P/L Corp.	Public Service Co. of NC	11-19-92	B	3,324	N	F	08-01-91	03-31-98
ST93-973	Transcontinental Gas P/L Corp.	Public Service Co. of NC	11-19-92	B	4,075	A	F	02-08-92	04-04-98
ST93-974	Transcontinental Gas P/L Corp.	City of Shelby	11-19-92	B	262	N	F	09-01-91	05-02-98
ST93-975	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-19-92	B	6,222	N	F	08-01-91	03-01-98
ST93-976	Transcontinental Gas P/L Corp.	City of Lexington	11-19-92	B	219	N	F	08-01-91	03-25-98
ST93-977	Transcontinental Gas P/L Corp.	Comm. of Public Works, Greer.	11-19-92	B	87	N	F	09-01-91	11-30-98
ST93-977	Transcontinental Gas P/L Corp.	Comm. of Public Works, Greer.	11-19-92	B	87	N	F	09-01-91	11-30-98
ST93-978	Channel Industries Co ...	Natural Gas P/L Co. of America.	11-20-92	C	75,00	N	I	10-24-92	Indef.
ST93-979	Tennessee Gas Pipeline Co.	Mississippi Valley Gas Co.	11-20-92	B	15,000	N	F	11-01-92	Indef.
ST93-980	East Tennessee Natural Gas Co.	Petroleum Source & System Group.	11-20-92	G-S	12,000	N	I	11-01-92	Indef.
ST93-981	East Tennessee Natural Gas Co.	International Power Co ..	11-20-92	G-S	2,000	N	I	11-06-92	Indef.
ST93-982	East Tennessee Natural Gas Co.	Virginia Gas Co	11-20-92	G-S	5,000	N	I	11-04-92	Indef.
ST93-983	East Tennessee Natural Gas Co.	Roanoke Gas Co	11-20-92	G-S	4,895	N	F	11-01-92	Indef.
ST93-984	East Tennessee Natural Gas Co.	Atlanta Gas Light Co	11-20-92	G-S	18,600	N	F	11-01-92	Indef.
ST93-985	Sabine Pipe Line Co	Phibro Energy USA, Inc	11-20-92	G-S	50,000	N	F	11-01-92	Indef.
ST93-986	Sabine Pipe Line Co	Gasmark, Ltd	11-20-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-987	Dow Pipeline Co	Natural Gas P/L Co. of America.	11-20-92	C	10,000	N	I	11-01-92	11-01-94
ST93-988	Lone Star Gas Co	United Gas Kpipe Line Co., et al.	11-20-92	C	15,000	N	I	10-23-92	Indef.
ST93-989	Panhandle Eastern Pipe Line Co.	Southern Michigan Gas Co.	11-20-92	G-S	17,400	N	F	11-01-92	Indef.
ST93-990	Panhandle Eastern Pipe Line Co.	Village of Franklin	11-20-92	G-S	500	N	F	10-01-92	Indef.
ST93-991	Panhandle Eastern Pipe Line Co.	Union Electric Co	11-20-92	G-S	17,320	N	F	11-01-92	Indef.
ST93-992	Panhandle Eastern Pipe Line Co.	Tarpon Gas Marketing Ltd.	11-20-92	G-S	19,680	N	F	11-01-92	Indef.
ST93-993	Panhandle Eastern Pipe Line Co.	NITEX	11-20-92	G-S	6,000	N	F	11-01-92	Indef.
ST93-994	Panhandle Eastern Pipe Line Co.	Entrade Corp	11-20-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-995	United Gas Pipe Line Co	Fina Natural Gas Co	11-20-92	G-S	42,107	N	I	11-01-92	03-10-93
ST93-996	United Gas Pipe Line Co	Fina Natural Gas Co	11-20-92	G-S	104,800	N	I	11-12-92	03-12-93
ST93-997	United Gas Pipe Line Co	MG Natural Gas Corp	11-20-92	G-S	41,920	N	I	11-09-92	03-09-93
ST93-998	United Gas Pipe Line Co	United Gas Services Co	11-20-92	G-S	628,800	N	I	11-09-92	03-09-93
ST93-999	United Gas Pipe Line Co	Shell Gas Trading Co	11-20-92	G-S	209,600	N	I	11-10-92	03-10-93
ST93-1000	United Gas Pipe Line Co	KCS Energy Marketing, Inc.	11-20-92	G-S	78,600	N	I	11-09-92	03-09-93

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-1001	United Gas Pipe Line Co	Coastal Gas Marketing Co.	11-20-92	G-S	262,000	N	I	11-11-92	03-11-93
ST93-1002	United Gas Pipe Line Co	Oxy USA Inc	11-20-92	G-S	3,000	N	I	11-10-92	03-10-93
ST93-1003	United Gas Pipe Line Co	Amerada Hess Corp	11-20-92	G-S	86,460	N	I	12-12-92	03-12-93
ST93-1004	Gateway Pipeline Co	Louis Dreyfus Energy Corp.	11-20-92	G-S	100,000	N	I	11-07-92	03-03-93
ST93-1005	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-20-92	G-S	111,500	N	I	04-11-91	Indef.
ST93-1006	Transcontinental Gas P/L Corp.	Transworld Oil U.S.A., Inc.	11-20-92	G-S	2,810,000	N	I	07-06-91	Indef.
ST93-1007	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	11-20-92	G-S	158,000	N	I	11-26-91	Indef.
ST93-1008	Transcontinental Gas P/L Corp.	Conoco, Inc	11-20-92	G-S	83,500	N	I	08-06-90	Indef.
ST93-1009	Transcontinental Gas P/L Corp.	CNG Trading Co	11-20-92	G-S	420,000	N	I	11-05-92	Indef.
ST93-1010	Transcontinental Gas P/L Corp.	Enmark Gas Corp	11-20-92	G-S	265,000	N	I	09-15-92	Indef.
ST93-1011	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-20-92	G-S	2,500,000	N	I	12-19-91	Indef.
ST93-1012	ANR Pipeline Co	Cibola Corp	11-20-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1013	ANR Pipeline Co	Entrade Corp	11-20-92	G-S	500,000	N	I	11-01-92	Indef.
ST93-1014	ANR Pipeline Co	Aquila Energy Marketing Corp.	11-20-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1015	ANR Pipeline Co	Hadson Gas System	11-20-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1016	ANR Pipeline Co	Coastal Gas Marketing Co.	11-20-92	G-S	750,000	N	F	11-01-92	Indef.
ST93-1017	ANR Pipeline Co	Coastal Gas Marketing Co.	11-20-92	G-S	750,000	N	F	11-01-92	Indef.
ST93-1018	ANR Pipeline Co	Cibola Corp	11-20-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-1019	ANR Pipeline Co	Hadson Gas Systems	11-20-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1020	ANR Pipeline Co	Entrade Corp	11-21-92	G-S	500,000	N	I	11-01-92	Indef.
ST93-1021	ANR Pipeline Co	Texaco Gas Marketing Inc.	11-21-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1022	ANR Pipeline Co	Coastal Gas Marketing Co.	11-21-92	G-S	750,000	N	F	11-01-92	Indef.
ST93-1023	Williston Basin Inter. P/L Co.	Rainbpw Gas Co	11-20-92	G-S	283,173	A	I	11-04-92	07-31-94
ST93-1024	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-20-92	G-S	260	N	I	11-01-92	Indef.
ST93-1025	Panhandle Eastern Pipe Line Co.	Tarpon Gas Marketing Ltd.	11-20-92	G-S	19,880	N	F	11-01-92	Indef.
ST93-1026	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	11-20-92	G-S	23,900	N	I	11-01-92	Indef.
ST93-1027	Panhandle Eastern Pipe Line Co.	Schuller International, Inc.	11-20-92	G-S	4,000	N	F	11-01-92	Indef.
ST93-1028	Panhandle Eastern Pipe Line Co.	City of Lacygne	11-20-92	G-S	850	N	I	10-01-92	Indef.
ST93-1029	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	11-20-92	B	10,000	N	F	11-01-92	Indef.
ST93-1030	Panhandle Eastern Pipe Line Co.	Western Gas Resources, Inc.	11-20-92	G-S	150,000	N	I	11-01-92	Indef.
ST93-1031	Panhandle Eastern Pipe Line Co.	Nitex	11-20-92	G-S	26,000	N	F	11-01-92	Indef.
ST93-1032	Panhandle Eastern Pipe Line Co.	Tarpon Gas Marketing Ltd.	11-20-92	G-S	19,880	N	F	11-01-92	Indef.
ST93-1033	Panhandle Eastern Pipe Line Co.	Pandhandle Eastern Pipe Line Co.	11-20-92	G	950	Y	I	11-01-92	Indef.
ST93-1034	Trunkline Gas Co	Neste OY	11-20-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-1035	Trunkline Gas Co	Conoco, Inc	11-20-92	G-G	20,161	N	F	11-01-92	Indef.
ST93-1036	Trunkline Gas Co	Ensearch Gas Co	11-20-92	G-S	30,000	N	I	11-01-92	Indef.
ST93-1037	Natural Gas P/L Co. of America.	Pan-Alberta Gas (U.S.) Inc.	11-20-92	G-S	150,000	N	F	11-01-92	07-31-93
ST93-1038	Natural Gas P/L Co. of America.	Vesta Energy Co	11-20-92	G-S	30,000	N	I	10-21-92	Indef.
ST93-1039	Natural Gas P/L Co. of America.	Central Illinois Public Serv. Co.	11-20-92	G-S	5,000	M	F	11-01-92	10-31-97
ST93-1040	Northern Border Pipeline Co.	Mobil Natural Gas Inc	11-20-92	G-S	30,000	Y	I	11-01-92	Indef.
ST93-1041	Northern Border Pipeline Co.	Husky Gas Marketing Inc.	11-20-92	G-S	100,000	Y	I	11-01-92	Indef.
ST93-1042	Northern Border Pipeline Co.	Tenaska Marketing Ventures.	11-20-92	G-S	50,000	Y	I	10-31-92	03-31-94
ST93-1043	Northern Border Pipeline Co.	Prairielands Energy Marketing, Inc.	11-20-92	G-S	12,000	Y	I	11-01-92	Indef.
ST93-1044	Northern Natural Gas Co	Iowa-Illinois Gas & Elect. Co.	11-20-92	G-S	1,340,880	N	F/I	11-01-92	Indef.
ST93-1045	Northern Natural Gas Co	Sanborn Municipal Gas Utility.	11-20-92	G-S	27,180	N	F/I	11-01-92	Indef.
ST93-1046	Northern Natural Gas Co	Midwest Natural Gas, Inc.	11-20-92	G-S	269,082	N	F/I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-1047	Northern Natural Gas Co	Michigan Gas Co	11-20-92	G-S	1,929,931	N	F/I	11-01-92	Indef.
ST93-1048	Northern Natural Gas Co	Austin Utilities Dept	11-20-92	B	632,388	N	F/I	11-01-92	Indef.
ST93-1049	Northern Natural Gas Co	Manning Municipal Gas Dept.	11-20-92	G-S	41,374	N	F/I	11-01-92	Indef.
ST93-1050	Northern Natural Gas Co	Interstate Power Co	11-20-92	G-S	2,347,295	N	F/I	11-01-92	Indef.
ST93-1051	Northern Natural Gas Co	Iowa Electric Light and Power Co.	11-20-92	B	5,761,254	N	F/I	11-01-92	Indef.
ST93-1052	Northern Natural Gas Co	Graettinger Municipal Gas.	11-20-92	G-S	12,533	N	F/I	11-01-92	Indef.
ST93-1053	Northern Natural Gas Co	Manilla Municipal Gas	11-20-92	G-S	11,325	N	F/I	11-01-92	Indef.
ST93-1054	Northern Natural Gas Co	Fairbank Municipal Utilities.	11-20-92	G-S	20,385	N	F/I	11-01-92	Indef.
ST93-1055	Northern Natural Gas Co	Harwarden Municipal Utilities.	11-20-92	G-S	35,183	N	F/I	11-01-92	Indef.
ST93-1056	Northern Natural Gas Co	Municipal Gas Utility, Cedar Falls.	11-20-92	G-S	679,500	N	F/I	11-01-92	Indef.
ST93-1057	Northern Natural Gas Co	Circle Pines Utilities	11-20-92	G-S	86,825	N	F/I	11-01-92	Indef.
ST93-1058	Transtexas Pipeline	Texas Eastern Transmission Corp.	11-23-92	C	10,000	N	I	10-24-92	Indef.
ST93-1059	Valero Transmission, L.P	Natural Gas P/L Co. of America.	11-23-92	C	20,000	N	I	11-01-92	Indef.
ST93-1060	Valero Transmission, L.P	El Paso Natural Gas Co	11-23-92	C	13,117	N	I	10-01-92	Indef.
ST93-1061	K N Energy, Inc	K N Gas Marketing, Inc.	11-23-92	G-S	5,110	A	I	11-01-92	Indef.
ST93-1062	K N Energy, Inc	Transok, Inc	11-23-92	B	50,000	N	I	06-01-92	Indef.
ST93-1063	Lone Star Gas Co	Tennessee Gas Pipeline Co.	11-23-92	C	40,000	N	I	10-21-92	Indef.
ST93-1064	TransTexas Pipeline	Tennessee Gas Pipeline Co.	11-23-92	C	30,000	N	I	10-29-92	Indef.
ST93-1065	Valero Transmission, L.P	Texas Eastern Transmission Corp.	11-23-92	C	10,062	N	I	10-22-92	Indef.
ST93-1066	Valero Transmission, L.P	Transwestern Pipeline Co.	11-23-92	C	200	N	I	11-01-92	Indef.
ST93-1067	Valero Transmission, L.P	Tennessee Gas Pipeline Co.	11-23-92	C	30,000	N	I	10-29-92	Indef.
ST93-1068	Alabama-Tennessee Nat. Gas Co.	City of Sheffield	11-23-92	B	678	A	I	11-01-92	11-01-95
ST93-1069	Alabama-Tennessee Nat. Gas Co.	City of Sheffield	11-23-92	B	835	A	I	11-01-92	11-01-00
ST93-1070	Alabama-Tennessee Nat. Gas Co.	City of Decatur	11-23-92	B	1,371	A	I	11-01-92	11-01-95
ST93-1071	Alabama-Tennessee Nat. Gas Co.	City of Decatur	11-23-92	B	1,690	A	I	11-01-92	11-01-00
ST93-1072	Alabama-Tennessee Nat. Gas Co.	City of Decatur	11-23-92	B	6,000	A	I	11-01-92	11-01-95
ST93-1073	Alabama-Tennessee Nat. Gas Co.	City of Athens	11-23-92	B	1,018	A	I	11-01-92	11-01-00
ST93-1074	Alabama-Tennessee Nat. Gas Co.	City of Tuscumbia	11-23-92	B	407	A	I	11-01-92	11-01-00
ST93-1075	Alabama-Tennessee Nat. Gas Co.	City of Tuscumbia	11-23-92	B	330	A	I	11-01-92	11-01-95
ST93-1076	Alabama-Tennessee Nat. Gas Co.	City of Florence	11-23-92	B	3,087	A	I	11-01-92	05-01-01
ST93-1077	Alabama-Tennessee Nat. Gas Co.	City of Russellville	11-23-92	B	938	A	I	11-01-92	11-01-00
ST93-1078	Alabama-Tennessee Nat. Gas Co.	City of Huntsville	11-23-92	B	5,281	A	F/I	11-01-92	11-01-00
ST93-1079	Alabama-Tennessee Nat. Gas Co.	City of Huntsville	11-23-92	B	4,284	A	F/I	11-01-92	11-01-95
ST93-1080	Delhi Gas Pipeline Corp	Williams Natural Gas Co	11-23-92	C	13,000	N	I	10-24-92	Indef.
ST93-1081	Tennessee Gas pipeline Co.	Mississippi Valley Gas Co.	11-23-92	B	20,000	N	F	11-03-92	Indef.
ST93-1082	Tennessee Gas Pipeline Co.	Fulton Cogeneration Associates.	11-23-92	G-S	6,050	N	F	11-01-92	Indef.
ST93-1083	Tennessee Gas Pipeline Co.	Masonite Corp	11-23-92	G-S	531	N	F	11-01-92	Indef.
ST93-1084	Tennessee Gas Pipeline Co.	T.W. Phillips Gas and Oil Co.	11-23-92	G-S	3,000	N	F	11-01-92	Indef.
ST93-1085	Tennessee Gas Pipeline Co.	Clinton Gas Marketing, Inc.	11-23-92	B	50,000	N	I	03-05-91	Indef.
ST93-1086	Tennessee Gas Pipeline Co.	CNG Transmission Corp	11-23-92	G	47,886	N	F	11-02-92	Indef.
ST93-1087	K N Energy, Inc	Equitable Resources Marketing Co.	11-23-92	G-S	20,000	N	I	11-02-92	Indef.
ST93-1088	K N Energy, Inc	Cibola Corp	11-23-92	G-S	5,423	N	F	11-02-92	Indef.
ST93-1089	ANR Pipeline Co	St. Joseph Light & Power Co.	11-23-92	G-S	614	N	F	11-01-92	10-31-93
ST93-1090	ANR Pipeline Co	Miami Valley Resources	11-23-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-1091	ANR Pipeline Co	City of Lineville	11-23-92	G-S	22	N	F	11-01-92	10-31-93
ST93-1092	ANR Pipeline Co	Aquila Energy Marketing Corp.	11-23-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1093	ANR Pipeline Co	Sioux Pointe, Inc	11-23-92	G-S	20,000	N	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-1094	ANR Pipeline Co	Great River Oil & Gas Corp.	11-23-92	G-S	60,000	N	I	10-28-92	Indef.
ST93-1095	ANR Pipeline Co	Lincoln Natural Gas Co., Inc.	11-23-92	G-S	200	N	F	11-01-92	10-31-93
ST93-1096	ANR Pipeline Co	Martin Exploration Management Co.	11-23-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1097	ANR Pipeline Co	Reynolds Metals Co	11-23-92	G-S	1,200	N	F	11-03-92	10-31-93
ST93-1098	ANR Pipeline Co	Access Energy Corp	11-23-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-1099	Panhandle Eastern Pipe Line Co.	Keystone Steel & Wire Co.	11-23-92	G-S	4,127	N	F	11-01-92	Indef.
ST93-1100	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co	11-23-92	G-S	10,600	N	F	11-01-92	Indef.
ST93-1101	Panhandle Eastern Pipe Line Co.	Nitex, Inc	11-23-92	G-S	20,000	N	I	11-01-92	Indef.
ST93-1102	Panhandle Eastern P/L Co.	National Steel Corp	11-23-92	G-S	7,455	N	F	11-01-92	Indef.
ST93-1103	Panhandle Eastern P/L Co.	O&R Energy, Inc	11-23-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-1104	Panhandle Eastern P/L Co.	Centra Gas Ontario Inc	11-23-92	G-S	15,000	N	F	11-01-92	Indef.
ST93-1105	Panhandle Eastern P/L Co.	Washington Gas Light Co.	11-23-92	B	23,000	N	F	11-01-92	Indef.
ST93-1106	Algonquin Gas Trans. Co.	Orange & Rockland Utilities, Inc.	11-23-92	G-S	125,000	N	I	11-06-92	Indef.
ST93-1107	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11-23-92	B	77,500	N	F	11-11-92	11-01-02
ST93-1108	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11-23-92	B	77,500	N	F	11-01-92	11-01-92
ST93-1109	Algonquin Gas Trans. Co.	New York State Ele. and Gas Corp.	11-23-92	B	6,250	N	F	11-01-92	Indef.
ST93-1110	U-T Offshore System	Panhandle Eastern Pipe Line Co.	11-23-92	K-S	80,000	N	I	10-23-92	Indef.
ST93-1111	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	11-23-92	B	77,500	N	F	11-01-92	11-01-02
ST93-1112	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11-23-92	B	77,500	N	F	11-01-92	11-01-02
ST93-1113	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	11-23-92	B	10,200,000	N	I	11-07-92	Indef.
ST93-1114	Algonquin Gas Transmission Co.	Entrade Corp	11-23-92	G-S	200,000	N	I	11-11-92	Indef.
ST93-1115	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	11-23-92	B	77,500	N	I	11-01-92	11-01-02
ST93-1116	Northern Natural Gas Co	Peoples Natural Gas Co	11-23-92	G-S	80,175,900	N	F	11-01-92	Indef.
ST93-1117	Northern Natural Gas Co	Virginia Public Utilities	11-23-92	G-S	1,000	N	F/I	11-01-92	Indef.
ST93-1118	Northern Natural Gas Co	Natural Gas, Inc	11-23-92	G-S	181,502	N	F/I	11-01-92	Indef.
ST93-1119	Northern Natural Gas Co	Sioux Center Muni. Nat. Gas. Util.	11-23-92	G-S	273,750	N	F/I	11-01-92	Indef.
ST93-1120	Northern Natural Gas Co	Watertown Municipal Utilities Dept.	11-23-92	G-S	709,700	N	F/I	11-01-92	Indef.
ST93-1121	Northern Natural Gas Co	Western Resources Inc	11-23-92	G-S	3,845	N	F/I	11-01-92	Indef.
ST93-1122	Northern Natural Gas Co	Iowa Southern Utilities Co.	11-23-92	G-S	271,347	N	F/I	11-01-92	Indef.
ST93-1123	Northern Natural Gas Co	Midwest Gas	11-23-92	G-S	4,500	N	F/I	11-01-92	Indef.
ST93-1124	Northern Natural Gas Co	Hutchinson Utilities Commission.	11-23-92	G-S	1,963,700	N	F/I	11-01-92	Indef.
ST93-1125	Natural Gas P/L Co. of America.	Central Illinois Pub. Serv. Co.	11-23-92	B	10,000	N	F	11-01-92	10-31-97
ST93-1126	Williams Natural Gas Co	Kansas Municipal Gas Agency.	11-23-92	G-S	11,000	N	F	11-01-92	04-01-93
ST93-1127	Phillips Gas Pipeline Co	Commercial Natural Gas, Inc.	11-23-92	B	10,000	Y	I	11-01-92	Indef.
ST93-1128	Phillips Gas Pipeline Co	Enron Industrial Natural Gas Co.	11-23-92	B	50,000	Y	I	09-04-92	Indef.
ST93-1129	Phillips Gas Pipeline Co	Centran Corp	11-23-92	B	50,000	Y	I	10-23-92	Indef.
ST93-1130	Valero Transmission, L.P	Tennessee Gas Pipeline Co.	11-23-92	C	9,000	N	I	10-01-92	Indef.
ST93-1131	Northern Border Pipeline Co.	Enron Gas Marketing, Inc.	11-23-92	G-S	75,000	A	I	11-01-92	Indef.
ST93-1132	Northern Border Pipeline Co.	Amerada Hess Corp	11-23-92	G-S	40,000	Y	I	11-01-92	Indef.
ST93-1133	Transcontinental Gas P/L Corp.	Seagulf Marketing Services, Inc.	11-23-92	G-S	860,000	A	I	03-24-92	Indef.
ST93-1134	Transcontinental Gas P/L Corp.	Philadelphia Electric Co	11-23-92	B	300,000	N	I	07-20-90	Indef.
ST93-1135	Transcontinental Gas P/L Corp.	Industrial Energy Services Co.	11-23-92	G-S	270,000	N	I	12-09-91	Indef.
ST93-1136	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	87	A	F	02-01-92	06-30-98
ST93-1137	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	87	A	F	02-01-92	06-30-98
ST93-1138	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	87	A	F	01-31-92	06-30-98

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-1139	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	262	A	F	01-31-92	06-30-98
ST93-1140	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-23-92	B	80,000	N	I	03-22-89	Indef.
ST93-1141	Transcontinental Gas P/L Corp.	Oryx Gas Marketing L.P	11-23-92	G-S	1,542,450	N	I	11-11-92	Indef.
ST93-1142	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-23-92	G-S	2,981,700	N	I	09-24-92	Indef.
ST93-1143	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11-23-92	B	4,900	A	F	08-01-91	12-31-98
ST93-1144	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	11-23-92	B	1,750	N	F	08-01-91	03-02-98
ST93-1145	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	44	A	F	02-01-92	06-30-98
ST93-1146	Transcontinental Gas P/L Corp.	Union Gas Co	11-23-92	B	10,350	A	F	08-01-91	03-31-05
ST93-1147	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-23-92	B	411,527	A	F	09-01-92	10-31-05
ST93-1148	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	44	A	F	01-31-92	06-30-09
ST93-1149	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	44	A	F	02-01-92	06-30-98
ST93-1150	Transcontinental Gas P/L Corp.	National Fuel Gas Supply Corp.	11-23-92	B	25,442	A	F	08-01-91	10-31-04
ST93-1151	Transcontinental Gas P/L Corp.	City of Union	11-23-92	B	181	N	F	08-01-91	02-25-98
ST93-1152	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-23-92	B	100,000	A	F	08-01-91	10-31-02
ST93-1153	Transcontinental Gas P/L Corp.	Public Service Co. of NC	11-23-92	B	2,187	A	F	08-01-91	03-23-98
ST93-1154	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-23-92	B	6,222	A	F	08-01-91	03-01-98
ST93-1155	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11-23-92	B	6,440	A	F	08-01-91	10-31-03
ST93-1156	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11-23-92	B	1,123,000	N	I	12-10-91	Indef.
ST93-1157	Transcontinental Gas P/L Corp.	City of Buford	11-23-92	B	87	A	F	01-31-92	06-30-98
ST93-1158	Transcontinental Gas P/L Corp.	South Jersey Gas Co	11-23-92	B	2,187	A	F	08-01-91	02-28-03
ST93-1159	Transcontinental Gas P/L Corp.	City of Shelby	11-23-92	B	11,600	A	F	10-30-92	03-31-00
ST93-1160	Transcontinental Gas P/L Corp.	City of Richmond	11-23-92	B	9,693	N	F	08-01-91	03-31-05
ST93-1161	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11-23-92	B	2,011	N	F	08-01-91	12-31-98
ST93-1162	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	11-23-92	B	55,000	N	F	08-01-91	12-31-00
ST93-1163	Tennessee Gas Pipeline Co.	CNG Transmission Corp	11-24-92	G	531	N	F	11-01-92	Indef.
ST93-1164	Tennessee Gas Pipeline Co.	O&R Energy, Inc	11-24-92	G-S	300,000	N	I	11-01-92	Indef.
ST93-1165	Tennessee Gas Pipeline Co.	Roanoke Gas Co	11-24-92	B	5,046	N	F	11-01-92	Indef.
ST93-1166	Tennessee Gas Pipeline Co.	Baltimore Gas & Electric Co.	11-24-92	B	4,097	N	F	11-01-92	Indef.
ST93-1167	Channel Industries Gas Co.	Natural Gas P/L Co. of America.	11-24-92	C	75,000	N	I	10-29-92	Indef.
ST93-1168	Viking Gas Transmission Co.	City of Perham	11-24-92	B	1,309	N	F	11-01-92	Indef.
ST93-1169	Tennessee Gas Pipeline Co.	Enron Gas Marketing Inc	11-24-92	G-S	703,297	N	I	11-01-92	Indef.
ST93-1170	Tennessee Gas Pipeline Co.	Consolidated Edison Co. of NY, Inc.	11-24-92	G-S	31,212	N	F	11-08-92	Indef.
ST93-1171	Tennessee Gas Pipeline Co.	Gasmark Ltd	11-24-92	G-S	75,000	N	I	10-29-92	Indef.
ST93-1172	Colorado Interstate Gas Co.	Montana Power Co	11-24-92	B	15,000	N	I	11-01-92	Indef.
ST93-1173	Colorado Interstate Gas Co.	ANR Pipeline Co	11-24-92	G	35,000	N	I	11-01-92	10-31-93
ST93-1174	Texas Eastern Transmission Corp.	Energy Consultants, Inc	11-24-92	G-S	3,500	N	I	11-04-92	Indef.
ST93-1175	Texas Eastern Transmission Corp.	Equitrans, Inc	11-24-92	G	100,000	N	I	11-01-92	Indef.
ST93-1176	Panhandle Eastern Pipe Line Co.	Aluminum Co. of America.	11-24-92	G-ST	4,771	N	F	11-01-92	Indef.
ST93-1177	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co	11-24-92	G-ST	4,970	N	F	11-01-92	Indef.
ST93-1178	Panhandle Eastern Pipe Line Co.	Miami Valley Resources, Inc.	11-24-92	G-S	4,629	N	F	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-1179	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	11-24-92	G-ST	9,940	N	F	11-01-92	Indef.
ST93-1180	Panhandle Eastern Pipe Line Co.	Missouri Public Service .	11-24-92	G-ST	5,940	N	F	11-01-92	Indef.
ST93-1181	Panhandle Eastern Pipe Line Co.	Interstate Gas Supply, Inc.	11-24-92	G-S	2,000	N	F	11-01-92	Indef.
ST93-1182	Panhandle Eastern Pipe Line Co.	Aluminum Co. of America.	11-24-92	G-S	2,923	N	F	11-01-92	Indef.
ST93-1183	Trunkline Gas Co	Unigas Energy, Inc	11-24-92	G-S	30,000	N	F	11-01-92	Indef.
ST93-1184	Trunkline Gas Co	Panhandle Trading Co	11-24-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-1185	ANR Pipeline Co	Wisconsin Southern Gas Co., Inc.	11-24-92	G-S	280	N	F	11-01-92	10-31-93
ST93-1186	ANR Pipeline Co	Wisconsin Public Service Corp.	11-24-92	G-S	20,000	N	F	11-01-92	Indef.
ST93-1187	ANR Pipeline Co	Michigan Gas Utilities	11-24-92	B	14,700	N	F	11-01-92	Indef.
ST93-1188	ANR Pipeline Co	Enron Gas Marketing	11-24-92	G-S	200,000	N	F	11-01-92	Indef.
ST93-1189	ANR Pipeline Co	Ohio Valley Gas Corp	11-24-92	B	1,500	N	F	11-01-92	Indef.
ST93-1190	ANR Pipeline Co	Coast Energy Group, Inc	11-24-92	G-S	75,000	N	F	11-01-92	Indef.
ST93-1191	ANR Pipeline Co	Enron Gas Marketing	11-24-92	G-S	200,000	N	F	11-01-92	Indef.
ST93-1192	ANR Pipeline Co	Triumph Gas Marketing Co.	11-24-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1193	ANR Pipeline Co	City of New Boston	11-24-92	G-S	44	N	F	11-01-92	10-31-93
ST93-1194	ANR Pipeline Co	Michigan Consolidated Gas Co.	11-24-92	B	100,000	N	F	11-01-92	Indef.
ST93-1195	ANR Pipeline Co	Enron Gas Marketing	11-24-92	G-S	200,000	N	F	11-01-92	Indef.
ST93-1196	Northern Natural Gas Co	Wisconsin Gas Co	11-24-92	G-S	25,000	N	F/I	11-01-92	Indef.
ST93-1197	Northern Natural Gas Co	City of Tipon	11-24-92	G-S	595	N	F/I	11-01-92	Indef.
ST93-1198	Northern Natural Gas Co	Northern Illinois Gas Co	11-24-92	B	70,000	N	F/I	11-01-92	Indef.
ST93-1199	Northern Natural Gas Co	Sioux Center Municipal Nat. Gas Ut.	11-24-92	G-S	350	N	F/I	11-01-92	Indef.
ST93-1200	Northern Natural Gas Co	Northern Illinois Gas Co	11-24-92	B	116,058	N	F/I	11-01-92	Indef.
ST93-1201	Northern Natural Gas Co	Northern Minnesota Utilities.	11-24-92	G-S	5,100	N	F/I	11-01-92	Indef.
ST93-1202	Northern Natural Gas Co	Northwestern Public Service Co.	11-24-92	G-S	29,907	N	F/I	11-01-92	Indef.
ST93-1203	Northern Natural Gas Co	Hibbing Public Utility Commission.	11-24-92	G-S	1,782	N	F/I	11-01-92	Indef.
ST93-1204	Northern Natural Gas Co	Superior Water Light & Power Co.	11-24-92	G-S	6,150	N	F/I	11-01-92	Indef.
ST93-1205	Northern Natural Gas Co	Harlan Municipal Utilities	11-24-92	G-S	1,840	N	F/I	11-01-92	Indef.
ST93-1206	Northern Natural Gas Co	Minnegasco, Div. of Arkla, Inc.	11-24-92	B	575,049	N	F/I	11-01-92	Indef.
ST93-1207	Northern Natural Gas Co	City of Preston	11-24-92	G-S	378	N	F/I	11-01-92	Indef.
ST93-1208	Northern Natural Gas Co	Muny Natural Gas	11-24-92	G-S	539	N	F/I	11-01-92	Indef.
ST93-1209	Northern Natural Gas Co	Madison Gas and Electric Co.	11-24-92	G-S	33,481	N	F/I	11-01-92	Indef.
ST93-1210	Northern Natural Gas Co	Wisconsin Natural Gas Co.	11-24-92	G-S	11,620	N	F/I	11-01-92	Indef.
ST93-1211	Northern Natural Gas Co	St. Croix Valley Nat. Gas Co., Inc.	11-24-92	G-S	3,812	N	F/I	11-01-92	Indef.
ST93-1212	Northern Natural Gas Co	Western Gas Utilities	11-24-92	G-S	3,202	N	F/I	11-01-92	Indef.
ST93-1213	Northern Natural Gas Co	Wisconsin Gas Co	11-24-92	G-S	56,875	N	F/I	11-01-92	Indef.
ST93-1214	Northern Natural Gas Co	Sheehan's Natural Gas Co.	11-24-92	G-S	205	N	F/I	11-01-92	Indef.
ST93-1215	Northern Natural Gas Co	Owatonna Public Utilities	11-24-92	G-S	7,001	N	F/I	11-01-92	Indef.
ST93-1216	Northern Natural Gas Co	City of Whittemore	11-24-92	G-S	333	N	F/I	11-01-92	Indef.
ST93-1217	Transcontinental Gas P/L Corp.	City of Covington	11-24-92	B	262	A	F	01-31-92	06-30-98
ST93-1218	Nyotex Gas Transport	Columbia Gas Transmission Corp.	11-24-92	C	15,000	N	I	11-05-92	Indef.
ST93-1219	Nyotex Gas Transport	Columbia Gas Transmission Corp.	11-24-92	C	15,000	N	I	11-05-92	Indef.
ST93-1220	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	11-24-92	G-S	15,000	N	I	11-11-92	Indef.
ST93-1221	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	11-24-92	B	600	N	F	11-01-92	03-31-93
ST93-1222	Columbia Gas Transmission Corp.	Fellon-McCord & Associates, Inc.	11-24-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1223	Columbia Gas Transmission Corp.	Ashland Exploration, Inc	11-24-92	G-S	93,792	N	I	11-01-92	Indef.
ST93-1224	Columbia Gas Transmission Corp.	Stand Energy Corp	11-24-92	G-S	5	Y	F	11-01-92	03-31-93
ST93-1225	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	11-24-92	G-S	70	N	F	11-01-92	Indef.
ST93-1226	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	11-24-92	B	700	N	F	11-15-92	03-31-93
ST93-1227	Columbia Gas Transmission Corp.	Access Energy Corp	11-24-92	G-S	3,978	Y	F	11-04-92	03-31-93
ST93-1228	Columbia Gas Transmission Corp.	Mark Resources Corp	11-24-92	G-S	2,800	N	I	11-01-92	Indef.
ST93-1229	Columbia Gulf Transmission Co.	AGIP Petroleum Co., Inc	11-24-92	G-S	50,000	N	I	10-31-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-1230	Columbia Gulf Transmission Co.	Consolidated Fuel Corp.	11-24-92	G-S	20,000	N	I	11-02-92	Indef.
ST93-1231	Columbia Gulf Transmission Co.	Onxy Gas Marketing L.P	11-24-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1232	Columbia Gulf Transmission Co.	Texaco Gas Marketing, Inc.	11-24-92	G-S	200,000	N	I	11-02-92	Indef.
ST93-1233	Columbia Gulf Transmission Co.	Onxy Gas Marketing L.P	11-24-92	G-S	70,000	N	I	10-31-92	Indef.
ST93-1234	Questar Pipeline Co	Celsius Energy Co	11-25-92	G-S	90,000	N	I	11-14-92	Indef.
ST93-1235	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	11-25-92	C	50,000	N	I	11-05-92	Indef.
ST93-1236	Transok, Inc	Natural Gas P/L Co. of America.	11-25-92	C	50,000	N	I	11-01-92	Indef.
ST93-1237	Tennessee Gas Pipeline Co.	Colonial Gas Co	11-25-92	G-S	7,504	N	I	11-01-92	Indef.
ST93-1238	Tennessee Gas Pipeline Co.	Alatenn Energy Marketing Co.	11-25-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1239	Tennessee Gas Pipeline Co.	Orchard Gas Corp	11-25-92	G-S	27,000	N	I	11-01-92	Indef.
ST93-1240	Tennessee Gas Pipeline Co.	Corning Natural Gas Corp.	11-25-92	G-S	5,956	N	I	11-01-92	Indef.
ST93-1241	Tennessee Gas Pipeline Co.	Atlanta Gas Light Co	11-25-92	B	18,979	N	I	11-01-92	Indef.
ST93-1242	Tennessee Gas Pipeline Co.	Iroquois Gas Trans. System L.P.	11-25-92	G	10,000	N	I	11-01-92	Indef.
ST93-1243	Tennessee Gas Pipeline Co.	Oryx Gas Marketing L.P	11-25-92	G-S	5,000	N	F	11-02-92	03-31-93
ST93-1244	Tennessee Gas Pipeline Co.	Procter & Gamble Paper Products Co.	11-25-92	G-S	4,444	N	F	11-01-92	Indef.
ST93-1245	Channel Industries Gas Co.	THC Pipeline Co	11-25-92	C	50,000	N	I	11-01-92	Indef.
ST93-1246	Kern River Gas Transmission Co.	A A Production, Inc	11-25-92	G-S	4,800	N	I	11-01-92	Indef.
ST93-1247	Viking Gas Transmission Co.	Northern Minnesota Utilities.	11-25-92	B	8,366	N	F	11-01-92	Indef.
ST93-1248	Viking Gas Transmission Co.	City of Hawley	11-25-92	G-S	504	N	F	11-01-92	Indef.
ST93-1249	Lone Star Gas Co	El Paso Natural Gas Co	11-25-92	C	42,000	N	I	11-01-92	Indef.
ST93-1250	Lone Star Gas Co	El Paso Natural Gas Co	11-25-92	C	75,000	N	I	11-01-92	Indef.
ST93-1251	Williston Basin Inter. P/L Co.	Indland Oil & Oil Gas Corp.	11-25-92	G-S	7,714	A	I	11-16-92	03-21-93
ST93-1252	Williston Basin Inter. P/L Co.	Coastal Gas Marketing Co.	11-25-92	G-S	117,725	A	I	10-27-92	06-18-94
ST93-1253	Transcontinental Gas P/L Corp.	Tejas Power Corp	11-25-92	G-S	3,665,000	N	I	05-08-91	Indef.
ST93-1254	Transcontinental Gas P/L Corp.	Consolidated Edison Co	11-25-92	B	7,880,000	N	I	10-16-92	Indef.
ST93-1255	Transcontinental Gas P/L Corp.	Texaco Gas Marketing, Inc.	11-25-92	G-S	6,175,000	N	I	06-04-92	Indef.
ST93-1256	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co., Inc.	11-25-92	B	352,000	N	I	10-26-92	Indef.
ST93-1257	Transcontinental Gas P/L Corp.	Aquila Energy Marketing Co.	11-25-92	B	1,050,000	N	I	02-16-92	Indef.
ST93-1258	Transcontinental Gas P/L Corp.	Arco Natural Gas Marketing, Inc.	11-25-92	G-S	8,859,000	N	I	03-23-92	Indef.
ST93-1259	Transcontinental Gas P/L Corp.	BP Gas, Inc	11-25-92	G-S	820,000	N	I	08-08-91	Indef.
ST93-1260	Transcontinental Gas P/L Corp.	Polaris Pipeline Corp	11-25-92	G-S	1,750,000	N	I	08-09-91	Indef.
ST93-1261	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-25-92	G-S	4,860,000	N	I	09-24-92	Indef.
ST93-1262	Transcontinental Gas P/L Corp.	MG Natural Gas Corp	11-25-92	G-S	900,000	N	I	10-13-92	Indef.
ST93-1263	Transcontinental Gas P/L Corp.	Mobil Natural Gas, Inc	11-25-92	G-S	15,255,213	N	I	10-28-92	Indef.
ST93-1264	Transcontinental Gas P/L Corp.	Conoco, Inc	11-25-92	G-S	80,000	N	I	08-10-90	Indef.
ST93-1265	Transcontinental Gas P/L Corp.	Heath Petra Resources, Inc.	11-25-92	G-S	571,000	N	I	07-01-91	Indef.
ST93-1266	Transcontinental Gas P/L Corp.	Stella Gas Co	11-25-92	G-S	1,900,000	N	I	09-04-92	Indef.
ST93-1267	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-25-92	G-S	80,000	N	I	10-13-92	Indef.
ST93-1268	Transcontinental Gas P/L Corp.	Heath Petra Resources, Inc.	11-25-92	G-S	846,000	N	I	10-29-91	Indef.
ST93-1269	Transcontinental Gas P/L Corp.	Texaco Gas Marketing, Inc.	11-25-92	G-S	4,516,425	N	I	06-30-92	Indef.
ST93-1270	ANR Pipeline Co	Iowa Electric Light and Power Co.	11-25-92	G-S	1,340	N	F	11-01-92	10-31-93
ST93-1271	ANR Pipeline Co	Public Service Electric & Gas Co.	11-25-92	G-S	12,850	N	F	11-0*-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-272	ANR Pipeline Co	Iowa Southern Utilities Co.	11-25-92	G-S	8,462	N	F	11-01-92	10-31-93
ST93-1273	ANR Pipeline Co	Miami Valley Resources, Inc.	11-25-92	G-S	846	N	F	11-01-92	10-31-93
ST93-1274	ANR Pipeline Co	Anchor Glass Container Corp.	11-25-92	G-S	3,518	N	F	11-01-92	Indef.
ST93-1275	Panhandle Eastern Pipe Line Co.	Northern Illinois Gas Co	11-25-92	G-S	507	N	F	11-01-92	Indef.
ST93-1276	Panhandle Eastern Pipe Line Co.	Access Energy Corp	11-25-92	G-S	14,721	N	F	11-01-92	Indef.
ST93-1277	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	11-25-92	G-S	9,940	N	F	11-01-92	Indef.
ST93-1278	Panhandle Eastern Pipe Line Co.	Access Energy Corp	11-25-92	G-S	14,721	N	F	11-01-92	Indef.
ST93-1279	Panhandle Eastern Pipe Line Co.	Columbia Gas of Ohio, Inc.	11-25-92	G-S	15,000	N	F	11-01-92	Indef.
ST93-1280	Northern Natural Gas Co	Rock Rapids Municipal Utilities.	11-25-92	G-S	525	N	F/I	11-01-92	Indef.
ST93-1281	Northern Natural Gas Co	Remsen Municipal Utilities.	11-25-92	G-S	280	N	F/I	11-01-92	Indef.
ST93-1282	Northern Natural Gas Co	Peninsular Gas Co	11-25-92	G-S	560	N	F/I	11-01-92	Indef.
ST93-1283	Northern Natural Gas Co	Guthrie Center Municipal Utilities.	11-25-92	G-S	420	N	F/I	11-01-92	Indef.
ST93-1284	Northern Natural Gas Co	Emmetsburg Municipal Utilities.	11-25-92	G-S	700	N	F/I	11-01-92	Indef.
ST93-1285	Northern Natural Gas Co	Cascade Municipal Utilities.	11-25-92	G-S	120	N	F/I	11-01-92	Indef.
ST93-1286	Northern Natural Gas Co	Woodbine Municipal Gas System.	11-25-92	G-S	90	N	F/I	11-01-92	Indef.
ST93-1287	Northern Natural Gas Co	Midwest Gas, Midwest Power Systems.	11-25-92	B	141,600	N	F/I	11-01-92	Indef.
ST93-1288	Northern Natural Gas Co	Wisconsin Power and Light Co.	11-25-92	G-S	13,665	N	F/I	11-01-92	Indef.
ST93-1289	Northern Natural Gas Co	Northwest Natural Gas Co.	11-25-92	B	67	N	F/I	11-01-92	Indef.
ST93-1290	Northern Natural Gas Co	Gasco, Inc	11-25-92	G-S	50,000	N	F/I	07-02-92	Indef.
ST93-1291	Northern Natural Gas Co	Great Plains Natural Gas Co.	11-25-92	G-S	3,410	N	F/I	11-01-92	Indef.
ST93-1292	Northern Natural Gas Co	City of West Bend	11-25-92	G-S	150	N	F/I	11-01-92	Indef.
ST93-1293	Northern Natural Gas Co	Wisconsin Southern Gas Co., Inc.	11-25-92	G-S	1,500	N	F/I	11-01-92	Indef.
ST93-1294	Northern Natural Gas Co	Peninsular Gas Co	11-25-92	G-S	315	N	F/I	11-01-92	Indef.
ST93-1295	Northern Border Pipeline Co.	Western Gas Marketing, Inc.	11-25-92	G-S	50,000	A	F/I	11-01-92	01-31-94
ST93-1296	Northern Border P/L Co	Suncor Inc	11-25-92	G-S	50,000	Y	I	11-01-92	Indef.
ST93-1297	Northern Border P/L Co	Iowa Electric Light & Power Co.	11-25-92	B	25,000	N	I	11-01-92	10-31-94
ST93-1298	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11-25-92	G-S	1,525	Y	F	11-09-92	03-31-93
ST93-1299	Columbia Gas Transmission Corp.	Access Energy Corp	11-25-92	G-S	686	Y	F	11-11-92	03-31-93
ST93-1300	Columbia Gas Transmission Corp.	Access Energy Corp	11-25-92	G-S	1,755	Y	F	11-11-92	03-31-93
ST93-1301	Columbia Gas Transmission Corp.	Access Marketing Services, Inc.	11-25-92	G-S	1,082	N	F	11-01-92	Indef.
ST93-1302	CNG Transmission Corp	New Jersey Natural Gas Co.	11-25-92	G-S	20,000	N	I	11-01-92	Indef.
ST93-1303	CNG Transmission Corp	New Jersey Natural Gas Co.	11-25-92	G-S	4,749	N	I	11-01-92	Indef.
ST93-1304	CNG Transmission Corp	Public Service Electric & Gas.	11-25-92	G-S	6,150	N	I	11-01-92	Indef.
ST93-1305	CNG Transmission Corp	AGF Direct Gas Sales, Inc.	11-25-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-1306	CNG Transmission Corp	Morgantown Energy Technology.	11-25-92	G-S	1,000	N	I	11-01-92	Indef.
ST93-1307	CNG Transmission Corp	Texas Ohio Gas, Inc	11-25-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1308	CNG Transmission Corp	O&R Energy, Inc	11-25-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-1309	CNG Transmission Corp	Stand Energy Corp	11-25-92	G-S	200	N	I	11-01-92	Indef.
ST93-1310	CNG Transmission Corp	Rochester Gas and Elect. Corp.	11-25-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-1311	CNG Transmission Corp	Access Energy Corp	11-25-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-1312	Gas Transport, Inc	Hope Gas, Inc	11-25-92	B	475	N	I	01-01-93	06-30-94
ST93-1313	Natural Gas P/L Co. of America.	Industrial Energy App., Inc.	11-25-92	G-S	2,386	N	F	11-01-92	10-31-97
ST93-1314	Natural Gas P/L Co. of America.	Midcon Marketing Corp	11-25-92	G-S	25,000	A	F	11-01-92	10-31-93
ST93-1315	Natural Gas P/L Co. of America.	Midcon Marketing Corp	11-25-92	G-S	5,000	A	F	11-01-92	02-28-93
ST93-1316	Natural Gas P/L Co. of America.	Minnegasco	11-25-92	B	25,500	N	F	11-01-92	03-31-93
ST93-1317	Natural Gas P/L Co. of America.	Minnesota Mining and Manufact. Co.	11-25-92	G-S	1,500	N	F	11-01-92	10-31-93

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-1318	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp.	11-25-92	G-S	50,000	N	F	11-01-92	11-30-92
ST93-1319	Natural Gas P/L Co. of America.	American Central Gas Cos., Inc.	11-25-92	G-S	5,000	N	F	11-01-92	03-31-93
ST93-1320	Natural Gas P/L Co. of America.	Wisconsin Natural Gas Co.	11-25-92	B	30,000	N	F	11-01-92	11-01-02
ST93-1321	Ozark Gas Transmission System.	Centran Corp	11-27-92	G-S	100,000	N	F/I	11-07-92	Indef.
ST93-1322	Ozark Gas Transmission System.	Bridgegas U.S.A., Inc	11-27-92	G-S	100,000	N	F/I	10-30-92	Indef.
ST93-1323	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-27-92	C	20,000	N	I	11-12-92	Indef.
ST93-1324	Delhi Gas Pipeline Corp	ANR Pipeline Co	11-27-92	C	10,000	N	I	11-01-92	Indef.
ST93-1325	Delhi Gas Pipeline Corp	Northern Natural Gas Co., Inc.	11-27-92	C	33,000	N	I	10-30-92	Indef.
ST93-1326	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-27-92	C	20,000	N	I	10-30-92	Indef.
ST93-1327	Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-27-92	C	17,000	N	I	11-12-92	Indef.
ST93-1328	Delhi Gas Pipeline Corp	Phillips Gas Pipeline Co	11-27-92	C	375,000	N	I	11-01-92	Indef.
ST93-1329	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	11-27-92	C	11,000	N	I	11-01-92	Indef.
ST93-1330	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-27-92	C	3,150	N	I	11-01-92	Indef.
ST93-1331	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-27-92	C	17,000	N	I	11-01-92	Indef.
ST93-1332	Lone Star Gas Co	Texas Eastern Transmission Co.	11-27-92	C	50,000	N	I	11-01-92	Indef.
ST93-1333	Columbia Gulf Transmission Co.	Aquila Energy Marketing Corp.	11-30-92	G-S	13,400	N	F	11-01-92	Indef.
ST93-1334	Viking Gas Transmission Co.	Great Plains Natural Gas Co.	11-30-92	B	7,841	N	F	11-01-92	Indef.
ST93-1335	Channel Industries Gas Co.	THC Pipeline Co	11-30-92	C	75,000	N	I	11-01-92	Indef.
ST93-1336	Channel Industries Gas Co.	Anadarko Trading Co	11-30-92	G-I	20,000	N	I	11-01-92	Indef.
ST93-1337	Viking Gas Transmission Co.	ANR Pipeline Co	11-30-92	G	206,448	N	I	11-01-92	Indef.
ST93-1338	Viking Gas Transmission Co.	Northern States Power Co.	11-30-92	B	30,800	N	F	11-01-92	Indef.
ST93-1339	Viking Gas Transmission Co.	Wisconsin Gas Co	11-30-92	G-S	6,445	N	F	11-01-92	10-31-02
ST93-1340	Viking Gas Transmission Co.	City of Perham	11-30-92	G-S	655	N	I	11-01-92	10-01-92
ST93-1341	Viking Gas Transmission Co.	Midwest Gas	11-30-92	B	1,098	N	F	11-01-92	Indef.
ST93-1342	Viking Gas Transmission Co.	Peoples Natural Gas Co	11-30-92	B	3,127	N	F	11-01-92	11-01-02
ST93-1343	Iroquois Gas Trans. System, L.P.	Brooklyn Interstate Natural Gas.	11-30-92	G-S	11,600	N	F	11-01-92	10-31-93
ST93-1344	Iroquois Gas Trans. System, L.P.	Niagara Mohawk Power Corp.	11-30-92	G-S	51,000	N	F	11-01-92	10-31-93
ST93-1345	Iroquois Gas Trans. System, L.P.	Kamine/Besicorp Carthage L.P.	11-30-92	G-S	14,200	N	F	11-01-92	10-31-93
ST93-1346	Iroquois Gas Trans. System, L.P.	Connecticut Natural Gas Corp.	11-30-92	B	10,000	N	F	11-01-92	Indef.
ST93-1347	Tennessee Gas Pipeline Co.	Pawtucket Power Assoc	11-30-92	G-S	15,000	N	I	11-03-92	Indef.
ST93-1348	Tennessee Gas Pipeline Co.	Entrade Corp	11-30-92	G-S	11,500	N	F	11-01-92	Indef.
ST93-1349	Tennessee Gas Pipeline Co.	Commonwealth Gas Co	11-30-92	G-S	9,439	N	F	11-02-92	Indef.
ST93-1350	Tennessee Gas Pipeline Co.	North Penn Gas Co	11-30-92	G-S	5,000	N	F	11-03-92	Indef.
ST93-1351	Tennessee Gas Pipeline Co.	Cincinnati Gas and Electric Co.	11-30-92	B	42,000	N	F	11-01-92	Indef.
ST93-1352	Tennessee Gas Pipeline Co.	Granite State Gas Trans., Inc.	11-30-92	G-S	15,200	N	F	11-09-92	Indef.
ST93-1353	Tennessee Gas Pipeline Co.	Essex County Gas Co	11-30-92	G-S	5,172	N	F	11-01-92	Indef.
ST93-1354	Transcontinental Gas P/L Corp.	City of Shelby	11-30-92	B	50,000	N	I	08-11-87	Indef.
ST93-1355	Transcontinental Gas P/L Corp.	Municipal Gas Authority of GA.	11-30-92	G-S	87	A	F	08-01-87	Indef.
ST93-1356	Transcontinental Gas P/L Corp.	Southwestern Virginia Gas Co.	11-30-92	B	5,850	N	F	02-01-92	01-31-11
ST93-1357	Transcontinental Gas P/L Corp.	Alabama Gas Corporation-Clanton.	11-30-92	B	3,460	N	F	02-01-92	12-31-01
ST93-1358	Transcontinental Gas P/L Corp.	Alabama Gas Corporation-Thomaston.	11-30-92	B	270	N	F	02-01-92	12-31-01
ST93-1359	Transcontinental Gas P/L Corp.	Hadson Gas Systems, Inc.	11-30-92	G-S	61,050	N	I	07-10-92	Indef.
ST93-1360	Transcontinental Gas P/L Corp.	TEJAS Power Corp	11-30-92	B	130,000	N	I	01-03-89	Indef.
ST93-1361	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-30-92	B	3,040,000	N	I	04-30-90	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-1362	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-30-92	B	3,040,000	N	I	04-03-92	Indef.
ST93-1363	Transcontinental Gas P/L Corp.	Union Gas Co	11-30-92	B	3,000	A	F	08-01-91	Indef.
ST93-1364	Gulf Energy Pipeline Co	Trunkline Gas Co	11-30-92	C	10,000	N	I	11-01-92	Indef.
ST93-1365	Northwest Pipeline Corp	Northwest Natural Gas Co.	11-30-92	G-S	242,922	N	F	11-01-92	Indef.
ST93-1366	Northwest Pipeline Corp	Cascade Natural Gas Corp.	11-30-92	G-S	179,068	N	F	11-01-92	Indef.
ST93-1367	Northwest Pipeline Corp	Utah Gas Service Co	11-30-92	G-S	6,433	N	F	11-01-92	Indef.
ST93-1368	Northwest Pipeline Corp	Union Pacific Fuels, Inc.	11-30-92	G-S	20,000	N	F	11-01-92	Indef.
ST93-1369	Northwest Pipeline Corp	IGI Resources, Inc	11-30-92	G-S	113,024	N	F	11-01-92	Indef.
ST93-1370	Northwest Pipeline Corp	Washington Natural Gas Co.	11-30-92	G-S	230,797	N	F	11-01-92	Indef.
ST93-1371	Northwest Pipeline Corp	Washington Water Power Co.	11-30-92	G-S	148,532	N	F	11-01-92	Indef.
ST93-1372	Northwest Pipeline Corp	City of Ellensburg	11-30-92	G-S	6,000	N	F	11-01-92	Indef.
ST93-1373	Northwest Pipeline Corp	Wyoming Industrial Gas Co.	11-30-92	G-S	2,750	N	F	11-01-92	Indef.
ST93-1374	Northwest Pipeline Corp	City of Enumclaw	11-30-92	G-S	2,572	N	F	11-01-92	Indef.
ST93-1375	Mississippi River Trans. Corp.	TEJAS Hydorcarbons Co	11-30-92	G-S	100,000	N	I	02-27-92	Indef.
ST93-1376	Colorado Interstate Gas Co.	Montana Power Co	11-30-92	B	15,000	N	I	11-01-92	Indef.
ST93-1377	Colorado Interstate Gas Co.	City of Colorado Springs	11-30-92	B	33,340	N	I	11-01-92	09-30-96
ST93-1378	Colorado Interstate Gas Co.	Montana Power Co	11-30-92	B	10,000	N	I	11-01-92	Indef.
ST93-1379	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	11-30-92	B	10,000	A	I	11-09-92	Indef.
ST93-1380	Colorado Interstate Gas Co.	Grand Valley Gas Co	11-30-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-1381	Black Marlin Pipeline Co	Houston Pipe Line Co	11-30-92	B	10,000	A	I	10-29-92	Indef.
ST93-1382	Northern Natural Gas Co	Midwest Gas	11-30-92	G-S	950	N	F/I	11-01-92	10-31-95
ST93-1383	Northern Natural Gas Co	Rolfe Municipal Gas	11-30-92	G-S	72	N	F/I	11-01-92	Indef.
ST93-1384	Northern Natural Gas Co	Iowa Electric Light & Power Co.	11-30-92	B	20,00	N	F/I	11-01-92	Indef.
ST93-1385	Northern Natural Gas Co	City of Duluth	11-30-92	G-S	3,000	N	F/I	11-01-92	Indef.
ST93-1386	Northern Natural Gas Co	City of Duluth	11-30-92	G-S	3,000	N	F/I	11-01-92	Indef.
ST93-1387	Northern Natural Gas Co	ANR Pipeline Co	11-30-92	G-S	86,512	N	F/I	11-01-92	Indef.
ST93-1388	Northern Natural Gas Co	Westbrook Municipal Light & Power.	11-30-92	B	203	N	F/I	11-01-92	Indef.
ST93-1389	Northern Natural Gas Co	Nebraska Kpublic Gas Agency.	11-30-92	G-S	124	N	F/I	11-01-92	Indef.

*Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,373, 10/10/85).
**Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
***Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 93-1238 Filed 1-19-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-165-009]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

January 13, 1993.

Take notice that Trunkline Gas Company (Trunkline) on January 8, 1992 tendered for filing the following tariff sheet to is FERC Gas Tariff, Original Volume No. 1:

Fifteenth Revised Sheet No. 21-F

Trunkline proposes that this tariff sheet become effective November 1, 1992.

Trunkline states that this tariff sheet was inadvertently omitted from Trunkline's tariff filing on October 1, 1992 in the above-referenced proceeding.

Trunkline states that copies of this filing are being mailed to Trunkline's jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-1236 Filed 1-19-93; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ93-2-31-001]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance With Commission Order

January 13, 1993.

Take notice that on January 7, 1993, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of the following revised tariff sheets to become effective January 1, 1993:

Rate Schedule No. G-2

Second Revised Volume No. 1
First Revised Substitute Fifteenth Revised Sheet No. 11

Rate Schedule No. CD

Second Revised Volume No. 1
First Revised Substitute Fifteenth Revised Sheet No. 16

AER states that the above tariff sheets are being filed in compliance with the Commission's order dated December 23, 1992 in AER's quarterly PGA effective January 1, 1993, to reflect revised pagination and corrections to the current adjustments for the overrun/deficiency rates. AER also states that the tariff sheets contain no change in total rates.

AER states that copies of the filing is being mailed to the customers served under AER's jurisdictional Rate Schedules and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1237 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–286–000]

Consumers Power Co.; Filing

January 13, 1993.

Take notice that on December 18, 1993, Consumers Power Company (Consumers) tendered for filing a Notice of Termination of Consumers' FERC Electric Rate Schedule No. 60.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1241 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–114–000]

Montana Power Co.; Filing

January 13, 1993.

Take notice that on December 11, 1993, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an Amendment No. 1 to its original filing of a Transmission Agreement executed by the United States of America, Department of Energy acting by and through the Bonneville Power Administration and Montana Intertie Users (Colstrip Project). This Amendment No. 1 provides additional information requested by Commission staff.

Copies of the filing were served upon the Bonneville Power Administration, PacifiCorp, Portland General Electric Company, Puget Sound Power & Light Company and The Washington Water Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1242 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–293–000]

Northern States Power Company (Minnesota); Filing

Janauary 13, 1993.

Take notice that on December 23, 1992, Northern States Power Company (Minnesota) (NSP) tendered for filing a Facilities Agreement Between NSP and the Water, Light and Power Commission of the City of East Grand Forks, Minnesota (City). NSP Rate Schedule FERC No. 387. The Facilities Agreement will replace the transmission service portion of the Resale Agreement, and sets forth the terms and conditions and rates for service to the City for the period January 1, 1993 to December 31, 2012.

NSP requests that the Facilities Agreement be accepted for filing effective January 1, 1993, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1243 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–4–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 13, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 8, 1993, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets is January 8, 1993.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and pursuant to Order No. 483 issued November 10, 1987 in Docket No. RM86–14. As contemplated in Docket No. RM86–14 and Order No. 483, this filing constitutes an out-of-cycle PGA rate

increase. Texas Eastern states that in compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542–PGA (Revised) and FERC's "Notice of Criteria for Accepting Electronic PGA Filings," dated April 12, 1991.

Texas Eastern states that the change proposed in this out-of-cycle PGA filing is a commodity sales rate increase from Texas Eastern's November 1, 1992, quarterly PGA, which was filed on October 1, 1992, in Docket No. TQ93–2–17, of $2.0505/dth. The proposed sales rate increase is based upon the change in Texas Eastern's projected unit cost of purchased gas for the twenty-four day period beginning January 8, 1993, and ending January 31, 1993, and is necessitated by the "after-market" phenomenon discussed in Texas Eastern's December 31, 1992, flex filing in Docket No. TF93–2–17 (the December 31 filing). In particular, Texas Eastern noted in its December 31 filing that it had in the past experienced sales losses to third parties, due to Texas Eastern's status as a regulated merchant that is required by the Commission's PGA regulations to file its rates, and that the December 31 filing might be effective for a very short period of time. The December 31 flex filing was submitted in order to reflect more closely Texas Eastern's actual cost of purchased gas in accordance with the policies announced by the Commission in Order Nos. 483 and 483–A, and numerous PGA decisions since issuance of such orders. However, "after-market" spot gas prices indeed undercut Texas Eastern's filed PGA rate and caused Texas Eastern to lose sales to third parties. Texas Eastern's average daily sales level to date for January 1993 is approximately 90 Mdth/d. The deterioration of Texas Eastern's sales increased the proportion of "must-take" gas as a percentage of total purchases. Since Texas Eastern's "must take" gas is, generally, higher priced, Texas Eastern's WACOG has increased as a result.

Texas Eastern states that the continued deterioration of Texas Eastern's sales also highlights the need for Texas Eastern's contract assignment program, described more fully in Texas Eastern's annual PGA filing made in Docket No. TA93–1–17 on December 2, 1992, as a cost mitigation measure. As stated in the December 2 filing, Texas Eastern's contract assignment program is a means of mitigating somewhat the unpredictable and significant daily and monthly swings between sales and transportation that are primarily due to lower-priced spot gas available to the market. Texas Eastern believes that its contract assignment program is the most effective means of minimizing Texas Eastern's take-or-pay buydown costs associated with the assigned contracts. As stated in the December 2 filing, contract assignment costs will be recovered by Texas Eastern pursuant to mechanisms consistent with Order No. 636.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1235 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

United Gas Pipe Line Co., Request Under Blanket Authorization

[Docket No. CP93–150–000]

January 11, 1993.

Take notice that on January 7, 1993, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–150–000 a request pursuant to §§ 157.205 and 157.211(a)(2) of the Regulations under the Natural Gas Act for authorization to install a meter station and communication equipment to enable United to transport natural gas to serve United Gas Services Company (UGS), under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act under United's FTS Rate Schedule, all as more fully set forth in the request on file with the Commission and open for public inspection.

United states that it is authorized to provide natural gas transportation service to UGS under a transportation agreement dated December 19, 1990. United further states that the service provided to UGS would be interruptible and would therefore have no impact on United's curtailment plan.

United further states it will revise, construct and operate the proposed facilities in compliance with 18 CFR, part 157, subpart F, and that the proposed activities will not affect United's ability to serve its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1239 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Renewal

Pursuant to section 14(a)(12)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, § 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel (HEPAP) has been renewed for a 2-year period beginning in January 1993. The Panel will continue to provide advice to the Secretary of Energy, through the Director, Office of Energy Research, on long-range planning and priorities in the national high energy physics program, including Superconducting Super Collider activities.

The renewal of the HEPAP has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance

with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Panel may be obtained from Rachel Murphy at (202) 586–3279.

Issued in Washington, DC on January 14, 1993.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 93–1327 Filed 1–19–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4553–8]

Open Meeting of the Environmental Financial Advisory Board (EFAB) on February 9, 1992

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board on Tuesday, February 9, 1992 from 9 a.m. to 4 p.m. the Meeting will be held at the Radisson Park Terrace Hotel located at 1515 Rhode Island Avenue NW., Washington, DC.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance. This meeting will address important financing issues related to ensuring environmental progress and economic revitalization. The Board's committees will proceed with work examining: Ways to finance environmental facilities in communities on the U.S./Mexican border; development and implementation of university-based Environmental Finance Centers; and methods for integrating risk and finance considerations to improve environmental decision-making.

The meeting will be open to the public, but seating is limited. For further information, please contact Joanne Lynch, U.S. EPA on (202) 260–1459.

Dated: January 12, 1993.

John J. Sandy,

Director, Resource Management Division.

[FR Doc. 93–1334 Filed 1–19–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00347; FRL–4185–8]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal will hold a 2–day meeting, beginning on January 28, 1993, and ending on January 29, 1993. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The SFIREG Working Committee on Ground Water Protection and Pesticide Disposal will meet on Thursday, January 28, 1993 from 8:30 a.m. to 5 p.m. and on Friday, January 29, 1993 beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: DoubleTree Hotel National Airport - Crystal City, 300 Army-Navy Drive, Arlington, Virginia, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By Mail: Shirley M. Howard, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location and telephone number: room 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee includes the following:

1. Reports from the SFIREG Working Committee Members on State Ground Water Protection & Pesticide Disposal projects.
2. Update on FIFRA Section 19 (f)(2).
3. Discussion on the Bulk Containment Policy Questions & Answers Document.
4. Status of Draft Questions & Answers Document on Ground Water Protection.
5. Status of Comprehensive State Ground Water Protection Program Working Committee.
6. Other topics as appropriate.

Dated: January 13, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–1364 Filed 1–19–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00336; FRL–4077–2]

Proposed Residue Chemistry Guidelines; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability, request for comments.

SUMMARY: This notice announces the availability of and requests comments on two proposed guidelines: (1) Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides, and (2) Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment. These guidelines are being proposed as supplemental guidance to Subdivision O of the Pesticide Assessment Guidelines, which provides guidance for registrants in the conduct of tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act as amended [FIFRA].

DATES: Comments must be received by March 22, 1993.

ADDRESSES: Copies of these proposed guidelines may be obtained from the Pesticide Docket, Office of Pesticide Programs, Public Response and Program Resources Branch, room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides contact by mail: Joel Garbus, Health Effects Division [H7509C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: room 805B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5405.

For Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment, contact by mail: Michael S. Metzger, Health Effects Division [H7509C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: room 816G, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5883.

SUPPLEMENTARY INFORMATION: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA requires registrants and applicants for registration of food use pesticides to provide information concerning the amount of pesticide residue found in or on agricultural commodities. These data are used to ensure that pesticides do not pose unreasonable risks to human

health. Specific data requirements for food-use pesticides are codified in 40 CFR 158.240, and guidelines for the conduct of these studies are made available through the National Technical Information Service (NTIS). This notice announces the availability of, and requests comments on, two proposed guidelines—Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides and Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment. These new guidelines will complement existing guidelines and will lead to a more formal and uniform approach to assessing both short and long-term dietary health risk.

The proposed acute residue data collection guideline is a portion of the overall scheme that EPA has been developing over the past few years to evaluate the potential for health risk from short-term dietary exposure. Current Agency guidelines are designed to address residue levels in or on composite samples (i.e., samples consisting of many individual items of one commodity, such as several potatoes). The proposed guidelines will enhance EPA's ability to evaluate acute risks by outlining procedures for obtaining and assessing residue levels in individual serving sizes of food commodities. The Agency is concerned about the potential for dietary risks from single servings of food containing unusually high levels of residues. Although there is reason to believe that such risks are generally limited, EPA is working to develop a science-based regulatory scheme to assess the potential for such risks. In order to accomplish this, EPA needs to know the range of residues likely to be present in a single serving and the levels of dietary exposure that cause acute toxicity i.e., the minimum amount of residue that would cause an adverse effect from consumption in a single serving.

These studies will not be required in all cases. The Agency will establish criteria for classifying a pesticide as an acute toxicant, and will establish data requirements and procedures for quantifying minimum acute toxicity levels. Internal procedures are being developed to identify and prioritize those pesticides that should be tested in this way and to deal with acute dietary risk in a systematic manner. The Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides will describe for registrants and applicants how to conduct studies to generate data to determine potential short-term exposure to pesticides with acute toxicological effects. The Agency will continue to seek public participation in all facets of the development of this approach.

The Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment discuss estimating pesticide residues in food at the time of consumption. The guidelines address a number of subjects which have bearing on the assessment of potential dietary exposure including the use of existing residue data, pesticide usage information, statistical considerations, movement of commodities in commerce, and generation of data for anticipated residue determination. These criteria are currently being used by the Agency on a case-by-case basis in performing dietary risk assessments. The Agency wishes to establish a standard approach for estimating dietary risk.

These proposed guidelines will be reviewed by the FIFRA Scientific Advisory Panel, an independent panel of experts required under FIFRA section 25(d), following receipt and incorporation, as appropriate, of public comments and then published in final form as addenda to Subdivision O (Residue Chemistry) of the Pesticide Assessment Guidelines within the next fiscal year. These guidelines will enhance the ability of pesticide registrants to plan, estimate costs, and design studies that EPA will likely require.

Dated: December 21, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–1335 Filed 1–19–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Channel 35, Jacksonville, NC

1. The Commission has before it the following mutually exclusive applications for a new commercial television station to operate on Channel 35, Jacksonville, North Carolina.

Applicant, city, and state	File No.	MM Docket No.
A. Local Television Associates, Inc.; Jacksonville, NC.	BPCT–911106KF	92–309
B. Charles Fitzgerald; Jacksonville, NC.	BPCT–920114KF	.....
C. Webber/Moore Broadcasting Company Limited Partnership; Jacksonville, NC.	BPCT–920114KG	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
FAA	B
Comparative	A–C
Ultimate	A–C

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1919 M Street NW., room 246, Washington, DC 20037. Telephone No. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 93–1280 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Channel 46, Panama City Beach, FL

1. The Commission has before it the following mutually exclusive applications for a new commercial television station to operate on Channel 46, Panama City Beach, Florida.

Applicant, city, and state	File No.	MM Docket No.
A. Sunkissed Broadcasting, Inc.; Panama City Beach, FL.	BPCT–910617KE	92–307
B. Beach TV Properties, Inc.; Panama City Beach, FL.	BPCT–910815KE	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues

has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
Comparative	A & B
Ultimate	A & B

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1919 M Street NW., room 246, Washington, DC 20037, Telephone No. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Divisions, Mass Media Bureau.

[FR Doc. 93–1292 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Channel 54, Slidell, LA

1. The Commission has before it the following mutually exclusive applications for a new commercial television station to operate on Channel 54, Slidell, Louisiana.

Applicant, city, and state	File No.	MM Docket No.
A. Caroline K. Powley d/b/a Unicorn Slide; Slidell, LA.	BPCT–900518KO	92–308
B. Trudy M. Mitchell; Slidell, LA.	BPCT–900726KG	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
FAA	A
Environmental Impact	A
Comparative	A & B
Ultimate	A & B

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1919 M Street NW., room 246, Washington, DC. 20037. Telephone No. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 93–1293 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Oakland, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW , 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200087–005.

Title: Oakland/Maersk Pacific Terminal Agreement.

Parties:

City of Oakland
Maersk Pacific Ltd.

Synopsis: The amendment reflects an adjustment in certain fees and charges assessed under the Agreement.

Agreement No.: 224–200671–001.

Title: Port of Seattle/Distribution and Auto Service, Inc. Terminal Agreement.

Parties:

The Port of Seattle ("Port")
Distribution and Auto Service, Inc.

Synopsis: The modification provides for the Port to increase the lease premises for Distribution and Auto Service, Inc., from 40 acres to fifty acres and to make the necessary adjustments in the rental payments for the acreage increases.

Agreememt No.: 203–011398.

Title: Nippon Yusen Kaisha, Hapag Lloyd, A.G., and Neptune Orient Lines, Ltd. Far East/United States/North Europe Space Charter and Sailing Agreement.

Parties:

Nippon Yusen Kaisha
Hapag Lloyd, A.G.
Neptune Orient Lines, Ltd.

Synopsis: The proposed Agreement permits the parties to charter and subcharter space among themselves, coordinate sailings and agree, on a voluntary basis, on rates and service contracts in the trade (1) between ports and points in the Far East and ports and points in the U.S. Atlantic, Gulf and Pacific Coasts (including Alaska) and (2) between ports and points in North Europe and ports and points in the U.S. Atlantic, Gulf and Pacific Coasts (including Alaska).

Dated: January 14, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–1302 Filed 1–19–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Bancshares Company; Formations of; Acquisitions by; and Merger of Bank Holding Companies; Correction

This notice corrects a previous Federal Register notice (FR Doc. 92–29998) published at page 58805 of the issue for Thursday, December 10, 1992.

Under the Federal Reserve Bank of Kansas City heading, the entry for Citizens Bancshares Company is revised to read as follows:

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Bancshares Company, Chillicothe, Missouri; to acquire 100 percent of the voting shares of Blackwater Bancshares, Inc., Blackwater, Missouri, and thereby indirectly acquire Farmers Stock Bank, Blackwater, Missouri.

Comments on this application must be received by February 4, 1993.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1312 Filed 1–19–93; 8:45 am]

BILLING CODE 6210–01–F

M.E. Black Dunklin, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. M.E. Black Dunklin, Pine Bluff, Arkansas, to acquire an additional 7.25 percent for a total of 34.93 percent; M.E. Black Farms, Inc., Pine Bluff, Arkansas, to acquire 20.0 percent; George H. Dunklin, Jr., Humphrey, Arkansas, to acquire an additional 3.48 percent for a total of 4.02 percent; and Deborah D. Tipton, Memphis, Tennessee, to acquire an additional 3.48 percent for a total of 3.89 percent of the voting shares of Bancshares of West Memphis, Inc., West Memphis, Arkansas, and thereby indirectly acquire Bank of West Memphis, West Memphis, Arkansas.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1313 Filed 1–19–93; 8:45 am]

BILLING CODE 6210–01–F

Mid Am, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225 14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 16, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to acquire 100 percent of the voting shares of a national banking assocation to be named, and to be located in Xenia, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. NationsBank Corporation, Charlotte, North Carolina, Charter Bancshares, Inc., Houston, Texas, and CBH, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of University National Bank, Galveston, Texas.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1314 Filed 1–19–93; 8:45 am]

BILLING CODE 6210–01–F

Saban, S.A., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Such activities will be conducted worldwide.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Saban, S.A., Panama City, Panama, and Republic New York Corporation, New York, New York; to engage *de novo* through its subsidiary, Republic Asset Management Corporation, New York, New York, in acting as investment or financial adviser pursuant to § 225.25(b)(4); foreign exchange advisory and transactional services pursuant to § 225.25(b)(17); providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19); and acting as a futures commission merchant pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1315 Filed 1–19–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 902 3283]

Archer Daniels Midland Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Illinois-based firm from making any claims, unless substantiated by competent and reliable evidence, that any of its product or plastic product additives are degradable when disposed of in landfills, or that such products or additives offer any environmental benefit.

DATES: Comments must be received on or before March 22, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Archer Daniels Midland Company, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Archer Daniels Midland Company, A corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Archer Daniels Midland Company, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Archer Daniels Midland Company is a Delaware corporation with its office and principal place of business at 4666 Faries Parkway, Decatur, Illinois 62526.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

Archer Daniels Midland product means any plastic product or any plastic product that contains the plastic product additive defined below, that is advertised, offered for sale, sold, or distributed to the public by respondent, its successors and assigns; and also means any plastic product or any plastic product that contains the plastic product additive defined below, that is offered for sale, sold, or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

Plastic product additive means *Polyclean, ADM Master Batch,* or any other ingredient added to plastic that is advertised, offered for sale, sold, or distributed to the public by respondent, its successors and assigns; and also means any such ingredient that is offered for sale, sold, or distributed to the public by third parties under licensing or other agreements with respondent, its successors and assigns.

I

A. *It is Ordered* That respondent Archer Daniels Midland Company, a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Archer Daniels Midland product or plastic product additive in or affecting commerce, as "commerce" is defined in the Federal

Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any Archer Daniels Midland product or plastic product additive is "degradable," "biodegradable," or "photodegradable" when disposed of in a sanitary landfill; or,

(2) Through the use of such terms as "degradable," "biodegradable," "photodegradable," or any substantially similar term or expression, that any such product or any such product containing such additive offers any environmental benefit compared to other products when consumers dispose of them as trash that is buried in a sanitary landfill or incinerated,

Unless at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however,* respondent will not be in violation of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Archer Daniels Midland product or plastic product additive, if it truthfully represents that such products or such additives are designed to degrade or break down and become part of usable compost, when disposed of in programs or facilities that collect yard waste or municipal solid waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such products or such additives and any advertising referring to the degradability of such products or such additives discloses clearly, prominently, and in close proximity to such representation:

(1) That such products are not designed to effectively degrade in landfills; and further discloses

(2) (a) In the case of products designed to be disposed of in yard waste composting programs, that such programs may not be available in the consumer's area; or, in the case of products designed to be disposed of in municipal solid waste composting facilities, that such facilities are generally unavailable in the U.S., or

(2) (b) Depending upon whether the product is designed to be disposed of in yard waste composting programs, or municipal solid waste composting facilities, the approximate percentage of the U.S. population having access to yard waste compositng programs, or having access to municipal solid waste composting facilities.

Provided further, That the disclosures contained in (2)(a) and (2)(b) above pertaining to yard waste composting programs need not be made in advertising or on product labels if such products or additives are distributed and advertised only to consumers residing in areas served by yard waste composting programs. Similarly, the disclosures contained in (2)(a) and (2)(b) above pertaining to municipal solid waste composting facilities need not be made in advertising or on product labels if such products or additives are distributed and advertised only to consumers residing in areas served by municipal solid waste composting facilities.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the principal display panel of the package. The principal display panel of the package is that part of the package that faces the consumer when presented under normal and customary conditions of display for retail sale.

If the advertising and labeling of any Archer Daniels Midland product or plastic product additive otherwise complies with subpart A of Part I of this Order, respondent will not be in violation of this Order if it does not make the disclosures in this proviso (Subpart B).

II

It is Further ordered That respondent Archer Daniels Midland Company, a corporation, its successors and assigns, and its officers, and respor.dent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Archer Daniels Midland product or plastic product additive in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols, that any Archer Daniels Midland product or plastic product additive offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

III

Nothing in this Order shall prevent respondent from using any of the terms cited in Parts I and II, or substantially similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV

It is Further ordered That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All tests, reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

V

It is Further ordered That respondent shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements or other such sales materials covered by this Order.

VI

It is Further ordered That respondent shall notify the Commission at least

thirty (30) days prior to any proposed change in the corporation, such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VII

It is Further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Archer Daniels Midland Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the advertising of Archer Daniels Midland plastic products and plastic product additives. The Commission's complaint charges that the respondent's advertising contained unsubstantiated representations concerning its products' alleged biodegradability and the environmental benefits that could be obtained when they were disposed of as trash. The complaint alleges that the respondent represented that its products offer a significant environmental benefit when consumers dispose of them as trash, and that they will completely break down, biodegrade, and disappear in six months to two years after consumers dispose of them as trash that is buried in landfills.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondent to cease representing that any of its plastic products or plastic product additives, or plastic products it manufactures and sells to third parties for further sale or distribution to the public, are "degradable," "photodegradable," or "biodegradable" when disposed of in a sanitary landfill, or more specifically, through the use of such terms or substantially similar terms, that such plastic products offer any environmental benefit when disposed of as trash in a sanitary landfill, unless the respondent has a reasonable basis for such representations at the time they are made.

Part I also contains a proviso that allows the respondent to advertise and label plastic products as "compostable" or "degradable" without violating Part I of the proposed order. The respondent may use the terms in labeling, and in advertising that refers to the products' "degradability," if such products will in fact degrade or break down into usable compost (soil-conditioning material) either in yard waste composting programs or municipal solid waste composting facilities. To avoid possible confusion about the benefit of a compostable product degrading in sanitary landfills, the proviso also requires the respondent to disclose clearly, prominently, and in close proximity to such terms its products "are not designed to effectively degrade in landfills." Furthermore, in the case of products designed to be disposed of in yard waste composting programs, the respondent must also disclose either that yard waste composting programs may not be available in the consumer's area, or the approximate percentage of the U.S. population having access to such composting programs. In the case of products designed to be disposed of in municipal solid waste composting facilities, the respondent must also disclose either that such facilities are generally unavailable in the U.S., or the approximate percentage of the U.S. population having access to such facilities. These disclosures concerning limited availability need not be made if the respondent's products are distributed and advertised only to consumers residing in areas served by such programs or facilities. This composting proviso is meant to provide a "safe harbor" which the respondent may use in making compost claims.

Part II of the proposed order provides that if the respondent represents in advertising or labeling that its plastic products offer any environmental benefit, it must have a reasonable basis consisting of competent and reliable evidence that substantiates the claims.

Part III of the proposed order allows the respondent to use the terms cited in Parts I and II, or substantially similar terms, and not be in violation of the proposed order, if it is necessary for the respondent to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93–1320 Filed 1–19–93; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

[Between: 12/21/92 and 12/31/92]

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Tenneco Inc., Indiana Energy, Inc., EnTrade Corp ..	93–0315	12/21/92
Bell Atlantic Corp., BCE Inc., National Telephone Directory Corp	93–0357	12/21/92

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

[Between: 12/21/92 and 12/31/92]

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Rubbermaid Inc., Vance P. Braxton III, Iron Mountain Forge Corp	93-0371	12/21/92
Ciba-Geigy Ltd., Fisons plc, Fisons plc	93-0374	12/21/92
Capital Holding Corp., Aachener und Munchener Beteiligungs-Aktiengesellschaft, Academy Insurance Group, Inc	93-0387	12/21/92
Marlis S.A., Matra S.A., Matra S.A	93-0403	12/21/92
Bouygues S.A., Donald L. Harrison, Delta Asphalt, Inc. and Southern Illinois Stone Co	93-0291	12/22/92
MMB S.A., Matra/Hachette S.A., Matra/Hachette S.A	93-0401	12/22/92
General Electric Corp., Barry Forman, Allegiance Capital Corp	93-0402	12/22/92
General Electric Corp., Roger Marriott, Allegiance Capital Corp	93-0404	12/22/92
Merrill Lynch & Co., Inc., Borg-Warner Corp., Borg-Warner Automotive, Inc	93-0422	12/22/92
Merrill Lynch Capital Appreciation Ptnship. #VIII L.P., Borg-Warner Corp., Borg-Warner Automotive, Inc	93-0423	12/22/92
Unilever N.V., Barry S. Halperin, The Isaly Klondike Company and Popsicle Industries, Ltd	93-0313	12/23/92
Motorola, Inc., Phillip N. and Mary A. Lyons, Airwave Communications Corp. (Los Angeles)	93-0360	12/23/92
The Washington Water Power Co., Sunrise Energy Services, Inc., Sunrise Energy Services, Inc	93-0416	12/24/92
Taihei Shokuhin Kogyo Kabushiki Kaisha, Donald L. Bren, The Irvine Co	93-0418	12/24/92
CMI Industries, Inc., Chatham Manufacturing, Inc., Chatham Manufacturing, Inc	93-0354	12/28/92
Norwest Corp., Z-Landerbank Bank Austria AG, LB Credit Corp	93-0400	12/28/92
Sonoco Products Co., Golder, Thomas, Cressy Fund III Limited Partnership, Crellin Holding, Inc	93-0421	12/28/92
Heaven Hill Distilleries, Inc., Guinness PLC, Guinness America, Inc. and Dubonnet Wine Corp	93-0425	12/28/92
President and Fellows of Harvard College, President and Fellows of Harvard College, Harken Anadardo Partners, L.P	93-0430	12/28/92
Darwin Deason, Darwin Deason, Dataplex Acquisition Corp	93-0433	12/28/92
Ronald O. Perelman, Vestar/Triple C Investment Limited Partnership, Triple C Acquisition Corp	93-0438	12/28/92
J.M. Voith GmbH, Winton M. Blount, BI Industries, Inc	93-0439	12/28/92

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

[Between: 12/21/92 and 12/31/92]

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Brynwood Partners II Limited Partnership, SmithKline Beecham plc, SmithKline Beecham Consumer Brands Inc	93-0442	12/28/92
H.F. Johnson Distributing T/I/t/b of Samuel C. Johnson, Bristol-Myers Squibb Co., The Drackett Company plus certain assets of BMS	93-0148	12/29/92
Century Telephone Enterprises, Inc., San Marcos Telephone Company, Inc., San Marcos Telephone Company, Inc	93-0369	12/29/92
Fisher Scientific International Inc., Charles L. Barancik, Hamilton Industries, Inc	93-0431	12/29/92
Doyon, Ltd., Doyon, Ltd., Doyon Drilling Inc. J.V. (partnership)	93-0437	12/29/92
The Edward W. Scripps Trust, Blade Communications, Inc., Monterey Peninsula Herald Co	93-0231	12/30/92
Blade Communications, Inc., The Edward W. Scripps Trust, Pittsburgh Press Co	93-0234	12/30/92
Equipment Managment & FinanceLimited Partnership, PacifiCorp, PCL, Inc	93-0440	12/30/92
Namco, Ltd., Bally Manufacturing Corp., Bally's Aladdin's Castle, Inc	93-0444	12/30/92
Ford Motor Co., James Moran, World Omni Leasing, Inc. and World Omni Financial Corp	93-0445	12/30/92
Mr. Charn Uswachoke, Olin Corporation, Indy Electronics, Inc	93-0446	12/30/92
W.R. Stephens Trust, Petrolon, Inc., Petrolon, Inc	93-0472	12/31/92
MTH Holdings, Inc., Peter J. Schmitt Holdings, Inc., Debtor-in-Possession, Peter J. Schmitt Co., Inc	93-0496	12/31/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-1321 Filed 1-19-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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, DHHS.

ACTION: Notice of the thirteenth meeting of the U.S. Advisory Board on Child Abuse and Neglect in McLean, Virginia from 1 pm., February 9, 1993 to 3:30 p.m., February 12, 1993.

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in McLean, Virginia from 1 p.m., February 9, 1993 through 3:30 p.m., February 12, 1993. This meeting is closed to the public except for Wednesday, February 10 (from 9 a.m. to 12 p.m.) to protect the free exchange of internal views among the members and to avoid undue interference with the operation of the Board.

ADDRESSES: The meeting will be held at: Ritz Carlton Hotel, 1700 Tyson Boulevard, McLean, Virginia 22102.

FOR FURTHER INFORMATION CONTACT: Joan M. Williams, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, room 303D, Humphrey Building, Washington, DC 20201, (202) 690-8178.

SUPPLEMENTARY INFORMATION: During the closed portions of the meeting, the Board will discuss: The form, content, nature and scope of the 1992, 1993, and 1994 annual reports of the Board; special Board reports on child protective services reform and research, and Board governance and administrative issues. During the open portions of the meeting, the Advisory Board will: Receive a briefing from a Transition Team member; and receive and update on developments relevant to the Board within the National Center on Child Abuse and Neglect.

Dated: January 7, 1993.

Preston Bruce, Jr.,

Acting Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 93-1361 Filed 1-19-93; 8:45 am]

BILLING CODE 4130-01-M

Food and Drug Administration

Advisory Committees; Notice of 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:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. February 2, 1993, 1 p.m., and February 3, 1993, 9 a.m., Bldg. 13, Conference rm., National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open board discussion, February 2, 1993, 1 p.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; open board discussion, February 3, 1993, 9 a.m. to 12 m.; closed board deliberations, 1 p.m. to 2 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the board. The board advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs to fulfill regulatory responsibilities.

Agenda—Open board discussion. The board will conduct a review of the Science Advisory Board Subcommittee site visit draft reports on three research programs of the center: (1) Quantitative Risk Assessment, (2) Developmental Toxicology, and (3) Neurotoxicology. The board will engage in discussions on these reports and come to final conclusion on the recommendations to be made to the director concerning these center programs.

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations should notify the contact person before January 21, 1993, 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.

Closed board deliberations. The board will discuss information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy relevant to the intramural scientific program. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)). A final agenda will be available on January 25, 1993, from the contact person.

Generic Drugs Advisory Committee

Date, time, and place. February 10, 11, and 12, 1993, 8 a.m., Holiday Inn, Silver Spring Plaza, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, February 10, 1993, 8 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open committee discussion, February 11, 1993, 8 a.m. to 4:30 p.m.; open public hearing, unless public participation does not last that long, 4:30 p.m. to 5:30 p.m.; open committee discussion, February 12, 1993, 8 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 4 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review agency-sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

Agenda—Open committee discussion. On February 10, 1993, the committee will discuss issues on bioequivalence including statistical analysis issues. On February 11, 1993, the committee will discuss bioequivalence issues related to metrics of rate and extent, and research programs sponsored by the Office of Generic Drugs. On February 12, 1993, the committee will discuss issues on bioequivalence related to narrow therapeutic range drugs such as phenytoin.

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 February 3, 1993, 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.

Closed committee deliberations. On February 12, 1993, the committee will review trade secret and/or confidential commercial information relevant to an abbreviated new drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Antiviral Drugs Advisory Committee

Date, time, and place. February 18, 1993, 8 a.m., and February 19, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 18, 1993, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 12 m.; open public hearing, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 5 p.m.; open committee discussion, February 19, 1993, 8:30 a.m. to 12 m.; closed committee deliberations, 12 m. to 4 p.m.; Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

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 February 12, 1993, 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 the morning of February 18, 1993, the committee will discuss new drug applications (NDA's) 20–264 and 20–296 for the use of megestrol acetate (Megace® OS, Bristol-Myers Squibb) in oral suspension and in 250 milligram tablets for the treatment of cachexia. In the afternoon of February 18, 1993, the committee will also consider overview information and outcome parameters in chronic fatigue syndrome. On February 19, 1993, there will be presentations providing members with updated regulatory information.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Biological Response Modifiers Advisory Committee

Date, time, and place. February 18, 1993, 4 p.m., Food and Drug Administration, Bldg. 29, Conference rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 4 p.m. to 4:30 p.m.; closed committee deliberations, 4:30 p.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; Jack Gertzog, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–9054.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human 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 February 10, 1993, 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 the intramural scientific programs of the Laboratory of Cellular and Molecular Biology and the Laboratory of Molecular Pharmacology of the Division of Biochemistry and Biophysics, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. February 25 and 26, 1993, 8:30 a.m., Parklawn Bldg. Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, February 25, 1993, 8:30 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m; open committee discussion, 1 p.m. to 5 p.m.; open public hearing, February 26, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open committee discussion. On February 25, 1993, the committee will receive an overview of center activities as they relate to the advisory committee process and will discuss NDA 19–547, Pro-Air® (procaterol) metered-dose inhalator, Warner Lambert. On February 26, 1993, the committee will discuss NDA 20–236, Serevent® (salmeterol xinafoate) inhalation, Glaxo.

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 February 12, 1993, 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.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. February 25 and 26, 1993, 9 a.m., rm. 503A–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, February 25, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; closed presentation of data, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 12 m. to 5 p.m.; open public hearing, February 26, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; closed presentation of data, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 12 m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1180.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

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 a formal presentation should notify the contact person before February 11, 1993, and submit a brief statement of the general nature and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss home uterine activity monitors used for the early detection of preterm labor, including draft guidelines for premarket testing and, possibly, premarket approval applications (PMA's).

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information

regarding home uterine activity monitors. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding home uterine activity monitors. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above 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. The dates and times reserved for the separate 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.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

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.

FDA regrets that it is publishing this notice in the **Federal Register** less than 15 days prior to the meeting of the Science Board to the National Center for Toxicological Research because of scheduling difficulties and time constraints due in part to the holidays.

Dated: January 13, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–1276 Filed 1–15–93; 8:45 am]

BILLING CODE 4160–01–U

Advisory Committees; Notice of 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:

Science Board to the Food and Drug Administration

Date, time, and place. February 2, 1993, 9 a.m., Federal Bldg. 8, rm. 1409, 200 C St. SW., Washington, DC.

Type of meeting and contact person. Open board discussion, 9 a.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; Sheryl Rosenthal, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5839.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open board discussion. The board will receive a general orientation about FDA and an overview of the existing scientific research at the agency. An introduction to the operations of the Center for Biologics Evaluation and Research and the Office of Regulatory Affairs will also be presented.

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations should notify the contact person before January 26, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Comments will be limited to 5 minutes.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. February 4 and 5, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 4, 1993, 8:30 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, February 5, 1993, 8:30 a.m. to 4 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

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 the practice of obstetrics and gynecology.

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 January 21, 1993, 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 February 4 and 5, 1993, the committee will discuss issues related to providing oral contraceptives without prescription.

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. February 11, 1993, 12:30 p.m, and February 12, 1993, 8 a.m., Ramada Inn, Ambassador rm., 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 11, 1993, 12:30 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 6 p.m. Open public hearing, February 12, 1993, 8 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

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 January 27, 1993, 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 February 11, 1993, the committee will discuss guidance documents for temporomandibular joint implants and periodontal test kits. If time permits, the committee will provide recommendations on classification of the following devices: (1) Root apex locator, (2) temporomandibular implants, (3) electrical anesthesia devices, and (4) bone-filling and augmentation materials. On February 12, 1993, an update on dental amalgam will be presented. The committee will discuss a new drug application for a root canal filling material.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. February 18, 1993, 9 a.m., and February 19, 1993, 8:30 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. (Parking in the Clinical Center visitor area is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as lot 41B. Free shuttle bus service is provided from lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.)

Type of meeting and contact person. Open public hearing, February 18, 1993, 9 a.m to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6 p.m.; open committee discussion, February 19, 1993, 8:30 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 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 cardiovascular and renal disorders.

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 February 10, 1993, 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 February 18, 1993, the committee will discuss: (1) New drug application (NDA) 19–885/S–001, Acoupril (quinapril HCl, Parke-Davis) tablets for congestive heart failure; (2) NDA 19–558/S–007, Prinivil (lisinopril, Merck Research Laboratories) tablets for congestive heart failure; and (3) NDA 19–777/S–007, Zestril (lisinopril, Stuart/ICI Pharmaceuticals) tablets for congestive heart failure. On February 19, 1993, the committee will discuss: (1) NDA 18–343/S–048, Capoten (captopril, Bristol-Myers Squibb) tablets for the prevention of congestive heart failure, the SAVE (Survival and Ventricular Enlargement) trial; and (2) NDA 18–998/S–032, Vasotec (enalapril maleate, Merck Research Laboratories) tablets for the prevention of congestive heart failure, the SOLVD (Studies of Left Ventricular Dysfunction) Prevention trial.

Board of Tea Experts

Date, time, and place. February 25 and 26, 1993, 10 a.m., New York Regional Laboratory, rm. 700, 850 Third Ave., Brooklyn, NY.

Type of meeting and contact person. Open public hearing, February 25, 1993, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, February 26, 1993, 10 a.m. to 4:30 p.m.; Robert H. Dick, New York Regional Laboratory, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 718–965–5730.

General function of the board. The board advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss and select tea standards.

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.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

FDA regrets that it is publishing this notice in the Federal Register less than 15 days prior to the meeting of the Science Board to the Food and Drug Administration because of scheduling difficulties and time constraints due in part to the holidays.

Dated: January 13, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–1275 Filed 1–15–93; 8:45 am]

BILLING CODE 4160–01–U

Health Care Financing Administration

[OPHC–026–N]

Health Maintenance Organizations; HMO Qualification Determinations and Compliance Actions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or modified service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (FQHMOs) during the period April 1, 1992 through September 30, 1992. It also includes the service expansion area for one FQHMO that had been inadvertently omitted from the previous Federal Register notice that covered the period August 6, 1991 through March 31, 1992. Additionally, it sets forth compliance actions taken by the Office of Prepaid Health Care Operations and Oversight for the period April 1, 1992 through September 30, 1992. This notice is being published in accordance with our regulations set forth at 42 CFR 417.144 and 417.163, which require publication in the Federal Register of certain determinations relating to FQHMOs.

FOR FURTHER INFORMATION CONTACT: Christine Boesz, (202) 619–0840.

SUPPLEMENTARY INFORMATION:

A. Qualification Determinations

As part of our evaluation and determination of whether an entity qualifies as a Federally qualified health maintenance organization (FQHMO), our regulations set forth at 42 CFR 417.144(e), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication in the **Federal Register** of the names, addresses, and descriptions of the service areas of new FQHMOs. We interpret this requirement as applying to revisions of service areas of currently approved FQHMOs as well. Our last notice containing this information was published in the **Federal Register** on July 27, 1992 (57 FR 33202) and corrected on September 11, 1992 (57 FR 41810).

There are three categories of FQHMOs: Operational, transitionally qualified, and pre-operational. Definitions of these terms are set forth at 42 CFR 417.141.

The Office of Prepaid Health Care Operations and Oversight has determined that the following entities are operational FQHMOs under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) or have expanded their previously qualified service areas:

1. New FQHMO

CIGNA Health Plan of Tennessee (Group Model, see section 1310(b)(1) of the Act), 1801 West End Avenue, Nashville, Tennessee 37203. The Federally qualified service area of CIGNA Health Plan of Tennessee include the following counties in their entirety: Cheatham, Davidson, Robertson, Rutherford, Summer, Williamson, and Wilson.

Date of qualification: August 10, 1992.

2. Service Area Expansions and Regional Components of Existing FQHMOs

a. *Inter Valley Health Plan (IVHP)* (individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 300 South Park Avenue, suite 300, Pomona, California 91766. IVHP's previously Federally qualified service area has been expanded to include the following zip codes in Los Angeles and Orange Counties:

Los Angeles County

90021
90022
90031 through 90033
90040 through 90042
90063
90065
90071
90601 through 90606
90631
90638
90640
90660
90720
91001
91007
91011
91020
91030
91046
91101 through 91108
91201 through 91208
91801
91803

Orange County

90620 through 90624
90630
90670
90680
92613
92621
92631 through 92635
92640
92641
92645
92664 through 92670
92686
92687
92801 through 92808

Date of qualification for service area expansion: April 2, 1992.

b. *PacifiCare of California (PC)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 5995 Plaza Drive, Cypress, California 90630. PC's previously Federally qualified service area has been expanded to include the following zip codes in Santa Barbara County:

93010
93067
93101
93103
93105
93108 through 93111
93117
93214
93254
93427
93429
93434
93440
93441
93454
93455
93460
93463

Date of qualification for service area expansion: May 6, 1992.

c. *Health Net (HN)* (Individual practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), Post Office Box 9103, Van Nuys, California 91409. HN's previously Federally qualified service area has been expanded to include Santa Cruz County in its entirety and the following zip codes in Fresno, Madera, and Tulare Counties:

Fresno County

93242
93602
93606
93609
93612
93613
93616
93622
93625
93626
93630
93631
93648 through 93652
93654
93657
93662
93667
93700 through 93712
93714 through 93718
93720 through 93722
93724 through 93729
93740
93741
93744
93745
93747
93750
93755
93759 through 93762
93764
93765
93771 through 93780
93782
93784
93786
93790 through 93794

Madera County

93614
93637 through 93639
93643 through 93645

Tulare County

93618
93666
93673

Date of qualification for service area expansion: June 18, 1992.

d. *Sisters of Providence Good Health Plan of Oregon (A.K.A. Good Health Plan (GHP))* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 1235 NE 47th, Suite 220, Portland, Oregon 97213. GHP's previously Federally qualified service area has been expanded to include Clatsop County in its entirety.

Date of qualification for service area expansion: June 29, 1992.

e. *Prudential Health Care Plan (A.K.A. PruCare of North Texas (PruCare))* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 4100 Alpha

Road, Suite 400, Dallas, Texas 75244–4327. PruCare's previously Federally qualified service area has been expanded to include the following counties in their entirety: Hood, Parker, and Somervell, and the remaining areas of Denton, Ellis, Johnson, and Kaufman Counties that were not previously Federally qualified.

Date of qualification for service area expansion: July 1, 1992.

f. *FHP, Inc. (FHP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 9900 Talbert Avenue, Fountain Valley, California 92708. FHP's previously Federally qualified service area has been expanded to include Hemet, High Desert, San Diego (South Bay and Coastal North), Simi Valley, Orange County, and the following zip codes in the referenced counties:

Los Angeles County

90001 through 90008
90010 through 90029
90031 through 90040
90042 through 90049
90056 through 90059
90061 through 90065
90067 through 90069
90071
90077
90201
90210 through 90212
90220 through 90223
90230
90232
90240 through 90242
90245
90247 through 90250
90254
90255
90260
90262
90265
90266
90270
90272
90274
90277
90278
90280
90290 through 90293
90301 through 90310
90401 through 90405
90501 through 90505
90507 through 90510
90601 through 90608
90637 through 90640
90650
90660
90670
90701
90706
90710
90712 through 90717
90723
90731
90732
90744 through 90746
90748
90749
90801 through 90810
90813 through 90815
90822
90853
91001
91006
91010
91011
91016
91020
91024
91030
91040
91042
91046
91101
91103 through 91108
91201 through 91208
91214
91301 through 91304
91306
91307
91311
91316
91324 through 91326
91331
91335
91340
91342 through 91345
91352
91356
91364
91367
91401 through 91403
91405
91406
91411
91423
91436
91501
91502
91504 through 91506
91601
91602
91604 through 91608
91702
91706
91711
91722 through 91724
91731 through 91733
91740
91744 through 91746
91748
91750
91754
91765 through 91768
91770
91773
91775
91776
91780
91789 through 91792
91801
91803
93510
93534
93535
93543
93544
93550
93551
93553
93563

Riverside County

91719
91720
91752
91760
92320
92501
92503 through 92509
92530
92543
92544
92548
92549
92553
92555
92557
92561
92562
92567
92570
92583 through 92586
92589
92595
92596

San Bernardino County

91701
91709
91710
91730
91739
91743
91761 through 91764
91786
92301
92307
92308
92316
92318
92324
92335
92336
92342
92345
92346
92354
92356
92359
92368
92369
92371 through 92374
92376
92392
92294
92397
92399
92401
92404
92405
92407 through 92411

San Diego County

91901
91902
91905
91906
91910
91911
91913
91916
91917
91931
91932
91934
91935
91941
91942
91945 through 91948
91950
91963
91976 through 91979
92003
92007 through 92009
92014
92019 through 92021
92024 through 92028
92037
92040
92054
92056
92057
92059 through 91962
92064 through 92071
92075
92082 through 92084
92086
92101 through 92111
92113 through 92124
92126 through 92131
92133
92135
92139
92140
92145
92154
92155

Ventura County

91320
91360 through 91362
93015
93021
93040
93063
93065

Date of qualification for service area expansion: July 27, 1992.

g. *Humana Medical Plan, Inc. (HMP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 500 West Main Street, Post Office Box 1438, Louisville, Kentucky 40201–1438. HMP's Federally qualified regional component (Humana-Daytona) now includes Flagler and Volusia Counties in their entireties.

Date of qualification for the regional component: August 17, 1992.

h. *FHP, Inc. (FHP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 9900 Talbert Avenue, Fountain Valley, California 92708. FHP's Federally qualified regional component includes Clark County, Nevada in its entirety and the following zip codes in Mohave County, Arizona:

85360
86401
86411
86412
86427
86430
86431
86433
86436 through 86438
86440 through 86444

Date of qualification for the regional component: September 4, 1992.

3. This notice also includes the following service area expansion that had been inadvertently omitted from the July 27, 1992 Federal Register notice, which covered the period August 6, 1991 through March 31, 1992:

SANUS Texas Health Plan, Inc. (SANUS) (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 8600 Freeport Parkway, Irving, Texas 75063. SANUS' previously Federally qualified service area has been expanded to include the following counties in their entirety: Cooke, Delta, Fannin, Grayson, Hood, Hopkins, Hunt, Kaufman, Rains, Somervell, and Wise. Also, the approved service area includes the incorporated city of Mineral Wells located in the County of Palo Pinto.

Date of qualification for service area expansion: March 23, 1992.

B. Notices of Revocation

Organization	Date issued	Reason
Health Plan of America, Cypress, California	4/23/92	Voluntary relinquishment (merger).
Rutgers Community Health Plan, Somerset, New Jersey	6/11/92	Voluntary relinquishment (merger).
Samaritan Health Plan Inc., Milwaukee, Wisconsin	9/10/92	Voluntary relinquishment (merger).
HMO Minnesota, St. Paul, Minnesota	9/11/92	Voluntary relinquishment.

C. Availability of Additional Information

A cumulative list of FQHMOs and additional information may be obtained by writing to the following address: Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, Room 4406 Cohen Building, 330 Independent Avenue, SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, except for Federal holidays. Interested persons should contact Margie Sharif for an appointment, telephone (202) 619–0845.

Authority: (42 U.S.C. 300e) Title XIII of the Public Health Service Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: January 12, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–1224 Filed 1–19–93; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3564]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a

toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 8, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Mortgage Record Change.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Mortgagees who participate in the HUD/FHA insurance programs must report mortgage portfolio activity to the Department regarding change of investor and/or service.

Form Number: HUD–92080.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92080	9,062		245.64		.1		222,600

Total Estimated Burden Hours: 222,600.

Status: Extension.

Contact: Donald L. Kline, HUD, (202) 708–1994. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Description of Materials.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–92005 is needed so that builders and sponsors can describe the materials and assembly of dwellings and other improvements to the property. This form and the drawings define the scope and limits of the construction and is used by HUD to estimate value for FHA mortgage insurance.

Form Number: HUD–92005.

Respondents: Businesses or Other For-Profit, Federal Agencies or Employees and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92005	2,500		40		.5		50,000

Total Estimated Burden Hours: 50,000.

Status: Extension.

Contact: Kenneth L. Crandall, HUD, (202) 708–2720. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: American Housing Survey—1993 National Sample.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: The 1993 AHS-National is a longitudinal study that collects current information on the quality, availability, and cost of the housing inventory. It also provides information on the characteristics of occupants. Federal and local government agencies use AHS data to evaluate housing issues.

Form Number: AHS–21, 22, 23, 26(L), 27(L), 28(L), and 394.

Respondents: Individuals or Households.

Frequency of Submission: Biennially.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	62,000		1		.54		33,552

Total Estimated Burden Hours: 33,552.

Contact: Duane T. McGough, HUD, (202) 708–1060. Daniel H. Weinberg, Census, (301) 763–8550. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Requisition for Disbursement of Section 202 Loan Funds.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–92403–EH will be used by the non-profit borrower entity to obtain disbursement on its HUD-funded building loan under the Section 202

Housing Program for the Elderly or Handicapped. Its use during the construction period will enable the borrower to obtain funds to settle his obligations or reimbursement in a timely, manner.

Form Number: HUD–92403–EH.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92403–EH	550		3		.5		825

Total Estimated Burden Hours: 825.

Status: Extension.

Contact: Evelyn Berry, HUD, (202) 708–2866. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Single Family Property Disposition Program for the Homeless, Interim Rule.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The purpose of this program is to make available, through sale or lease, to applicants approved by HUD, certain HUD-acquired single family properties for use by the homeless.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	300		1		2		600

Total Estimated Burden Hours: 600.

Status: Extension.

Contact: Ann Sudduth, HUD, (202) 708–0740. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Single Family Accounting Management System (SAMS) Public Reporting Forms.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: In managing its program to dispose of acquired single family properties, HUD reimburses contractors and vendors for their services in maintaining, marketing, and selling HUD homes, and collects funds from the sales of these properties. Several forms capture the information necessary for HUD to record and process financial transactions in this automated Single Family Accounting Management System.

Form Number: SAMS–1100, 1101, 1103, 1104, 1106, 1108, 1110, 1111, 1115, 1116, 1116A, 1117, and 1300.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1–75		Varies		272,150		54,520

Total Estimated Burden Hours: 54,520.

Status: New.

Contact: Augusta J. Benge, HUD, (202) 708–4029. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Mortgagee Request for Extension of Time Requirements.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–50012 will be used by mortgagees when requesting an extension for completion of foreclosure and claim actions.

Form Number: HUD–50012.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–50012 Recordkeeping	2,000		2		.20		800
	2,000		1		.50		1,000

Total Estimated Burden Hours: 1,800.

Status: Extension.

Contact: Leslie Bromer, HUD, (202) 708–1719. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Single Family Property Disposition; Program for Sales to Nonprofits and Governmental Entities.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Demonstration Program facilitates the sale of HUD acquired Single Family properties to private nonprofit organizations and governmental entities for resale to low and moderate income families. The program will also help to

stabilize neighborhoods and to expand affordable homeownership opportunities for low and moderate income families.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	10		1		50		500

Total Estimated Burden Hours: 500.

Status: Reinstatement.

Contact: Marion F. Conell, HUD (202) 708–0740. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Urban Revitalization Demonstration Program.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The information provided by the applicant will be reviewed by HUD and evaluated against rating criteria for possible grant funding. HUD will review and determine the feasibility and effectiveness of both planning and implementation applications to conduct this demonstration program. Applicants will be notified of their selection/rejection.

Form Number: HUD–52825, 50070 and 52820.

Respondents: State or Local Governments.

Frequency of Submission: Quarterly and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	50		1		Varies		17,634

Total Estimated Burden Hours: 17,634.

Status: New.

Contact: Janice Rattley, HUD, (202) 708–1800, Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

[FR Doc. 93–1282 Filed 1–19–93; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. R–93–3454; FR–3300–N–02]

Community Development Technical Assistance Program Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of competition winners.

SUMMARY: In accordance with section 104(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions the Department has made under the Community Development Technical Assistance Program, following a national competition, to economically empower low-income residents in Community Development Block Grant (CDBG) communities, especially riot damaged areas of Los Angeles, California. The announcement contains the names and addresses of the award winners and the amounts of the awards.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Robert M. Duncan, Office of Economic Development, Department of Housing and Urban Development, room 7144, 451 Seventh Street, SW., Washington, DC 20410; his telephone number is (202) 708–3773. The TDD number is (202) 708–0564. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In a Notice published on June 29, 1992 (57 FR–3300–N–01), the Department announced the availability of up to $12.1 million in grants to provide technical assistance in support of local economic empowerment, including business development and job training initiatives, for low-income residents in CDBG communities.

This competition was authorized under title I, section 107(b)(4) of the Housing and Community Development Act of 1974, and conducted pursuant to program requirements contained in 24 CFR 570.400 and 570.402 (the Community Development Technical Assistance Program). The purpose of the competition is to provide technical assistance to help communities create public-private partnerships among city officials, private sector organizations, and a broad array of local neighborhood groups and organizations to:

Create and implement an economic employment program including supporting the implementation of Federal enterprise zones (if enacted) and on-going State enterprise zone efforts;

Establish comprehensive activities to link economic empowerment and job training efforts to benefit lower income residents; and

Implement applicants' programs through a coalition of diverse public and private organizations.

The Notice announced the availability of $12.1 million and was divided into three subcompetitions. The first subcompetition allocated $4.0 million to be awarded to CDBG entitlement jurisdictions within Los Angeles County that were able to demonstrate extensive physical damage resulting from the civil disturbances occurring during April–May 1992. Nine applicants responded to the Notice by the closing date of August 6, 1992; these were scored and selected for funding according to the "Factors for Award" contained in the June 29, 1992 Notice. Eight applicants were able to demonstrate extensive physical damage resulting from the April–May 1992 civil disturbances and were scored. One applicant was not able to demonstrate extensive physical damage resulting from the April–May 1992 civil disturbances and did not receive consideration under this subcompetition. However, the applicant was considered under the $6.6 million subcompetition in accordance with the terms of the Notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 102–235,

approved December 15, 1989), HUD is publishing the names of the winners of the $4.0 million technical assistance subcompetition to economically empower low-income residents in Community Development Block Grant Communities, especially in riot damaged areas of Los Angeles, California, and in connection with implementation of enterprise zones.

1. City of Los Angeles, 215 W. 6th Street, Los Angeles, CA 90014. Parker C. Anderson, Community Development Department, 213–485–4682 1,052,631
2. Los Angeles County, 2525 Corporate Place, Monterey Park, CA 91754. Edna Bruce, Community Development Commission, 213–260–2187 1,052,631
3. City of Long Beach, 333 W. Ocean Blvd. Long Beach, California 90802. Michael K. Parker, Community Development Department, 310–590–6843 491,228
4. City of Compton, 205 South Willowbrook Avenue, Compton, CA 90220. Timothy Iverson, Office of Grants Management Services, 310–605–5580 280,702
5. City of Huntington Park, 6550 Miles Avenue, Huntington Park, CA 90255. Tim Anusiem, Community Development Department, 213–582–6161. 280,702
6. City of Inglewood, One Manchester Blvd., Inglewood, CA 90301. Patricia Way, Department of Community Development and Housing, 310–412–5230. 280,702
7. City of Lynwood, 11330 Bullis Road, Lynwood, CA 90262. Sol Blumenfeld, Community Development Department, 310–603–0220. 280,702
8. City of Pasadena, 100 North Garfield Avenue, Pasadena, CA 91109. Anthony Randolph, Department of Northwest Programs, 818–405–3567. 280,702

The second subcompetition allocated $6.6 million to be awarded to CDBG entitlement jurisdictions other than those California jurisdictions identified under the $4.0 million subcompetition. Fifty applicants responded to the Notice by the closing date of August 6, 1992; these were scored and selected for funding according to the "Factors for Award" contained in the June 29, 1992 Notice. One applicant that had responded under the $4.0 million subcompetition was not able to demonstrate extensive physical damage resulting from the April-May 1992 civil disturbances and was included in the $6.6 million competition in accordance with the provisions of the Notice. The $6.6 million that was available permitted full or partial funding of the 20 most qualified applicants.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 102–235, approved December 15, 1989), HUD is publishing the names of the winners of the $6.6 million technical assistance subcompetition to economically empower low-income residents in Community Development Block Grant Communities in connection with implementation of enterprise zones.

1. City of Syracuse, 201 E. Washington Street, Syracuse, NY 13202. Christine Abate, Department of Community Development, 315–473–2616 ..... $200,000
2. City of Philadelphia, 1650 Arch Street, 19th floor, Philadelphia, PA 19103. James Cuorato, Department of Commerce, 215–686–8585 350,000
3. City of Oakland, 1333 Broadway, suite 900, Oakland, CA 94610. Gwen McCormick, Office of Economic Development and Employment, 510–238–3015 350,000
4. City of Albany, 230 South Jackson, suite 315, Albany, GA 31701. Rudy Goddard, Community Development Division, 912–430–5283 200,000
5. Metropolitan Government of Nashville and Davidson County, 701 South Sixth Street, Nashville, TN 37206. Gerald F. Nicely, Metropolitan Development and Housing Agency, 615–252–8410 200,000
6. City of San Diego, 1200 Third Avenue, Suite 1620, San Diego, CA 92101. Michael D. Jenkins, Enterprise Zone Program, 619–236–6089 350,000
7. City of Pittsfield, City Hall, 70 Allen Street, room 205, Pittsfield, MA 01201. Andree Tremoulet, Office of Community and Economic Development, 413–499–9368 324,500
8. City of Boston, 43 Hawkins Street, Boston, MA, 02114. Jerry Rubin, Economic Development and Industrial Corporation, 617–635–3342 350,000
9. City of Kansas City, City Hall, 11th floor, 414 E. 12th Street, Kansas City, MO 64106. James M. Vaughn, Department of Housing and Community Development, 816–274–2201 350,000
10. City of Dallas, 1500 Marilla Street, room 4/B/N, Dallas, TX 75201. Dennis B. Martinez, Economic Development Department, 214–670–1685 350,000
11. City of Fort Wayne, One Main Street, Fort Wayne, IN 46802. Greg Purcell, Division of Community and Economic Development, 219–427–1131 .. 200,000
12. City of Phoenix, One N. First Street, suite 700, Phoenix, AZ 85004–2357. Kim Dorney, Community and Economic Development Department, 602–262–5040 350,000
13. City of Kansas City, One McDowell Plaza, Kansas City, KS 66101. Edward C. Smith, Division of Community Development, 913–573–5100 350,000
14. City of Cleveland, 601 Lakeside Avenue, Cleveland, OH 44114. Joseph A. Marinucci, Department of Economic Development, 216–664–2406 350,000
15. City of Fort Worth, 1000 Throckmorton, Fort Worth, TX 76102. Tom Higgins, Economic Development Office, 817–871–6192 350,000
16. City of Las Vegas, 400 E. Stewart, Las Vegas, NV 89101. Kenneth Williams, Urban Development, 702–229–6462 260,858
17. Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507. Irene Gooding, Division of Housing and Community Development, 606–258–3070 312,775
18. City of Indianapolis, 200 E. Washington Street, Indianapolis, IN 46204. Leslie Rubin, Department of Metropolitan Development, Division of Planning, 317–327–5151 350,000
19. City of Altanta, 68 Mitchell Street, SW., Atlanta, GA 30335. Muriel Mitchell, Department of Housing, 404–330–6420 350,000
20. Jefferson County, 805 North 22nd Street, Birmingham, AL 35203–2385. James F. Fenstermaker, Office of Planning and Community Development, 205–325–5761 350,000

The third subcompetition allocated $1.5 million to be awarded to states for technical assistance or for distribution to non-entitlement CDBG-eligible units of general local government. Eight applicants responded to the Notice by the closing date of August 6, 1992; these were scored and selected for funding according to the "Factors for Award" contained in the June 29, 1992 Notice. Two of the eight applicants did not score above the 50 point minimum threshold required to be considered for funding. The $1.5 million that was available permitted full funding of the 6 applicants that meet the 50 point minimum threshold.

In accordance with section 102(a)(4)(C) of the Department of

Housing and Urban Development Reform Act of 1989 (Pub. L. 102–235, approved December 15, 1989), HUD is publishing the names of the winners of the $1.5 million technical assistance subcompetition to economically empower low-income residents in Community Development Block Grant Communities in connection with implementation of enterprise zones.

1. The State of Wisconsin, P.O. Box 7970, Madison, WI 53707. Kathleen Heady, Department of Development, 608–267–2045. ..... $249,981
2. The State of Texas, P.O. Box 13941, Austin, TX 78711–3941. Ruth Cedillo, Department of Housing and Community Affairs, 512–475–3882. 250,000
3. The State of New Mexico, Joseph Montoya Building, 1100 St. Francis Drive, Santa Fe, NM 87503. William E. Garcia, 505–827–0381. 250,000
4. The State of Massachusetts, 100 Cambridge Street, room 1802, Boston, MA 02202. Carolyn Britt, Massachusetts Executive Office of Communities and Development, Bureau of Small Cities, 617–727–7180. 200,521
5. The State of Nebraska, P.O. Box 9466, Lincoln, NE 68509. Jenne Rodriguez, Nebraska Department of Economic Development, 402–471–4388. 232,283
6. The State of Rhode Island, State House, room 111, Providence, RI 02903. Troy Contazzo, Governor's Office Housing, Energy, Intergovernmental Relations, 401–277–2080. 123,882

Dated: January 13, 1993.

Don I. Patch,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 93–1281 Filed 1–19–93; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N–93–3440; FR–3294–N–04]

Announcement of Allocations for Housing Opportunities for Persons With AIDS; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice; correction.

SUMMARY: This notice corrects the list of HUD Field Offices contained in the announcement of availability of funding for the Housing Opportunities for Persons with AIDS program for applicants from North Carolina and Washington.

Accordingly, in FR Doc. 92–30976, published in the **Federal Register** on December 28, 1992 (57 FR 61752), the Department corrects the list of HUD Field Offices of page 61753, third column as follows:

(1) The address listed for "North Carolina" is removed and replaced with the following: Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707; (919) 547–4005; TDD (919) 547–4055.

(2) The address listed for "Washington" is removed and replaced with the following: John Peters, Federal Office Building, 909 First Avenue, suite 200, Seattle, WA 98104–100, (206) 220–5150; TDD (206) 220–5185.

Dated: January 13, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 93–1283 Filed 1–19–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–600–03–4120–02–241A]

Request for Public Comment Concerning the Inclusion of Certain States Under Federal Coalbed Methane Recovery Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment period.

SUMMARY: The Bureau of Land Management requests public comment on the inclusion of certain States under the provisions of section 1339. OWNERSHIP OF COALBED METHANE, of the Energy Policy Act of 1992, Public Law 102–486. Under the provisions of this Section, the Secretary of the Interior will compile a list of Affected States and will administer this section in those States on lands where the United States is the owner of the surface estate or where the United States has transferred the surface estate but reserves the subsurface mineral estate.

ADDRESSES: Written comments should be addressed to: State Director, Eastern States, Bureau of Land Management, Mail Stop 920, 7450 Boston Boulevard, Springfield, Virginia 22153.

DATES: Comments received on or before March 8, 1993, will be considered prior to publishing the initial list of Affected States.

FOR FURTHER INFORMATION CONTACT: Ken FitzPatrick, Bureau of Land Management, at the above address, or telephone (703) 440–1731.

SUPPLEMENTARY INFORMATION: Not later than 180 days after the October 24, 1992, enactment of the Energy Policy Act of 1992, Public Law 102–486, the Secretary of the Interior, with the participation of the Secretary of Energy, shall publish in the **Federal Register** a list of Affected States which shall be comprised of States:

(1) In which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that disputes, uncertainty, or litigation exist(s), regarding the ownership of coalbed methane gas;

(2) In which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that development of significant deposits of coalbed methane gas is being impeded by such disputes, uncertainty, or litigation regarding ownership of such coalbed methane;

(3) Which do not have in effect a statutory or regulatory procedure or existing case law permitting and encouraging the development of coalbed methane gas within the State; and

(4) Which do not have extensive development of coalbed methane gas.

Any Affected State shall be deleted from the list of Affected States upon receipt by the Secretary of the Interior of a Governor's petition requesting such deletion, a State law requesting such deletion, or a resolution requesting such deletion enacted by the legislative body of the State. Under the provisions of this Section, the following States are included on the list until the Secretary of the Interior publishes a new list of Affected States: Illinois, Indiana, Kentucky, Ohio, Pennsylvania, Tennessee, and West Virginia. This Section also declares that States which shall not be included on the list are Alabama, Colorado, Louisiana, Mississippi, Montana, New Mexico, Utah, Virginia, Washington, and Wyoming. Other States with significant coal production will be considered for inclusion on this list, and the States currently on the list will be considered for removal.

In implementing this Section, the Secretary of the Interior, with the participation of the Secretary of Energy, shall—(A) consider existing and future coal mining plans, (B) preserve the mineability of coal seam, and (C) provide for the prevention of waste and maximization of recovery of coal and coalbed methane gas in a manner which will protect the rights of all entities owning an interest in such coalbed resources.

If an Affected State has not placed in effect, by statute or by regulation, a substantial program promoting the permitting, drilling, and production of coalbed methane wells (including

pooling arrangements) within that State within 3 years after becoming an Affected State, the Secretary of the Interior, with the participation of the Secretary of Energy, shall administer this section and shall promulgate such regulations as are necessary to carry out this Section in that State. Federal provisions applicable to the listed States in parts "e" through "p" of this section include Spacing, Spacing Units, Development Under Pooling Arrangement, Escrow Account, Approval of the Secretary of the Interior, Authorization to Stimulate a Coal Seam, Notice and Objection, Plugging, Notice and Objection by Other Parties, Venting for Safety, Other Laws, and Definitions.

The information sought from comment on this notice includes the following—(A) Should a State be listed? Why? Why not? (B) Should a listed State be removed from the list? Why? Why not? (C) Any other relevant information.

The text of section 1339, OWNERSHIP OF COALBED METHANE., of the Energy Policy Act of 1992, Public Law 102–486, is available from the above address.

Dated: January 14, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–1360 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–03–4210–04; IDI–27420]

Realty Action; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—IDI–27420; exchange of public and private lands in Ada, Elmore, Owyhee, and Washington Counties, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian, Idaho

T. 1 N., R. 1 E.,
Sec. 6, E½SE¼, E½E½W½SE¼,
Sec. 7, E½NE¼, E½E½W½NE¼,
Sec. 8, NW¼,
Containing 360 acres in Ada County;
T. 6 S., R. 4 E.,
Sec. 25, NW¼SW¼, S½S½,
Sec. 26, SE¼NE¼, E½SE¼,
Containing 320 acres in Owyhee County.

In exchange for the above described public lands, BLM will acquire the following described private lands from The Nature Conservancy:

Boise Meridian, Idaho

T. 13 N., R. 4 W.,
Sec. 20, SE¼SW¼,
Sec. 29, E½NW¼, SW¼NW¼, SW¼, W½SE¼,
Containing 400 acres in Washington County;
T. 4 S., R. 2 E.,
Sec. 10, Lots 1, 5, & 6, NW¼NE¼,
Sec. 11, N½SW¼,
Containing 233.5 acres in Elmore County.

The purpose of this exchange is to dispose of public lands that have, for a number of years, been farmed under BLM permit, possess very little public resource value or potential, are difficult and uneconomic to manage, and would be better managed in private ownership, in exchange for private lands that contain important raptor and raptor prey habitat, important upland game habitat, valuable recreation potential, and over a mile of frontage on the Snake River. The public interest will be well served by the completion of this exchange, as the consummation thereof will fulfill the Secretary's Fish and Wildlife 2000, Recreation 2000, and riparian management initiatives.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be accomplished prior to closing through either acreage adjustment or cash payment in an amount not to exceed 25 percent of the value of the lands to be transferred out of Federal ownership.

DATES: Interested parties may submit comments to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705 on or before March 8, 1993. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Bruneau Resource Area Realty Specialist, at (208) 384–3338.

SUPPLEMENTARY INFORMATION: Publication of this notice in the Federal Register segregates the public lands from operation of the public land laws, except the exchange provisions of the Federal Land Policy and Management Act, and mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

Excepting and Reserving to the United States: 1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1980 (43 U.S.C. 945).

Subject To: 2. Those rights for electric powerline line purposes granted to Idaho Power Company, its successors or assigns, by Rights-of-Way No. IDI–4243, IDI–8913, IDI–013210, IDI–013448, and IDI–013610, pursuant to the Act of March 4, 1911 (43 U.S.C. 961).

3. Those rights for irrigation pipeline purposes granted to Robert V. and K. Marlene Anderson, their heirs, successors, or assigns, by Right-of-Way No. IDI–9711, pursuant to the Act of March 3, 1891 (43 U.S.C. 946–951).

4. Those rights for drainage ditch purposes granted to Kent Kohring, his heirs, successors, or assigns, by Right-of-Way No. IDI–25382, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for irrigation canal purposes granted to J.G. Kohring, his heirs, successors, or assigns, by Right-of-Way No. IDI–015847, pursuant to the Act of March 3, 1891 (43 U.S.C. 946–951).

Dated: January 8, 1993.

Roger E. Schmitt,

Associate District Manager.

[FR Doc. 93–1279 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate for water resources planning.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1993 is 8.25 percent.

DATES: This discount rate is to be used for the period October 1, 1992, through and including September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Norbert S. Ries, Special Programs Manager, Investigations and Oversight Branch, U.S. Bureau of Reclamation, D–5110, Building 67, Denver Federal Center, Denver CO 80225–0007. Telephone 303–236–5247.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for

water and related land resources is 8.25 percent for fiscal year 1993.

This rate has been computed in accordance with section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 7.87 percent. The rate of 8.25 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: January 13, 1993.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 93–1261 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Final Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Development in Highlands County, FL

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Wal-Mart Stores, Incorporated, of Bentonville, Arkansas, (applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize, for a period of 1 year, the incidental take of a threatened species, the Florida scrub jay (*Aphelocoma coerulescens coerulescens*), known to occupy the site in Sebring, Highlands County, Florida. In addition to the scrub jays, three other federally listed threatened wildlife species are assumed present on the property, even though the survey conducted did not provide positive evidence of these species. The proposed permit would, therefore, also authorize the incidental take of eastern indigo snakes (*Drymarchon corais couperi*), blue-tailed mole skinks (*Eumeces egregius lividus*), and sand skinks (*Neoseps reynoldsi*), in the event they are impacted as a result of development of the site.

Although no incidental take authorization is required for listed plant species, impacts to these species must be addressed in the intra-Service consultation required pursuant to section 7(a) of the Act. Listed plant species occurring onsite are Highlands scrub hypericum (*Hypericum cumulicola*), scrub blazing star (*Liatris ohlingerae*), papery whitlow-wort (*Paronychia chartacea*), a wireweed (*Polygonella basiramia*), and scrub plum (*Prunus geniculata*). Two plant species onsite that are proposed for listing as endangered are the short-leaved rosemary (*Conradina brevifolia*) and the sandlace (*Polygonella myriophylla*).

The Service also announces the availability of a final environmental assessment/habitat conservation plan (EA/HCP) for the incidental take permit application. Copies of the EA/HCP can be obtained by making requests to the addresses below. The Service is soliciting data on any of the above-listed wildlife or plant species to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA/HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA/HCP should be received on or before February 22, 1993.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA/HCP may obtain a copy by writing the Regional Office or the Jacksonville, Florida, Field Office. Documents will be available by written request for public inspection, by appointment, during normal business hours at the Regional Office, or the field office. Written data or comments concerning the application and the EA/HCP should be submitted to the Regional Office. Please reference permit under PRT–774603 in your comments.

Assistant Regional Director (FWE/SE), U.S. Fish and Wildlife Service, Suite 1276, 75 Spring Street, SW., Atlanta, Georgia 30303. (telephone 404/331–3580, fax 404/730–3419).

Field Supervisor U.S. Fish and Wildlife Service, 3100 University Blvd. South, Suite 120, Jacksonville, Florida 32216 (telephone 904–232–2580, fax 904–232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the above Jacksonville, Florida, Field Office.

SUPPLEMENTARY INFORMATION: Wal-Mart Stores, Incorporated (applicant) proposes to develop 24 acres of land located in Sebring, Highlands County, Florida. This site is known to support two families to Florida scrub jays, and is suitable to support eastern indigo snakes, blue-tailed mole skinks, and sand skinks. The application includes a habitat conservation plan (HCP), combined with the environmental assessment (EA), which outlines the steps the applicant intends to take to mitigate for impacts to the species.

The EA considers the environmental consequences of six alternatives. The no-build alternative would probably result in continued succession of the scrub habitat onsite, resulting in the eventual loss of listed species over time. The conservation acquisition alternative would still require compliance with incidental take prohibitions of the Act, and any management actions would need to take these prohibitions into account. Since the site is almost completely surrounded by urban development, little value would be gained for species preservation by conserving this site. Other sites were considered by the applicant, but would result in environmental impacts at these sites. For each of the above alternatives, the development potential for the proposed site would still be an issue, and there would be a potential for continued disturbance from the surrounding urbanization. Other site plans were also considered by the applicant, including construction of a smaller store and elimination of required stormwater treatment facilities. Construction of a smaller store was deemed economically unfeasible by the applicant.

Elimination of the stormwater treatment would result in revocation of local permits, and the project could not be built. The proposed action would result in the loss of four scrub jays in two families, as well as the potential loss of any eastern indigo snakes, blue-tailed mole skinks, and sand skinks which may use the site. As mitigation for the incidental take of these species, the applicant proposes to provide funds needed to purchase and perpetually

manage 40 acres of high quality scrub habitat located adjacent to Archbold Biological Station, a privately-funded scrub research facility. The final alternative discussed involves delisting the scrub jay. Federal delisting would not negate the take prohibitions found in Florida statutes, and is not warranted on a biological basis.

Dated: January 11, 1993.

Warren T. Olds, Jr.,

Assistant Regional Director.

[FR Doc. 93–1311 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–XXXX); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 254, Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines

OMB approval number: 1010–XXXX

Abstract: This information will be used by the Regional Supervisor to determine if a spill-response plan submitted for a platform or pipeline meets the MMS requirements as stated in 30 CFR part 254.

Bureau form number: None

Frequency: Once with minor annual updates

Description of respondents: Offshore lessees and facility operators

Estimated completion time: 48.6 hours

Annual responses: 350

Annual burden hours: 17,000 (rounded)

Bureau Clearance Officer: Dorothy Christopher (703) 787–1238

Dated: January 12, 1993.

Richard Roldan,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 93–1346 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–641–642 (Preliminary)]

Ferrosilicon From Brazil and Egypt

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–641–642 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil and Egypt of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 26, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 12, 1993.

FOR FURTHER INFORMATION CONTACT:

Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on January 12, 1993, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; United Autoworkers of America (locals 523 and 12646); United Steelworkers of America (locals 2528, 3081, and 5171); and Oil, Chemical & Atomic Workers (local 389).

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on February 3, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than January 28, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to

make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 8, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: January 13, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1322 Filed 1–14–93; 2:15 pm]

BILLING CODE 7020–02–M

[Investigation No. 332–340]

Enterprise for the Americas Initiative: Regional Economic Trends and Summary of Likely Effects of a Hemispheric Free Trade Zone

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: January 13, 1993.

SUMMARY: Following receipt on December 22, 1992, of a request from the United States Trade Representative (USTR) the Commission instituted investigation No. 332–340 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing certain requested information with respect to regional economic trends in the 30 countries currently included in the Enterprise for the Americas Initiative (EAI) and a summary of likely effects of a hemispheric free-trade zone. The USTR has requested that the Commission submit its report by April 23, 1993, and has indicated that portions of the report will likely be classified.

FOR FURTHER INFORMATION CONTACT: Information on the study may be obtained from Karen Laney-Cummings, Office of Industries (202–205–3443). The media should contact Edward Carroll, Acting Director, Office of Public Affairs (202–205–1819). Hearing impaired persons are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

BACKGROUND: More specifically, the USTR has requested that the Commission's report contain the following information:

(1) A brief country-by-country overview of recent economic developments in the 30 countries identified on the list supplied by USTR that have significantly influenced U.S. relations with such countries, including present trade and investment patterns in these regions.

(2) A brief discussion of the likely effect of a hemispheric free-trade zone with Latin American and Caribbean countries on the U.S. economy and its relationships with other countries in the region, including Canada and Mexico.

(3) The likely effect on broad U.S. industrial and other sectors (e.g., agriculture, textiles, chemicals, services, etc.) of a hemispheric free-trade zone. The USTR requested that this discussion provide a general profile of comparable Latin American sectors, an indication of the relative sizes of the U.S. and Latin American sectors; those major Latin American industries that compete with U.S. industries in domestic and export markets; the regional distribution of the competing U.S. industries; those Latin American industries that complement U.S. industries in the U.S. market; and an indication of the effects on the U.S. sectors.

In preparing its report, the USTR requested that the Commission assume, "strictly for analytical purposes," (a) a single agreement that would be tailored after the North American Free Trade Agreement (NAFTA) in terms of duty reductions, staging, quota elimination, other liberalizations, and safeguards; (b) that Mexico and Canada will both participate in the hemispheric agreement; and (c) the NAFTA will be implemented. The USTR noted that "the eventual form and nature of any possible hemispheric free-trade agreement is, of course, unknown at this time."

The 30 countries currently included in the EAI are Argentina, Brazil, Bolivia, the Caribbean Community (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago), Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

In her letter the USTR noted that section 5 of the Enterprise for the Americas Initiative Act of 1992 (Pub. L. 102–532, approved Oct. 27, 1992) requires that the President transmit a report to the Congress on the likely effect of free trade with Latin American and Caribbean countries within 8 months of the date of enactment.

PUBLIC COMMENT: Submissions from the public in connection with the investigation will be accepted by the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, through February 15, 1993.

Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: January 14, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1330 Filed 1–19–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–346]

Certain Magnetic Switches For Coaxial Transmission Lines and Products Containing the Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sector Microwave Industries, Inc., 999 Grand Boulevard, Deer Park, New York 11729 and Victor Nelson 999 Grand Boulevard, Deer Park, New York 11729. The complaint alleges violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetic switches for coaxial transmission lines and products containing the same, by reason of alleged infringement of claim 6 of U.S. Letters Patent 4,965,542, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Kent R. Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 13, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain magnetic switches for coaxial transmission lines and products containing the same, by reason of alleged infringement of claim 6 of U.S. Letters Patent 4,965,542; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Sector Microwave Industries, Inc., 999 Grand Boulevard, Deer Park, New York 11729.
Victor Nelson, 999 Grand Boulevard, Deer Park, New York 11729.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Com Dev Ltd., 155 Sheldon Drive, Cambridge, Ontario, Canada NIR 7H6.

(c) Kent R. Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: January 14, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1331 Filed 1–19–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927–5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Revision of a currently approved form.

Bureau/Office: Office of Compliance & Consumer Assistance.

Title of Form: Annual Performance Report.

OMB Form Number: 3120–0006.

Agency Form Number: OCP–101.

Frequency: Annually.

No. of Respondents: 125.

Total Burden Hours: 3125.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1352 Filed 1–19–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32213]

Growth Resources of Wellsboro Foundation and Wellsboro and Corning Railroad Co.—Acquisition and Operation Exemption—Consolidated Rail Corp.; Exemption

Growth Resources of Wellsboro Foundation (GROW) Wellsboro and Corning Railroad Company (W&C), noncarriers, have filed a notice of exemption for GROW to acquire and W&C to operate approximately 35.5 miles of certain rail lines owned by

Consolidated Rail Corporation (Conrail). W&C will become a class III rail carrier.[1]

The rail lines involved in the transaction consist of two segments:

(1) The Corning Secondary between milepost 74.7, in the Township of Erwin, NY, and milepost 106.15, in the Township of Delmar, PA, near Wellsboro Junction, PA; and

(2) The Wellsboro Industrial Track between milepost 0.0, near Wellsboro Junction, PA and milepost 3.9, in the Township of Charleston, PA.

GROW will also acquire from Conrail and W&C will operate incidental trackage rights over approximately 0.7 miles of track between milepost 74.7, Line Code 2322, in Erwin, and the connection with Conrail's West Wye Track at milepost 74.5± and continuing westerly to Conrail's Gang Mills Yard, Gang Mills, NY, a total distance of approximately 0.5 miles, together with various lead tracks and yard tracks within Gang Mills Yard as designated by Conrail. These rights will permit traffic on the acquired lines to be interchanged with Delaware & Hudson Railway Company at Gang Mills Yard. Consummation was expected to occur on or before December 31, 1992, but after the effective date of this notice.[2]

Any comments must be filed with the Commission and served on:

(1) Eric M. Hocky, Rubin Quinn Moss & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106; and

(2) Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

GROW shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-1353 Filed 1-19-93; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding is related to Finance Docket No. 32214, wherein Richard D. Robey has concurrently filed a notice of exemption for the continuance in control of W&C when W&C becomes a rail carrier upon consummation of the transaction described in this notice.

[2] The notice of exemption in this proceeding was filed December 21, 1992. Under the Commission's rules, the exemption is effective 7 days after the notice is filed. 49 CFR 1150.32(b).

[Finance Docket No. 32214]

Richard D. Robey—Continuance in Control Exemption—Wellsboro and Corning Railroad Co., Inc.; Exemption

Richard D. Robey has filed a notice of exemption to continue in control of Wellsboro and Corning Railroad Company, Inc. (W&C) upon the latter's becoming a rail carrier. W&C and Growth Resources of Wellsboro Foundation (GROW), noncarriers, have concurrently filed a notice of exemption in Finance Docket No. 32213, Growth Resources of Wellsboro Foundation and Wellsboro and Corning Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation, for GROW to acquire and W&C to operate approximately 35.5 miles of rail line owned by Consolidated Rail Corporation in the Commonwealth of Pennsylvania and the State of New York. W&C expected the transaction to be consummated on or about December 31, 1992.

Mr. Robey controls and is an officer of five other class III rail carriers—North Shore Railroad Company (NSRC), The Nittany and Bald Eagle Railroad Company (N&B), The Shamokin Valley Railroad Company (SVRC), West Shore Railway Services, Inc. (WSRS), and The Sturbridge Railroad Company, Inc. (SRC).

This transaction involves the continuance in control of nonconnecting carriers where:

(1) The rail lines of NSRC, N&B, SVRC, WSRS, SRC, and W&C will not connect with each other or any railroads in their corporate family;

(2) The transaction is not part of a series of anticipated transactions that will connect the railroads with each other or any railroad in their corporate family; and

(3) The transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: January 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-1351 Filed 1-19-93; 8:45 am]

BILLING CODE 7035-01-M

[1] Although the parties in the verified notice of exemption indicate their belief that "there is no requirement for the imposition of labor protective conditions," pursuant to 49 CFR 1180.2(d), these class exemptions do not relieve a carrier of its statutory obligation to protect the interests of employees. See 49 U.S.C. 10505(g)(2) and 11347.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By notice dated November 24, 1992, and published in the **Federal Register** on December 1, 1992, (57FR56932), Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 6, 1993.

Anthony J. Senneca,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-1300 Filed 1-19-93; 8:45 am]

BILLING CODE 4410-09-M

Office for Victims of Crime

Discretionary Grant Program and Application Information for Fiscal Year 1993

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Public announcement of availability of the funds and application information under the Discretionary

Grant Program authorized by section 1404(c) of the Victims of Crime Act (VOCA) of 1984, Public Law 98–473, as amended, 42 U.S.C. 10603(c).

SUMMARY: The Office for Victims of Crime is publishing this notice to announce the availability of discretionary funds for new training and technical assistance and direct assistance programs to improve the services rendered to victims of crime. Application information is provided.

DATES: All applications are due by the close of business (5 p.m. e.s.t.) March 22, 1993.

ADDRESSES: Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Josephine Morrow, Special Projects Division, (202) 514–6444 or the persons whose names follow the individual programs below.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Program Descriptions
Competitive Programs
III. Eligibility Requirements
IV. Application Requirements
V. Procedures and Criteria for Selection
VI. Submission Requirements
VII. Civil Rights Compliance

I. Introduction

The Office for Victims of Crime (OVC) is a component of the Office of Justice Programs within the U.S. Department of Justice that serves as the Federal focal point for all crime victim issues. In addition to ensuring that the criminal justice system addresses the victim's legitimate rights and interests, OVC's program activities include providing victim assistance and compensation grants to the States; training and technical assistance; and emergency services to victims of Federal crimes. See 42 U.S.C. 10601–10605.

OVC's FY 93 discretionary grant programs respond to the recommendations set forth in the 1992 Final Report of the President's Task Force on Victims of Crime and to the objectives of Operation Weed and Seed, the President's multi-agency approach to urban revitalization which consists of comprehensive efforts to combat violent crime and cultivate community development. Operation Weed and Seed combines rigorous law enforcement measures with social, educational, and economic programs to rejuvenate high-crime neighborhoods, prevent violent crime from recurring, and respond to the needs of community residents, many of whom are crime victims. In keeping with the Weed and Seed objectives, a number of OVC discretionary programs are designed to foster victim participation in the criminal justice system. Other training and technical assistance programs that enhance victim assistance services will be targeted to specific participant groups, such as law enforcement personnel and public housing residents at designated Weed and Seed sites. Further information specific to Operation Weed and Seed program components is included in the individual program descriptions.

II. Program Descriptions

Competitive Programs

State Victim Conference Support Initiative

$75,000

The goal of this project is to provide support to multi-disciplinary, statewide victim conferences to enhance the quality and breadth of training that the conferences have to offer.

Since 1986, OVC has provided national-scope training for victim service providers. Each year the training has been offered through a series of regional conferences. With the growth of the victims movement and the increasingly specialized areas of expertise involved in responding to victims of crime, OVC believes that providing regional training conferences on a set of basic topics is no longer the most effective way to meet the training needs of the field. To meet demand, training should be in-depth, skills-oriented training on a variety of topics targeting criminal justice, medical and mental health personnel, as well as victim service providers and victim advocates. The training must be responsive to the specific requirements of each locale, taking into consideration types of crime, gaps in services and knowledge, the level of coordination among service providers, and State legislative mandates.

OVC may award grants of up to $7,500 each to 10 applicants to support conference activities within a 12-month period. Applicants will be State agencies or qualified private organizations with sufficient capability and stature to manage a statewide victims conference. To be eligible, the applicant must be designated in writing by the State Victim Compensation and Victim Assistance Administrators as the appropriate organization to sponsor the statewide conference. The State Victim Compensation or Victim Assistance agency, with the concurrence of the other, is also eligible to function as conference sponsor. Previous experience and history with organizing and sponsoring statewide conferences will be taken into account during the selection process.

Under the grant program, States may select workshop topics from the list of OVC-sponsored special training and technical assistance projects. The availability of any particular topic is subject to the availability of a qualified trainer at the time requested. Specific trainers will be scheduled in order to ensure that a diversity of expertise is offered. At least 80 percent of the grant funds is to be allotted for the purchase of workshop presentations from the list; or in special cases, other workshop presentations may be purchased with OVC approval. In purchasing selected presentations, funds will be used to pay trainers' consultant fees of up to $200 per day and travel expenses. In addition, up to 30 percent of each award may be allotted to the development of conference materials, special assistance with conference planning, and purchase of conference space.

In addition to the selection criteria applicable to all programs which are listed below, proposals for this initiative will be assessed on the conference plan submitted, as well as the justification of the need for conference support and for the specific type(s) of training requested. Special consideration will be given to States which have not previously sponsored statewide victim conferences.

Each grantee will be required to submit a conference report assessing the impact of the grant, including participant evaluations of workshops sponsored by the grant.

Workshop Topics

1. Multi-Disciplinary Response to Sexual Assault Victims
2. Prosecutorial Response to Crime Victims
3. Victim Services in Community Corrections (Probation and Parole)
4. Victim Services in Institutional Corrections
5. Law Enforcement and Victim Service Provider Response to Bias Crime Victims
6. Law Enforcement Training on Identifying Sexually Exploited Youth
7. Law Enforcement Response to Victims of Domestic Violence
8. Judicial Training on Victim Issues
9. Civil Remedies for Victims
10. Mental Health Treatment of Crime Victims
11. Training for Mental Health Professionals in Responding to Child Victims of Physical and Sexual Abuse
12. Elderly Abuse
13. Legal Advocacy for Rural Domestic Violence Victims

14. Serving Hispanic Victims of Crime
15. Clergy Response to Crime Victims
16. Crisis Response Team Training
17. Serving Victims of Property Crimes
18. Dealing with Media's Role in Reporting Crime Victimization
19. Managing Victim Assistance Volunteers
20. Victim Services in the Inner-City
21. Children Grieving Violent Death

For further information contact: Susan Laurence, Special Projects Division, (202) 307–5950.

Indian Nations Conference

$155,000

The goal of this project is to improve the response of victim service professionals to Native American victims of crime and to enhance the investigation, prosecution, and handling of cases involving the sexual and physical abuse of children.

Through the Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program, OVC has awarded grants to fifteen States to support victim assistance programs for 52 tribes and tribal organizations and, under the Children's Justice Act (CJA) Discretionary Grant Program for Native Americans, has provided direct funding to 23 tribes and tribal organizations to improve the investigation, prosecution, and case handling of child abuse in Indian country. Since 1988, OVC has sponsored a biennial national conference entitled "Indian Nations: Justice for Victims of Crime" to address services for crime victims through comprehensive training of VAIC service providers. In addition, OVC has funded two training conferences for tribes and organizations participating in the CJA program. This fifth national conference will address the training needs of professionals working to assist victims of violent crime in Indian country including staff implementing CJA programs.

This project will be implemented by a grantee chosen competitively from among proposals submitted in response to this solicitation. One grant of up to $155,000 will be awarded for a 12-month period. The grantee will review current information on victim assistance and CJA programs in Indian country and evaluations from previous Indian Nations and CJA conferences and, with the assistance of a planning committee, develop an agenda for a three-day training conference. The grantee will then present a national training conference that will enhance the skills of victim service providers; train professionals who are involved in the investigation, prosecution, and management of child abuse cases; promote an interdisciplinary strategy that combines legal, law enforcement, and victim assistance approaches to responding to Native American crime victimization and child abuse; and present established and new models of assisting Native American crime victims, including traditional healing ceremonies. The grantee will be expected to award grant-funded scholarships to those who work in crime victim assistance efforts and/or the handling of child abuse cases and who would otherwise be unable to attend. Finally, the grantee will complete an overall evaluation of the training provided and make recommendations for meeting future training needs.

Contact: Bill Brantley, Federal Crime Victims Division, (202) 514–6444.

Multi-jurisdictional, Interagency Model for Investigating and Prosecuting Cases of Child Pornography and Juvenile Prostitution

$225,000

The goal of this program is to improve the investigation and prosecution of cases involving sexual exploitation of children and juveniles and to provide crisis intervention and assistance to child and juvenile victims. This project, jointly sponsored by OVC and the Office of Juvenile Justice and Delinquency Prevention, will involve the U.S. Attorney, the Federal Bureau of Investigation (FBI), and other related Federal, State, and local law enforcement agencies.

Estimates of the number of juveniles involved in prostitution range from 200,000 to 300,000 nationally. Many of these children are runaway or throwaway children without secure homes who are extremely vulnerable to sexual exploitation, which may include their involvement in the production of pornography. According to the Attorney General's Commission on Pornography, the production of child pornography frequently entails serious physical and psychological harm to children. A second harmful effect of child pornography is its influence on viewers of these sexually explicit materials. Research has shown that a "modeling effect" may occur whereby those who view materials portraying violence and degradation of children may desire to recreate the acts, thus furthering the victimization of children. Though the gravity of the problem has been acknowledged, cases of child sexual exploitation are often not pursued because they are time consuming and resource intensive.

The grantee for this project will develop a prototype multi-jurisdictional task force to address child pornography and juvenile prostitution aggressively. The task force will implement centrally coordinated and managed investigations involving Federal, State, and local investigative agencies. These investigations will identify and locate procurers who recruit juveniles and furnish the available information to law enforcement agencies, including the U.S. Postal Service, U.S. Customs, and the FBI in a wide geographic area. The task force will also develop a law enforcement-based interdisciplinary model that involves child protective, social, mental health, and medical services in providing assistance and support to child victims in crisis from the initial investigation through adjudication to readjustment; provide training for law enforcement officials and others involved in the project; and initiate an effort to raise public awareness of the harm associated with child pornography and juvenile prostitution. As this project will require support from the U.S. Attorney, the FBI, and local law enforcement, OVC will consider only those sites in which Federal and local law enforcement officials agree to commit adequate resources to form a multi-jurisdictional effort. The funds for this project cannot be used for law enforcement efforts but must be targeted to assisting child and youth victims in crisis, and providing training and initiating public awareness efforts.

Contact: Marti Speights, Federal Crimes Division, (202) 514–6444.

III. Eligibility Requirements

In addition to special eligibility requirements listed within the individual program descriptions (above), the following apply: Applications are invited from public and private agencies and organizations. Applications will be accepted from for-profit agencies as long as they agree to waive any profit and accept only actual allowable costs. Applicants must demonstrate that they have ample expertise and/or prior experience in the design and conduct of projects of a nature similar to that for which they are applying.

Applicants must also demonstrate that they have the management capability, fiscal integrity, and financial responsibility, including but not limited to, an acceptable accounting system and internal controls, and compliance with grant fiscal requirements. Applicants who fail to demonstrate that they have the capability to manage the program

will be ineligible for funding consideration.

IV. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative. All applications must include the information outlined in this section of the solicitation (Section IV. Application Requirements) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application should not exceed 35 double-spaced pages in length.

In accordance with Executive Order No. 12549, 28 CFR 67.510, applications must also provide Certifications Regarding Lobbying; Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (Form 4061/6), which will be supplied with the application package, and must be submitted with the application.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application (SF–424) Part IV Program Narrative:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this grant on the basis of the eligibility criteria established in section III of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in each program description listed above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append examples of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Programs Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. The CPA certification (Section H) is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives—A brief statement of the applicant's understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of each program. A detailed discussion of how the activities and products of each program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involve in implementing the program, describe how they will allocate available resources to implement the project, and also describe how the program will be managed.

The plan must also include an organizational chart depicting the roles and describing the responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major stages of the project. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individual résumés may be submitted as appendices to the applications.

E. Time-Task Plan—Applicants must develop a time-task plan for the duration of the project periods, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F Products—Applicants must concisely describe the interim and final products of each stage of the program.

G. Program Budget—Budgets must be accompanied by a detailed justification for all costs, including the basis for computation of these costs. Applications containing contract(s) must include detailed budgets for each organization's expenses.

H. Evaluation—Each grant recipient will be required to submit formal findings from an assessment or evaluation, within 60 days of the completion of each year's activities and within 90 days of project completion. Each application must provide a plan for assessing or evaluating the project.

V. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements set forth in Section IV. Applications will be evaluated by a peer review panel according to the OVC Competition and Peer Review Guidance. The selection criteria and their point values (weights) are as follows:

A. The problem to be addressed by the project is clearly stated. This criterion includes a concise, well-justified statement of the problem. (5 points)

B. The goals and objectives of the proposed project are clearly defined. This criterion includes a brief statement of the goals and objectives of the project as well as an understanding of project requirements and definitions of key terms. (10 points)

C. The project design is sound and contains program elements directly linked to the achievement of project objectives. This criterion includes appropriateness and technical adequacy of the approach to the activities and products of each stage of the program for meeting the goals and objectives. (25 points)

D. The project management structure is adequate to the successful conduct of the project. (Total 25 points) This criterion includes:

1. Adequacy and appropriateness of the project management structure and the feasibility of the time-task plan. (10 points)

2. The qualifications of staff identified to manage and implement the program, including staff to be hired through contracts (if any). This criterion includes the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (15 points)

E. Organizational capability is demonstrated at a level sufficient to support the project successfully. This criteria includes the extent and quality of organizational experience in the development, delivery and coordination of programs of similar nature. (25 points)

F. Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. This criterion includes completeness and appropriateness of the proposed costs in relation to the proposed strategy and tasks to be accomplished. (10 points)

Applications submitted in response to competitive announcements will be

evaluated by a peer review panel. The results of the peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist OVC in considering competing applications and in selection of the application for funding. The final award decision will be made by the OVC Director.

VI. Submission Requirements

All applicants responding to this solicitation are subject to the following requirements:

1. Upon request to OVC, the necessary forms for application will be provided, along with Department of Justice certification information.

2. Applicants must submit the original signal application (Standard Form 424) and two copies to OVC. Applicants should also include Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements (Form 4061/6), in order to meet the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D) and the Disclosure of Lobbying Activities Form (SF LLL) in accordance with 31 U.S.C. 1352.

3. All applications must be received by mail or hand delivered to OVC by 5 p.m. E.S.T. on March 22, 1993. Those applications sent by mail should be addressed to: Office for Victims of Crime, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to OVC, 633 Indiana Avenue, NW., Washington, DC between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

OVC will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. Applications will be reviewed as Peer Review Panels can be convened. Every effort will be made to review applications in a timely manner.

VII. Civil Rights Compliance

A. All recipients of OVC assistance, including any contractors, must comply with the non-discrimination requirements of the Victims of Crime Act of 1984, as amended; title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; subtitle A, title II of the Americans with Disabilities Act (ADA) (1990); title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR part 35 and part 39.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

Brenda G. Meister,

Acting Director, Office for Victims of Crime.

[FR Doc. 93–1246 Filed 1–19–93; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment Standards Administration

Black Lung Program Provider Enrollment Form
1215–0137; CM–1168
On occasion
Businesses or other for-profit; small businesses or organizations 6,500 respondents; 5 minutes per response; 525 total burden hours; 1 form.

The CM–1168 requests profile information on providers to afford both timely reimbursement for medical services provided to Black Lung claimants and a list of active providers for miner referral.

Revision

Occupational Safety and Health Administration

Construction Crane or Derrick Annual Inspection Record State or local governments' businesses or other for-profit; small businesses or organizations.

As a result of the Federal 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for those paperwork activities involving the employer and the third party (employee) disclosure contained in 29 CFR 1926.550(a)(6).

Signed at Washington, DC, this 11th day of January 1993.

Kenneth A. Mills,

Department Clearance Officer.

[FR Doc. 93-1342 Filed 1-19-93; 8:45 am]

BILLING CODE 4510-29-M

Glass Ceiling Commission; Postponement of Open Meeting

SUMMARY: Pursuant to title II of the Civil Rights Act of 1991 (Pub. L. 102-166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92-462, 5 U.S.C. app. II) a Notice of Establishment of the Glass Ceiling Commission was published in the Federal Register on March 30, 1992 (57 FR 10776).

This notice is to postpone indefinitely the open meeting scheduled for Monday, January 25, 1993. This meeting was previously announced in the Federal Register on January 6, 1993 at 58 FR 584.

The postponement is necessary to allow sufficient time for Secretary-Designate Robert Reich to be briefed on Glass Ceiling Commission activities.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth Leonard, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-2018, Washington, DC 20210, (202) 219-8271.

Signed at Washington, DC, this 13th day of January 1993.

Lynn Martin,

Secretary of Labor.

[FR Doc. 93-1265 Filed 1-19-93; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA-W-28,098]

Marilyn Fashions, Inc., Windber, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 14, 1992 in response to a worker petition which was filed on behalf of workers at Marilyn Fashions, Incorporated, Windber, Pennsylvania.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purposes; and the investigation has been terminated.

Signed at Washington, DC, this 11th day of January 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-1263 Filed 1-19-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 1, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 1, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of January 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Midwest Portland Cement Co (Co)	Zanesville, OH	01/04/93	12/28/92	28,161	Portland Cement.
Joan and Jay (Workers)	Lynchburg, VA	01/04/93	12/18/92	28,162	Ladies' blouses, pants, skirts, dresses.
Idaho Forest Inds (Workers)	St. Anthony, ID	01/04/93	12/11/92	28,163	Softwood dimensional lumber.
HMC Acquisition Corp (Workers)	Westfield, PA	01/04/93	12/18/92	28,164	Ladies' undergarments.
Genicom Corporation (Workers)	Waynesboro VA	01/04/93	12/14/92	28,165	Parts for computers.
Dresser Rand Co (Workers)	Olean, NY	01/04/93	12/21/92	28,166	Gas & oil compressors.
Nelson/Weather-Rite (Co)	Secaucus, NJ	01/04/93	12/15/92	28,167	Industrial rainwear & camping gear.
Brainard Strapping (USWA)	Warren, OH	01/04/93	12/18/92	28,168	Steel strapping.
General instrument Corp (Workers)	Hicksville, NY	01/04/93	10/20/92	28,169	Schottky rectifier wafers.
Custom Plywood Corp (Workers)	Anacortes, WA	01/04/93	10/27/92	28,170	Plywood used to build concrete forms.
Utica Corp., Mohawk Street (IAM)	Whitesboro, NY	01/04/93	12/23/92	28,171	Fan and turbine blades.
Semiconductor Specialties Corp (Workers).	Kane, PA	01/04/93	12/18/92	28,172	Polysilicon products.
Texas Exploration & Production Co (Workers).	Midland, TX	01/04/93	12/12/92	28,173	Oil and gas.
TransAmerican Natural Gas Corp (Workers).	Houston, TX	01/04/93	12/22/92	28,174	Natural gas.
Sandoz Chemicals Corp (Co)	Fair Lawn, NJ	01/04/93	12/22/92	28,175	Scouring assistance & optical brightners
Revlon, Inc. (UAW)	Edison, NJ	01/04/93	12/07/92	28,176	Cosmetics, perfumes and creams.
Pacific Uniform Mfg. Co (Workers)	Conyers, GA	01/04/93	12/18/92	28,177	Industrial garments.
Northwest Airlines, Inc. (Workers)	St. Paul, MN	01/04/93	12/02/92	28,178	Aircraft mechanics.
Raymel Corp. (Workers)	Hialeah, FL	01/04/93	12/19/92	28,179	Men's & childrens' pullovers.
West Point Pepperell, Inc (Workers)	Biddeford, ME	01/04/93	12/29/92	28,180	Blankets & other accessories.

APPENDIX—Continued

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Hill-Loma, Inc (Workers)	Gorham, ME	01/04/93	12/27/92	28,181	Multipurpose metalworking machines
Utica Corp., Halsey Road (IAM)	Whitesboro, NY	01/04/93	12/23/92	28,182	Fan and turbine blades

[FR Doc. 93-1264 Filed 1-19-93; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Public Hearing

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Public hearing.

SUMMARY: Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public hearing before the National Commission on Judicial Discipline and Removal will be held on January 29, 1993 in Washington, DC. The hearing will commence at 1:15 p.m. and adjourn at approximately 5 p.m. The precise location of the hearing will be room 226, Dirksen Senate Office Building, U.S. Senate, Washington, DC.

AUTHORITY: The hearing will be the fourth one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President, the President *pro tem* of the Senate, the Chief Justice of the United States, and the Conference of State Chief Justices. The National Commission, established by Public Law 101-650 (Title IV), is assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges. The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline and removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice, and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate. The due date for the Commission's final report is August 1, 1993. The Commission is not authorized to consider specific complaints against federal judges.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, good faith commitment to open meetings is incorporated in the Commission's By-laws.

STATUS: The hearing will be open to the public.

MATTERS TO BE CONSIDERED: Testimony will be received from representatives of public interest groups and other interested citizens informing the Commission of their views regarding the Commission's investigation and study of problems involved in the discipline and removal from office of Article III Federal judges.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave, NW., Washington, DC 20037-3202; or call (202) 254-8169.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission office approximately thirty (30) working days following the meeting.

William J. Weller,
Deputy Director

[FR Doc. 93-1251 Filed 1-19-93; 8:45 am]
BILLING CODE 6820-DB-M

Public Meetings

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on January 28 and 29, 1993, in Washington, DC. On January 28, the first session of the meeting will convene at 9:30 a.m. and adjourn at approximately 12:30 p.m., and the second session of the meeting will convene at 1:30 p.m. and adjourn at approximately 5 p.m. On January 29, the third session of the meeting will convene at 9:15 a.m. and adjourn at 12:15 p.m. All three sessions of the meeting will be held in the Federal Judiciary Building's Main Conference Room, located on the Fourth Floor of the Federal Judiciary Building at One Columbus Circle, NE.

AUTHORITY: This public meeting will be the seventh one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President, the President *pro tem* of the Senate, the Chief Justice of the United States and the Conference of State Chief Justices. The National Commission, established by Public Law 101-650 (Title IV), is assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges. The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline and removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice, and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate. The due date for the Commission's final report is August 1, 1993. The Commission is not authorized to consider specific complaints against Federal judges.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, a good faith commitment to open meetings is incorporated in the Commission's By-laws.

STATUS: All three sessions of the meeting will be open to the public. A portion of the second session of the meeting may be held in executive session to consider administrative matters involving privacy interests.

MATTERS TO BE CONSIDERED: This meeting will be the third in a series of

Commission sessions designed to consider draft reports from consultants who have prepared papers about specific research topics assigned to them. This meeting will consider seven draft reports.

During the first meeting session of January 28, the Commission will review three draft reports: A report on the history of judicial resignation, by Emily Van Tassel, Deputy Historian at the Federal Judicial Center; a report on legal issues related to the disqualification of federal judges convicted of bribery by Jerome Marcus, Assistant U.S. Attorney in the Eastern District of Pennsylvania; and a report on the relationship between federal judicial resignation and statutorily authorized judicial retirement and employment benefits, by Professor Dan M. McGill of the University of Pennsylvania.

During the second meeting session on January 28, the Commission conducted Commission business before reviewing two draft reports: a study of existing arrangements for dealing with complaints of judicial misbehavior within the Judicial Branch, prepared by the Federal Judicial Center; and a study of how judicial branch disciplinary arrangements are perceived to be working by judges generally, and by the public, prepared by the Justice Research Institute of Philadelphia.

During the third meeting session on January 29, the Commission will review two draft reports: a study of the judiciary's administration of specific statutorily authorized powers vested in the judicial circuit councils and the Judicial Conference of the United States, prepared by Professor Richard L. Marcus of the Hastings College of Law of the University of California; and a draft report examining the relationship between judicial administration and judicial discipline, prepared by Professor Charles Geyh of Widener University School of Law.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave, NW., Washington, DC 20037–3202; or call (202) 254–8169.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission office approximately thirty (30) working days following the meeting.

William J. Weller,

Deputy Director.

[FR Doc. 93–1250 Filed 1–19–93; 8:45 am]

BILLING CODE 6820–DB–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 5, 1993 from 9 a.m.–5:30 p.m. and February 6 from 8:30 a.m.–2 p.m. in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 5 from 9 a.m.–5:30 p.m. and February 6 from 9:15 a.m.–2 p.m. The topics for discussion will include opening remarks; report on Cultural Diversity Issues Meeting; and Program Review and/or Guidelines and/or Application Review for the Arts in Education, Challenge/Advancement, Dance, Design Arts, Expansion Arts, Folk Arts, International, Literaure, Local Arts Agencies, Media Arts, Museum, Music, Policy, Planning and Research, Opera-Musical Theater, Presenting & Commissioning, Special Constituencies, State & Regional, Theater, and Visual Arts Programs.

The remaining portion of this meeting on February 6 from 8:30 a.m.–9:15 a.m. is for the purpose of reviewing nominations for the National Medal of Arts to be awarded by the President during 1993. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (6) and 9(B) of section 552b of title 5, United States Code.

Also, if in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the Council will go into closed session for that limited purpose only pursuant to subsection (c)(4) of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of November 24, 1992.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1273 Filed 1–19–93; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Performing Arts: Theater Section) to the National Council on the Arts will be held on February 9, 1993 from 9:15 a.m.–6 p.m., February 10–11 from 9 a.m.–7 p.m., and February 12 from 9 a.m.–4:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 9 from 9:15 a.m.–10:30 a.m. and February 12 from 2 p.m.–4:30 p.m. for opening remarks, general program overview, policy discussion and guidelines review.

The remaining portions of this meeting on February 9 from 10:30 a.m.–6 p.m., February 10–11 from 9 a.m.–7 p.m., and February 12 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.

Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1274 Filed 1–19–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

January 14, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 17, 1992 the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Gary D. Miller on January 12, 1993.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 93–1341 Filed 1–19–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: New
2. Title of the information collection: "Survey of NRC Materials Licensees"
3. The form number if applicable: Not applicable
4. How often the collection is required: One time
5. Who will be required or asked to report: NRC Materials Licensees
6. An estimate of the number of responses annually: 4,800
7. An estimate of the total number of hours needed annually to complete the requirement or request: 7,200 hours (1.5 hours per response)
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable
9. Abstract: NRC materials licensees are being asked to provide information concerning their approximate annual gross receipts and number of employees to enable the NRC to update and refine its economic profile and determine the economic impact of NRC regulatory actions on those licensees.

Copies of the submittal may be inspected, or copied for a fee, from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–_____, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1301 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection: 10 CFR part 71—Packaging and Transportation of Radioactive Material.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.
5. Who will be required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.
6. An estimate of the number of responses: 760.
7. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 87 hours per response plus 18 hours per recordkeeper. The total annual industry burden is estimated to be 72,752 hours.
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.
9. Abstract: NRC regulations in 10 CFR part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0008), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1299 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, paragraph III.D.3, Type C Tests, to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The licensee would be exempt from the requirements of 10 CFR part 50, appendix J, paragraph III.D.3, to the extent that an extension would be allowed for performing Type C local leak rate tests (LLRTs) on containment isolation valves. These LLRTs are currently required to be performed at intervals no greater than 2 years. The exemption would allow Type C LLRTs to be performed at intervals no greater than 30 months.

By letter dated July 17, 1992, as supplemented December 23, 1992, the licensee applied for a technical specifications (TS) amendment and requested an exemption from the Code of Federal Regulations' (CFR) requirements to allow Type C LLRTs to be performed at intervals no greater than 30 months.

The Need for the Proposed Action

The licensee commenced operating on 24-month fuel cycles, instead of the previous 18-month fuel cycles, starting with fuel cycle 9. Fuel cycle 9 started in August 1992. The requirements of 10 CFR part 50, appendix J, paragraph III.D.3, indicate that Type C LLRTs must be performed during each reactor shutdown for refueling at intervals no greater than 2 years (24 months). In order to conform with this regulation, the licensee would have to shut down Indian Point Nuclear Generating Unit No. 3 and enter a forced outage prior to the next scheduled refueling outage. The next refueling outage is scheduled to commence in the September 1994 time frame.

The NRC staff had previously recognized that certain regulations would not accommodate fuel cycles longer than 18 months. Consequently, the NRC staff issued Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." This generic letter provides guidance to licensees on how to prepare requests for TS amendments and regulation exemptions which are needed to accommodate a 24-month fuel cycle. The licensee's letter of July 17, 1992, as supplemented December 23, 1992, which, in part, requested an exemption from the Code of Federal Regulations requirements to allow Type C LLRTs to be performed at intervals no greater than 30 months, followed the guidance of Generic Letter 91–04.

Environmental Impacts of the Proposed Action

The proposed exemption does not increase the probability or consequences of accidents previously analyzed and the proposed exemption does not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous LLRTs performed at Indian Point Nuclear Generating Unit No. 3, and has provided the methodology used in extrapolating the previous LLRT data to the proposed 30-month intervals. The requested exemption is also based on increasing the margin to the allowed combined leakage rate limit by 25 percent. The licensee has provided a sound basis for concluding that the containment leakage rate would be maintained within acceptable limits with a maximum LLRT interval of 30-months. The NRC staff has determined the licensee's actions are consistent with the guidance provided in Generic Letter 91–04. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves LLRTs on containment isolation valves. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant nonradiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of Indian Point Nuclear Generating Plant Unit No. 3," dated February 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the exemption under consideration.

For further details with respect to this action, see the licensee's application for exemption dated July 17, 1992, as supplemented December 23, 1992. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., DC, and the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 12th day of January 1993.

For The Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1298 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Computers in Nuclear Power Plant Operations

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations will hold a meeting on February 9, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 9, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss current and proposed methods, including the risk-based method for evaluating computer software for safety-critical applications in nuclear power plants. In addition, it will discuss recent utility experience with conversion of analog instrumentation and control systems to software-based digital instrumentation and control systems in existing plants. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with the NRC staff, its consultants, industry representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (E.S.T.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 12, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–1296 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published December 23, 1992 (57 FR 61104). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Computers in Nuclear Power Plant Operations, February 9, 1993, Bethesda, MD. The Subcommittee will discuss current and proposed methods used to evaluate software for safety-critical applications, including the use of risk-based criteria. In addition, it will discuss recent utility experience with conversions of analog instrumentation and control systems to software-based digital instrumentation and control systems.

Advanced Pressurized Water Reactors, February 10, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Draft Safety Evaluation Report (NUREG–1462) for certification of the ABB CE System 80+ Design.

Planning and Procedures, February 10, 1993, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Thermal Hydraulic Phenomena, March 4 and 5, 1993, Idaho Falls, ID. The Subcommittee will review the status of the PWR version of the RELAP5/MOD–3 code with emphasis on analytical programs in support of the AP600 design certification effort.

Joint Materials and Metallurgy/ Structural Engineering, March 10, 1993, Bethesda, MD. The Subcommittees will discuss: (1) The status of the NRC staff's concerns regarding steam generator tube degradation, and (2) the industry proposal on piping design improvements to reflect current technical knowledge for ALWR plants.

ACRS Full Committee Meetings

394th ACRS Meeting, February 11–13, 1993, Bethesda, MD. Items are tentatively scheduled.

A. *Key Policy Issues for Preapplication Designs*—Review and comment on key policy issues identified by the NRC staff for resolution with respect to advanced reactor designs such as the MHTGR, PIUS, PRISM, and CANDU–3. Representatives of the NRC staff, of the Department of Energy and of the industry will participate, as appropriate.

B. *Fitzpatrick Nuclear Power Plant*—Briefing and discussion regarding restart of the Fitzpatrick nuclear plant following an extended shutdown for plant and organizational changes. Representatives of the licensee and of the NRC staff will participate, as appropriate.

C. *Research on Organizational Factors*—Briefing and discussion regarding NRC sponsored research on organizational factors. Representatives of the NRC staff and of the industry will participate, as appropriate.

D. *Atomic Safety and Licensing Board Panel (ASLBP)*—Briefing by and discussion with representatives of the ASLBP regarding the current and anticipated activities of the ASLBP.

E. *Multiple System Responses Program*—Briefing by and discussion with representatives of the NRC staff regarding the status of the staff's work for dealing with the potential generic safety issues identified in the Multiple System Responses Program.

F. *ACRS Subcommittee Activities*—Reports on and discussion of the status of ACRS subcommittee assignments, including use of digital instrumentation and control systems in nuclear power plants, and ABB–CE System 80+ design, and procedures for conduct of ACRS business. Representatives of the NRC staff will participate, as appropriate.

G. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee.

H. *Resolution of ACRS Recommendations*—Discuss replies from the NRC Executive Director for Operations regarding the NRC staff

reaction to recent ACRS comments and recommendations.

I. *NRC Regulatory Review Group*—Discuss the proposed charter for and activities of the NRC Regulatory Review Group. The purpose of this group will be to conduct a comprehensive and disciplined review of power reactor regulations and related NRC process, programs, and implementation practices. Representatives of the NRC staff and of the industry will participate, as appropriate.

J. *Briefing on Recent Changes to the Regulations on the Conduct of Government Employees*—Briefing by and discussion with representatives of the NRC Office of the General Counsel on the impact on ACRS members of the implementation of the recent Office of Government Ethics government-wide changes to the regulation on the conduct of government employees.

K. *Schedules of NRC Review of Proposed Advanced Reactor Designs*—Briefing by and discussion with representatives of the NRC staff on the current schedules for the NRC staff's review of proposed advanced reactor designs.

*L. *Miscellaneous*—Discuss information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy and matters discussed but not completed during previous meetings as time and availability of information permit.

395th ACRS Meeting, March 11–13, 1993, Bethesda, MD. Agenda to be announced.

396th ACRS Meeting, April 15–17, 1993, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

Joint Meeting of the ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems, February 5, 1993—Postponed to March 5, 1993 (tentative), Bethesda, MD.

51st ACNW Meeting, February 24–25, 1993, Bethesda, MD. Items are tentatively scheduled.

A. Meet with the Commission to discuss items of mutual interest.

B. Briefing on Standards of Ethical Conduct for Employees of the Executive Branch.

C. Briefing on decommissioning plans for the Shoreham Nuclear Power Plant.

D. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Joint Meeting of the ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems, March 5, 1993 (tentative), Bethesda, MD. The Working Group/Subcommittee will review the following proposed final regulatory guides related to the implementation of the revised 10 CFR part 20:

(1) DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,"

(2) DG–8009, "Interpretation of Bioassay Measurement," and

(3) DG–8013, "ALARA Radiation Protection Program for Effluents from Materials Facilities."

ACNW Working Group on Low-Level Waste Repository Performance Indicators, March 23, 1993, Bethesda, MD. The Working Group will consider the development of a performance indicator system to be used in monitoring various aspects of low-level radioactive waste handling and disposal.

52nd ACNW Meeting, March 24–25, 1993, Bethesda, MD. Agenda to be announced.

53rd ACNW Meeting, April 28–29, 1993, Bethesda, MD. Agenda to be announced.

Dated: January 13, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–1297 Filed 01–19–93; 8:45 am]

BILLING CODE: 7590–01–M

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission 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 December 24, 1992, through January 7, 1993. The last biweekly notice was published on January 6, 1993 (58 FR 590).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, And Opportunity For A 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 February 22, 1993, 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.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 5, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.1.2 relating to the Auxiliary Feedwater (AFW) System. Specifically, two additional action statements would be added to the Limiting Condition for Operation (LCO), and Surveillance Requirements (SR) 4.7.1.2.a and 4.7.1.2.c would be modified. One of the new action statements added to the LCO would apply when two AFW pumps are

inoperable; the other new action statement would apply when all three AFW pumps are inoperable. SR 4.7.1.2.a would be revised by replacing the specific pump-performance parameter specified with the performance requirements that would be developed for the pumps by the Inservice Testing Program. Additionally, it would clarify that the provisions of TS 4.0.4 do not apply for entry into Mode 3 for testing the steam-driven AFW pump, and a footnote would be added to specify the minimum steam system pressure when the steam-driven auxiliary feedwater pump is tested. SR 4.7.1.2.c would be reworded and a footnote would be added to clarify when the requirement is applicable.

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.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes would impose additional more restrictive actions to be taken if more than one AFW pump is inoperable, would specify minimum conditions for conducting surveillance tests, would clarify when a surveillance requirement applies, and would replace the specific pump performance parameter with parameters established and periodically reevaluated through the inservice testing program. The probability of occurrence or consequences of any accident previously evaluated would not be increased by the proposed amendment because the capability and availability of the AFW pumps to perform their function are not reduced.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely clarify or add operability and surveillance requirements for AFW pumps.

C. The proposed changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve a change of equipment or features which affect the operational characteristics of the facility.

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 proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: September 16, 1992

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Limiting Condition for Operation (LCO) 3.6.1.3 relating to the Containment Air Locks. Specifically, the amendments would modify LCO 3.6.1.3 for both Units to include the condition when more than one air lock is affected by inoperable components. (The current LCO does not reflect that the Beaver Valley Power Station, Units 1 and 2, designs each include two containment air locks.) Additionally, a new action statement would be added to provide guidance for when a containment air lock interlock mechanism is inoperable. Two footnotes would be added to the LCO action statements. The first footnote, applying to action a.1. would allow passage through the outer operable air lock door to repair the inner inoperable air lock door. The second footnote, applying to action c.2. would allow passage through the air lock (with the interlock mechanism inoperable) provided an individual is dedicated to control passage to ensure that one air lock door only is opened at a time. The existing footnotes would be redesignated to maintain document consistency.

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.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The probability of occurrence of any accident previously evaluated would not be increased by the proposed amendments because the changes do not involve any accident initiation scenario. The consequence of any accident previously evaluated is not increased by the proposed amendments because the changes to the action statements would continue to ensure that at least one door in each air lock is maintained closed. Furthermore, the changes do not affect the structural integrity or leaktightness of the containment structures. Therefore, the ability of the containment to restrict the release of fission product radioactivity is maintained.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility operations are conducted or involve a change to equipment or features which affect the operational characteristics of the facility. Containment air locks are designed to maintain containment integrity while allowing access to the containment. The proposed amendments will assure that the air lock operation is as assumed in the original design.

C. The proposed changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the leak rates for the containments would remain within the assumptions of the design basis accident. The assumed leak rates are maintained provided at least one door in each air lock is closed, which the proposed amendments would ensure.

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 proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: November 2, 1992

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Technical Specification 3.9.4 relating to the Containment Building Penetrations. Specifically, the amendments would modify Limiting Condition for Operation 3.9.4.c.1 for both Units to allow for the use of an approved functional equivalent to an isolation valve, blind flange, or manual valve on penetrations that provide direct access from the containment atmosphere to the outside atmosphere. The proposed amendments would permit various other operations, such as steam generator tube eddy current testing, to be performed simultaneously with other refueling operations. To perform, for example, eddy current testing, temporary cables must be run into the containment to the steam generator being tested through a spare electrical penetration.

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.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The changes would permit the use of an approved functional equivalent to valves or blind flanges to accomplish containment closure when necessary during refueling operations. During refueling operations, significant containment pressurization is not likely, therefore, the use of a functionally equivalent closure will provide assurance of containment closure thus maintaining the ability of the containment to restrict the release of fission product radioactivity. Therefore, the changes will not cause an increase in the consequences of an accident previously evaluated. Since the use of the functional equivalent penetration closure does not change the manner in which facility operations are conducted during refueling, the probability of an accident previously evaluated is not changed.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility operations are conducted during refueling or involve a change to equipment or features which affect the operational characteristics of the facility. The proposed changes merely permit the use of a functionally equivalent penetration closure.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the functionally equivalent penetration closure would maintain the ability of the containment to restrict the release of radioactive material in the event of a refueling accident.

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 proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: November 16, 1992

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Technical Specification 3.6.2.2 relating to the Containment Recirculation-Spray System and would modify Figure 3.6-1 of the Unit 1 Technical Specifications only. Specifically, the amendments would modify the ACTION statements for both Units to address the inoperability of combinations of containment recirculation-spray subsystems that are not addressed currently. Additionally, for Unit 1 only, Figure 3.6-1 and SURVEILLANCE REQUIREMENT 4.6.2.2.e.3 would be revised to reflect that the required minimum flow through each recirculation-spray heat exchanger is 8000 gpm; this change would remove the temporary provision for a lower minimum flow that was applicable only to Cycle 8.

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.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The changes would add a new ACTION statement for each Unit that addresses the inoperability of two recirculation-spray subsystems (the current ACTION statements address only the inoperability of one subsystem). The added ACTION statement is more restrictive (than the one currently in place) with respect to the time allowed to restore operability or to shutdown the Unit. The changes do not involve a modification to plant equipment nor do they affect the manner by which the facility is operated. Therefore, there is no change to the probability or consequences of any accident. The removal of the temporary provision permitting the recirculation-spray heat exchanger flow to be as low as 6000 gpm is purely administrative since the provision, which was incorporated by Amendment 156, was valid for Cycle 8 only.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated or involve a change to equipment or features which affect the operational characteristics of the facility. The proposed changes merely add additional restrictions with regard to the time the facility can be operated with more than one recirculation-spray subsystem inoperable.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve a change to equipment or features which affect the operational characteristics of the facility.

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 proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: December 22, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 4.4-2, "Steam Generator Tube Inspection," to allow continued operation of the plant with two uninspected tubes in the "B" steam generator, until the next planned steam generator tube inspection.

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.

This change has no actual impact on any previously analyzed accident in the FSAR [final safety analysis report]. A double-ended break of one steam generator tube is postulated as part of the ANO-2 [Arkansas Nuclear One, Unit 2] Design Basis accident evaluation. Failure to examine these two tubes with bobbin coil eddy current does not in any way alter the consequences of this previously evaluated accident.

Of the 8291 tubes in the 'B' steam generator that were to be inspected, the two tubes not examined represent less than 0.025% of the total number. As previously discussed, these two tubes were examined with the bobbin coil probe as recent as 2R8 (spring 1991)with no detectable degradation of any type evident. Considering that only 120 of 8411 tubes in this steam generator (per TS required Bobbin Coil testing) have developed defects requiring repair (i.e., ≥40% TW [through wall]) through 2R8, delaying the examination of two tubes (out of 8291 tubes) for a maximum of seven months past 2R9 is statistically insignificant.

It should be noted that ANO-2 TSs allow for 24 months between eddy current testing of steam generator [SG] tubes, even when 100% inspection is required. The 2R8 inspection of these tubes was completed on April 3, 1991. ANO-2 TSs would allow the tubes to be examined as late as April 3, 1993, had the 2R9 outage been scheduled this late. The actual date of the SG inspection outage

has been scheduled for April 30, 1993. Therefore, the actual delay time for the examination of the two tubes, past the TS allowable 24 months, is less than 2 months. Considering the rate of degradation/ propagation of axial flaws and/or batwing wear [the damage mechanisms that bobbin coil testing is likely to detect), this delay is not considered significant.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2- Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

The scope of this change does not establish a potential new accident precursor. ANO's design basis accident analyses include the consequences of a double-ended break of one steam generator tube which bounds other postulated failure mechanisms. CE's experience with nuclear steam generators indicates the probability of complete severance of the Inconel vertical U-tubes is remote. The only known cause for such a failure would be a circumferential crack. Circumferential cracking has only been detected at the hot leg expansion transition region in the ANO-2 SGs. The subject two tubes were examined at the hot leg expansion transition region with the RPC [rotating pancake coil] for detection of curcumferential cracking and were found to have no detectable circumferential defects. Therefore, the probability of a double-ended break is considered to be remote.

Defect mechanisms for which inspections were not performed on these two tubes (batwing support wear and axial cracking at support plates) would not be expected to result in double-ended rupture. The type of ruptures that could be expected from these types of defects are "fish mouth" in nature and would not likely result in a double-ended break. The consequences of "fish mouth" ruptures in either of the subject two tubes are bounded by the ANO-2 design basis accident analyses considering a double-ended break of one steam generator tube.

Since the type of accident that could be postulated to occur to ANO steam generator tubes not receiving bobbin coil eddy current testing during 2R9 is bounded by the "double-ended break" scenario already included in the design basis analyses, it is concluded that this change 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 Marginof Safety.

As previously stated, a double-ended rupture of one steam generator tube is accounted for in the ANO-2 design basis accident analyses. Safety margins to detect and repair tube defects prior to rupture are reflected by the 40% TW plugging criteria and 0.5 GPM [gallons-per-minute] primary-to-secondary leakage limit stated in ANO-2 TSs. As stated in the ANO-2 TS Bases, cracks having a primary-to-secondary leakage less than the 0.5 GPM limit during operation will have an adequate margin of safety to withstand the loads imposed during normal operation and by postulated accidents. Considering that the two tubes in question were examined with the bobbin coil probe as recently as spring 1991 with no detectable degradation, and considering that mechanisms are in place to detect and mitigate tube leakage in a very timely manner, delaying the examination of two tubes for less than 2 months past the TS recognized 24 month inspection frequency does not significantly reduce the margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

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. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 11 and 18, 1992

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow continued operation for 72 hours with more than one full-length or part-length Control Element Assembly (CEA) inoperable due to electronic or electrical problems in the Control Element Drive Mechanism Control System (CEDMCS), provided that all affected CEAs remain trippable.

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:

The proposed change will allow 72 hours for diagnosis and repair of electronic or electrical malfunctions associated with the CEDMCS. This is acceptable, since the extension of the allowable outage time only applies to CEAs which remain trippable, and assurance of the CEA's primary safety function of shutting down the reactor upon initiation of a reactor trip signal is maintained. The change does not alter the specified requirements of CEA position, insertion, or alignment limits and will have no affect [sic] on the power distribution limits or SHUTDOWN MARGIN as described in the safety analysis. This change will not affect the ability of the CEAs to perform their intended safety function when a safety system setting is reached. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not alter operation of the plant or the manner in which it is operated. The change does not involve any modification to the operation limits or physical design of the affected systems or components. Thus no new failure modes are introduced or associated with the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

The proposed change will have no adverse impact on the protective boundaries, safety limits or margin of safety. The change will allow appropriate actions commensurate with one or more CEAs inoperable due to an electronic or electrical problem in the CEDMCS. Since the extension of the allowable outage time only applies to CEAs which remain trippable, assurance of the CEAs primary safety function of shutting down the reactor upon initiation of a reactor trip signal is maintained. Therefore, the proposed change will 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: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: November 30, 1992

Description of amendment request: The proposed amendment revises Technical Specifications Tables 3.3-3, 3.3-4, and 4.3-2 where they apply to the Emergency Bus Undervoltage Protection Devices and will permit improvements to be made in the undervoltage protective relaying scheme.

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:

The Commission has provided a standard for determining whether a significant hazards

consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; 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. Each standard is discussed as follows:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will result in a better overall posture of the plant under degraded voltage conditions. The new settings will result in improved protection for the equipment at all voltage levels while at the same time minimizing the possibility of unnecessary challenges to the safety systems. Namely, the higher settings at the 4160 volt electrical system level will enhance protection offered to the 480 volt system equipment under all operating modes and the lower settings of the 480 volt system protective relays will not initiate the transfer of power to the on-site sources under accident conditions until the level of voltage may become injurious to the equipment. Therefore, the proposed change does not increase the probability of accidents previously analyzed.

Since the time interval assumed in the safety analyses for connection of the safety-related buses to the emergency diesel-generators is not exceeded by the new settings, the proposed change does not increase the consequences of an accident previously analyzed.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of an accident from any accident previously evaluated.

The proposed change does not change the operation, function or modes of plant operation. The ability of the degraded grid voltage protection scheme to detect the degraded voltage at any of the busses and to transfer the power from the off-site to the on-site sources is being maintained. No new hazards are created or postulated which may cause an accident different from any accident previously analyzed. The new relay settings represent an enhancement resulting in a more sensitive protective scheme allowing continuous operation without unnecessary challenges to the safety systems while offering an adequate protection to all the safety equipment.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The ability of the degraded grid voltage detection system is enhanced by the changes being proposed and is confirmed by the existing surveillance requirements. The new settings will result in a more sensitive detection and reduce possibility of spurious actuation, therefore the margin of safety is being increased. Further, the new settings will also result in enhancing the maintenance/calibration activities. The associated bases of the design are not affected since the new relay settings allow a better fulfillment of the original criteria of protecting the Class 1E equipment from damage due to prolonged exposure to degraded voltage, and, therefore, the proposed amendment does not involve a reduction in the margin of safety.

Based on the above, FPL has determined that the proposed license amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of an accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration as defined in 10 CFR 50.92.

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: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant,Unit No. 1, St. Lucie County, Florida

Date of amendment request: December 17, 1992

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3.3.3.2 by changing the operability requirements for the Incore Detection System. Linear Heat Rate TS 4.2.1.4.b.1 is also revised by increasing the measurement-calculational uncertainty factor commensurate with the number of inoperable incore detector locations. The proposed amendment facilitates full power operation of St. Lucie Unit 1 for the remainder of Cycle 11 and will remain effective from the date of issuance until April 30, 1993.

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:

The standards used to arrive at a determination that a request for amendment involves no significant hazards consideration are included in the Commission's regulations, 10 CFR 50.92, which state that no significant hazards considerations are involved if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment allows operation with a reduced number of operable incore detector strings which provide an alternate means of monitoring nuclear core power distributions. A physical change to the facility is not involved and the incore detection system does not perform automatic interlock, control, or protective functions. The number of operable incore detectors has no impact on the probability that a particular accident will occur. Therefore, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The proposed amendment requires an increase in the core peaking factor measurement uncertainties commensurate with the reduction of number of operable incore detectors to ensure that peaking factors are conservatively calculated. This increase represents more conservative alarm settings for the operable incore detectors which are set to activate whenever the peak linear heat rate approaches an allowable limit as determined by the plant accident analyses. Limiting peaking factors specified in the design basis for the nuclear core or assumed in the Updated Final Safety Analysis Report (UFSAR) remain unchanged and the amendment is only applicable to the present fuel cycle. Therefore, the proposed amendment will not significantly increase the consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not change the physical design of the facility and a new failure mode is not introduced as a result of the reduction in the minimum required number of operable incore detector locations. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The physical facility is not changed by the proposed amendment and use of increased measurement uncertainty factors are required commensurate with the reduction in the minimum allowable number of incore detector locations. The increased measurement uncertainty factors assure that power distribution calculations based on the

incore system will continue to be conservative and that the existing Limiting Conditions for Operation specified for linear heat rate and core peaking factors will not be exceeded. Therefore, use of the modified specification will not involve a significant reduction in a margin of safety.

Based upon the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction a margin of safety, and therefore does not involve any significant hazards consideration.

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: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: December 15, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.A.2.f and its Acceptance Criteria by rewording and incorporating Condition 1, and deleting Conditions 2 and 3. Condition 4 would be reworded and incorporated into the Remedial Action for Technical Specification 3.19.A.4. The Basis of TS 3.19.A.4 and 4.6 also would be revised to delete reference to the previous operating position of low pressure injection motor opetated valves LSI-M-11, 21, and 31, and their use as pressure isolation barriers. (Note that "Remedial Action" is an administrative correction of "Exception".) Finally, the Exception to Technical Specification 4.6.A.1.b would be deleted.

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.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As presented in the Final Safety Analysis Report (FSAR), accident analyses involving activation of emergency core cooling systems (ECCS) require eleven separate valves to change position to admit coolant injection flow into the reactor coolant system (RCS). The proposed amendment would align each low pressure safety injection (LPSI) system loop motor operated valve (LSI-M-11, 21, and 31) in the normally open position. Such positioning will eliminate the chance that a single active failure of these valves would degrade the ECCS function, and thus will improve the overall probability of proper ECCS function on demand.

The safety class boundary between the reactor coolant and low pressure coolant systems is not affected by the proposed change. Current, NRC approved standards for such boundaries require two in-line check valves between such systems, and periodic leak testing of the valves. Maine Yankee satisfies the boundary standards by providing three, in-series check valves grouped into two separate isolation barriers. Isolation barrier (a) is comprised of the two check valves closest to the RCS; isolation barrier (b) is formed by the check valve closest to the LPSI system. Both isolation barriers in each LPSI loop are leak tested each refueling outage. Leakage limits specified by TS 4.6.A.2.f (Criterion 1) remain, but the plant may not start up or operate for more than 24 hours if barrier leakage exceeds TS 4.6.A.2.f.

Based on a probablistic risk consideration, the staff concludes that there is a slight decrease in core damage probability when the plant is operated with low pressure coolant injection motor operated valves LSI-M-11, 21 and 31 open. Thus, the probability or consequences of an accident previously evaluated is not increased.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

No unanalyzed FSAR accident would be created by this valve alignment change. Maine Yankee has operated with valves LSI-M-11, 21, and 31 shut to provide an additional pressure barrier between the reactor coolant system (high pressure) and each loop of the low pressure coolant injection system. This pressure isolation function was intended to protect LPSI system piping from being overpressurized, should the associated isolation check valves between the reactor coolant and low pressure injection systems leak. With the installation of a third isolation check valve to form two isolation barriers in each loop of the LPSI system, the pressure isolation function provided by valves LSI-M-11, 21, and 31 is rendered unnecessary.

Containment isolation, system safety classification, and postulated ECCS spillage in loss-of-coolant-accidents (LOCA) remain unchanged. The possibility of ECCS equipment malfunction is reduced, because there would be fewer components that need to change position as a result of a LOCA.3. Involve a significant reduction in a margin of safety.

The leak test history of the pressure isolation barrier (a) and (b)check valves provides a basis for discontinuing the use of LPSI motoroperated valves LSI-M-11, 21, and 31 as backup pressure isolation barriers. The set of leakage test data collected since 1982 shows that neither barrier (a) nor barrier (b) has approached its leakage rate limit. This leakage test data set shows that the barriers provide adequate overpressure protection for the LPSI system.

Based on a review of the licensee's analysis, and on the staff's analysis detailed above, 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: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: December 7, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Sections 3/4.3 and 4.2.2.1 and associated Bases. The proposed revisions would increase the surveillance test intervals and allowable out-of-service times for various instruments. The proposed changes would be in accordance with General Electric Company's Licensing Topical Reports which have been reviewed and approved by the NRC staff. Also, the allowable out-of-service times would be clarified in accordance with the most recently approved Boiling Water Reactors (BWR) Owners Group letters which were used in the

development of NUREG-1434, "Improved Standard Technical Specifications." The proposed changes would permit specified instrument channel functional tests to be performed quarterly rather than weekly or monthly.

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 operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A, assessed the impact of changing RPS [Reactor Protection System] surveillance test intervals (STIs) and allowable out-of-service times (AOTs) on the RPS failure frequency, the scram frequency and equipment cycling. Specifically, Section 5.7.4 "Significant Hazards Assessment" of NEDC-30851P-A states that:

"Fewer challenges to the safeguards system, due to less frequent testing of the RPS, conservatively results in a decrease of approximately one percent in core damage frequency. This decrease is based upon the following:

• Based on the plant specific experience presented in Appendix J, the estimated reduction in scram frequency (0.3 scrams/yr) represents a 1 to 2 percent decrease in core damage frequency based on the BWR plant specific Probabilistic Risk Assessments (PRAs) listed in Table 5-8.

• The increase in core damage frequency due to less frequent testing is less than one percent. This increase is even lower (less than 0.01 percent) when the changes resulting from the implementation of the Anticipated Transients Without Scram (ATWS) rule are considered. Therefore, this increase is more than offset by the decrease in CDF [core damage frequency] due to fewer scrams.

• The effect of reducing unnecessary cycles on RPS equipment, although not easily quantifiable also results in a decrease in core damage frequency.

• The overall impact on core damage frequency of the changes in allowable out-of-service time is negligible."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, namely the increase in probability of a scram failure due to RPS unavailability is insignificant, and the overall probability of an accident is actually decreased as the time the scram (RPS) instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP2 differs from the generic plant analyzed in Licensing Topical Report NEDC-30851P-A, the net effect of the plant-specific differences do not alter the generic conclusions. Also, the BWROG 92102 letter clarifications used in the development of NUREG 1434, "Improved

Standard Technical Specifications", for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Reports NEDC-30851P-A Suppl 2/NEDC 31677P-A assessed the impact of changing STIs and AOTs for BWR Isolation Instrumentation common/not common to RPS and ECCS instrumentation. Specifically, Section 4.0 "Summary of Results" of NEDC30851P-A Supp1 2 states that:

"The results indicate that the effects on probability of failure to initiate isolation are very small and the effects on probability or frequency of failure to isolate are negligible in nearly every case. In addition, the results indicate that increasing the AOT to 24 hours for tests and repairs has a negligible effect on the probability of failure of the isolation function. These combined with changes to the testing intervals and allowed out-of-service times for RPS and ECCS instrumentation provide a net improvement to plant safety and operations".

Section 5.6 "Assessment of Net Effect of Changes" of NEDC-31677P-A states that:

"A reduction in core damage frequency (CDF) of at least as much as estimated in the ECCS instrumentation analysis can be expected when the isolation actuation instrumentation STIs are changed from one month to three months. The chief contributor to this reduction is the channel functional tests for the MSIVs. Inadvertent closure of the MSIVs will cause an unnecessary plant scram. This reduction in CDF more than compensates for any small incremental increase (10% or 1.0E-07/year) in calculated isolation function failure frequency when the STI is extended to three months".

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the consequences of an accident previously evaluated, namely the probability of an isolation failure due to isolation instrumentation unavailability is insignificant, and the increase in overall probability of an accident is actually decreased as the time the scram (RPS) instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Also, the BWROG OG90-579-32A letter clarifications used in the development of NUREG 1434, "Improved Standard Technical Specifications", for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30936P-A (Parts 1 and 2) assessed the impact of changing STIs and AOTs for all BWR ECCS Actuation Instrumentation. Specifically, Section 4.0 "Technical Assessment of Changes" of NEDC-30936P-A (Part 2) states that:

"The results indicate an insignificant (less than 5E-7 per year) increase in water injection function failure frequency when STIs are increased from 31 days to 92 days, AOTs for repair of the ECCS actuation instrumentation are increased from one hour to 24 hours, and AOT's for surveillance testing are increased from two to six hours. For all four BWR models the increase represents less than 4% increase in failure frequency. However, when other factors which influence the overall plant safety are considered, the net result is judged to be an improvement in plant safety".

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, namely the increase in probability of a water injection failure due to ECCS instrumentation unavailability is insignificant and the net result is judged to be an improvement in plant safety. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP2 differs from the generic model analyzed in Licensing Topical Report NEDC-30936P-A, the net affect of the plant specific differences do not alter the generic conclusions. Also, the BWROG OG90-319-32D letter clarifications used in the development of NUREG 1434, "Improved Standard Technical Specifications" for AOTs, results in no significant increase in the probability or consequences of an accident previously evaluated.

Bases contained in GE Topical Report GENE-770-06-1 assessed the impact of changing STIs and AOTs on selected systems failure frequency. Specifically, Section 2.0 "Summary" of GENE-770-061 states that:

"Technical bases are provided for selected proposed changes to the instrumentation STIs and AOTs that were identified in the BWROG Improved BWR Technical Specification activity. These STI and AOT changes are consistent with approved changed to the RPS, ECCS, and isolation actuation instrumentation. These proposed changes do not result in degradation to overall plant safety".

From these Bases, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated.

Bases contained in GE Topical Report GENE-770-06-2, assessed the impact of changing STIs and AOTs on BWR RCIC failure frequency. Specially, Section 2.0 "Summary" of GENE-770-06-2 states that:

"The STI and AOT changes to the RCIC actuation instrumentation are justified based on their small effect on the water injection function unavailability and consistency with comparable changes to actuation instrumentation for the other ECCS sub systems".

From this bases, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A,

Suppl 1, assessed the impact of changing Rod Block STIs on Rod Block failure frequency. Specifically, Section 5 (BNL's Tech. Eval. Report - Attachment 2 to the NRC SER) of NEDC-30851P-A Suppl 1 states that:

"The BWR Owners' Group proposed changes to the Technical Specifications concerning the test requirements for BWR control rod block instrumentation. The changes consist of increasing the surveillance test intervals from one to three months. These test interval extensions are consistent with the already approved changes to STIs for the Reactor Protection System. The technical analysis reviewed and verified as documented herein indicates that there will be no significant changes in the availability of the control rod block function if these changes are implemented. In addition, there will be a negligible impact on the plant core melt frequency due to the decreased testing."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not alter the physical characteristics of any plant systems or components and all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

The addition of allowable out-of-service times (AOTs) and the increase in surveillance test intervals (STIs) does not alter the function of the ECCS, Isolation, Rod Block and Selected Instrument Systems nor involve any type of plant modification and no new modes of plant operation are involved with these changes. Finally, the approved BWR Owners' Group clarifications are enhancements to allowable out-of-service times (AOTs) and do not create the possibility or [of] a new of [or] different kind of accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic studies contained in the LTRs and has concurred with the BWR Owners' Group that the proposed changes do not significantly affect the availability of the RPS, ECCS, Isolation, Rod Block, or Selected Instrument Systems. The proposed addition of AOTs for the instruments addressed in the LTRs provide reasonable time for making repairs and performing tests. The lack of AOTs in the current Technical Specification (TS) creates a hurried atmosphere during repairs and tests which could cause an increased risk of error. Also, placing an individual channel in a tripped condition because no AOT exists, as in the current TS, increases the potential of an inadvertent scram. The proposed AOTs provide realistic times to complete the required actions without increasing the overall instrument failure frequency. The approved BWR Owners' Group Clarifications are enhancements to allowable out-of-service times (AOTs) and do not involve a significant reduction in a margin of safety.

The incorporation of extended STIs does not result in significant changes in the probability of instrument failure, as demonstrated by the LTRs. These changes, when coupled with the reduced probability of test-induced plant transients and equipment failures, result in an overall increase in the margin of safety. Also, the sensor calibration frequency has not changed. Therefore, assurance exists that the setpoints will not be affected by drift. Therefore, there is no 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 request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 15, 1992

Description of amendment request: The proposed amendment would allow a one-time extension of the 7 day Limiting Condition for Operation (LCO) to fourteen days during the current operating cycle (Cycle 16), to permit extensive maintenance to be performed on the "B" diesel generator while the reactor is at 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

In order to provide added assurance that the "A" EDG will perform its function if required, the "A" EDG will be tested for operability prior to entering into the "B" EDG LCO period. The Technical Specifications also require that during the LCO period, all remaining Low Pressure Core Cooling and Containment Cooling Systems connected to the operable EDG remain operable. Vermont Yankee has developed a detailed LCO maintenance plan for EDG LCO maintenance. This plan has been successfully used during prior EDG LCO maintenance and will be invoked for this evolution as well. In addition, the Vernon Hydro Station dedicated tie-line, which historically has demonstrated a very high reliability, is required by Vermont Yankee procedure to be available to supply power to Emergency Bus 3 during the "B" EDG LCO. Any previously analyzed event postulated during the seven day extension period can be mitigated by the other available systems. The proposed LCO extension has no significant impact on the consequences of any previously analyzed event.

The proposed extension would allow the "B" EDG to remain inoperable for an additional seven days beyond the present seven day LCO allowed by Technical Specifications. The unavailability of one EDG is not a part of the initiation of any of the analyzed accidents. Therefore, the proposed change does not increase the probability of an accident previously evaluated.

As discussed above, a seven day extension to an already existing seven day LCO period would involve no significant increase in the probability of occurrence or consequences of a design basis accident during the extension period.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change would not create the possibility of a new or different kind of accident from those previously evaluated. The proposed change would have no impact on the possibility of a new or different initiating event. The proposed change requests a one time extension of 7 days beyond the already authorized 7 day "B" EDG LCO. Any previously analyzed event postulated during the seven day extension period can be mitigated by the other available systems.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change would not involve a significant reduction in the margin of safety. As discussed above, approval of this request involves an insignificant reduction in the margin of safety because of the availability of other plant electrical systems, including the Vernon tie line, and the short duration of the extension period.

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: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

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: December 11, 1992

Description of amendment request: The proposed changes to the Technical Specifications (TS) would eliminate the operability requirements for the reactor coolant system loop stop valve interlocks and establish requirements for operation of the loop stop valves.

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 and concluded that the proposed changes to the TS will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed changes do not increase the probability or consequences of a loop startup accident or a loss of shutdown decay heat removal. The risk of inadvertent criticality in cold shutdown or refueling shutdown is sufficiently low that administrative controls can be used in lieu of the loop stop valve interlock system in those conditions. The proposed restrictions on loop stop valve operation preclude a significant positive reactivity addition or loss of Reactor Coolant System inventory when an isolated loop is returned to service. Locking closed the stop valves of an isolated loop with power removed prevents inadvertent opening and potential boron dilution or loss of inventory. Requirements for boron concentration, temperature, and relief line flow for an isolated and filled loop ensure no significant positive reactivity addition occurs when returning the loop to service. Verifying that a drained loop is initially empty ensures that liquid present in the loop does not dilute the Reactor Coolant System. Requiring a minimum Reactor Coolant System water level precludes a loss of RHR [residual heat removal] pump suction when filling a drained loop by opening the loop stop valves.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new failure modes or accident precursors. Eliminating the operability requirements for the loop stop valve interlocks does not create any new or different kind of accident scenarios. The loop startup accident has been analyzed with no credit taken for loop stop valve interlock operation. The loop stop valves will not be operated in a different manner from which they were designed to operate. Furthermore, the plant conditions for which loops may be isolated have been limited to cold shutdown and refueling shutdown.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification requirements for return of an isolated loop to service fulfill the function of the loop stop valve interlocks. Adequate controls have been established to virtually eliminate the potential for an inadvertent valve opening in an isolated loop, causing a boron dilution or cold water addition accident. These controls also virtually eliminate the potential for a loss of shutdown cooling caused by the opening of a stop valve in an isolated and drained loop. Furthermore, startup of an isolated loop is now limited to only cold shutdown or refueling shutdown. Calculations have shown that an inadvertent loop startup at cold shutdown will not result in an inadvertent criticality regardless of the temperature differential between loops. At cold shutdown conditions the positive reactivity effects of changing moderator temperature are substantially less than the available shutdown margin. Therefore, the margin of safety as defined in any Technical Specification is not reduced.

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, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YNPS), Franklin County, Massachusetts

Date of amendment request: December 21, 1992

Description of amendment request: The proposed amendment would revise the License and Technical Specifications to reflect the permanently shutdown and defueled status of the plant. This change would eliminate those requirements applicable only to an operating nuclear power station.

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:

YNPS holds a Possession Only License which permanently restricts the facility from power operations and from moving nuclear fuel into the containment building.

Maintenance of the facility has been significantly simplified with the reduction in the numbers of systems, structures and components required for the permanently shutdown and defueled condition. The accident analyses have been revised, incorporating the new restrictions and configurations, and conclude the only credible accident remaining is the fuel handling accident.

The changes described herein incorporate the changes and analytical results into the Possession Only License and its Technical Specifications, simplifying and clarifying both. As such, these changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The revised analyses indicate that only the fuel handling accident remains credible. The proposed changes incorporate into the Technical Specifications requirements from these analyses and thus do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes integrate into the Technical Specifications previously evaluated accidents and thus do 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. The proposed changes incorporate into the Defueled Technical Specifications the margin of safety associated with the current safety analyses and thus do not involve a significant reduction in a margin of safety.

Based on the above considerations, it is concluded that there is reasonable assurance that the maintenance of Yankee Nuclear Power Station consistent with the proposed changes, will not endanger the health and safety of the public.

This proposed change has been reviewed by the Plant Operations Review Committee and the Nuclear Safety Audit and Review Committee.

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: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusettts 02110-2624

NRC Project Director: Seymour H. Weiss

Notice of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

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: March 19, 1992

Brief description of amendments: These amendments remove certain fuel-cycle-specific parameters from the technical specifications and require that a unit-specific Core Operating Limits Report be submitted to NRC instead, as discussed in NRC Generic Letter 88-16.

Date of issuance: December 30, 1992

Effective date: December 30, 1992

Amendment Nos.: 69, 55, and 42

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18169) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 9, 1992

Brief description of amendments: The amendments revise the TS regarding diesel fuel oil requirements.

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment Nos.: 177 and 154

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53783) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 29, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 25, 1992

Brief description of amendments: The amendments revise Technical Specification 4.7.1.2.a.4 to exclude the surveillance requirement to verify valve positions every 31 days for those valves that are locked, sealed, or otherwise secured in their correct positions and which are in the direct flow path of the auxiliary feedwater system. These valves are included in a Calvert Cliffs Facility program which provides administrative control requirements for locked valves.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos.: 178 and 155

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48812) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 1, 1992

Brief description of amendments: The amendments make changes to Technical Specification 3.8.2.1 by adding additional requirements to the Limiting Condition for Operation.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos.: 179 and 156

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45075) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: July 9, 1990, as supplemented January 17, and December 28, 1992.

Brief description of amendment: The amendment provides consistency with the overtime work limits promulgated by Generic Letter 82-12 and also renumbers subsequent items within Technical Specification 6.2.3.

Date of issuance: December 30, 1992

Effective date: December 30, 1992

Amendment No.: 144

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32324) The January 17, and December 28, 1992, letters provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the

FEDERAL REGISTER.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

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 application for amendment: September 14, 1990, revised and supplemented March 15, 1991 and December 20, 1991.

Brief description of amendment: The amendment revised the Technical Specifications (TS) to reflect changes in reactor vessel pressure/temperature limits in accordance with Generic Letter 88-11. The amendment also deleted Table 4.4.6.1.3-1, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule," from the TS and relocated it to the Updated Safety Analysis Report.

Date of issuance: December 18, 1992

Effective date: December 18, 1992

Amendment No.: 45

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 24, 1991 (56 FR 33961) The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 18, 1992.No significant hazards consideration comments received: Yes.Petitioners, Ohio Citizens for Responsible Energy (OCRE) and Susan L. Hiatt, requested a hearing in response to the July 24, 1991, notice of opportunity for hearing. In their request for hearing, the petitioners stated their agreement with the Staff's "no significant hazards" finding and agreed that the amendment was merely an administrative matter. By Memorandum and Order dated March 18, 1992, the Atomic Safety and Licensing Board (ASLB) denied the petition to intervene and request for a hearing after it ruled that the petitioners had failed to establish standing to intervene in this license amendment proceeding. On April 2, 1992, the petitioners filed a Notice of Appeal to the ASLB decision that is awaiting NRC resolution.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 13, 1992, as supplemented December 1, 1992

Brief description of amendments: The amendments delete cycle-dependent core operating limits from the Technical Specifications to allow 10 CFR 50.59 reviews for future core reloads for all Oconee units. These limits will be relocated in the Core Operating Limits Report in accordance with the guidance provided in Generic Letter 88-16.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos.: 197, 197, and 194

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40210) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: August 18, 1992, as supplemented by letter dated September 2, 1992.

Description of amendment request: The amendment adds License Condition 2.C(9) which provides for a limited extension of the performance interval for certain surveillance tests that are conducted during a refueling outage.

Date of issuance: December 31, 1992

Effective date: December 31, 1992

Amendment No.: 168

Facility Operating License No. DPR-66.

Amendment added License Condition 2.C(9).

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47128). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 19, 1992 as supplemented December 3, 1992

Brief description of amendment: The amendment modifies TS 4.0.5, Applicability, and TS 3/4.4.3, Reactor Coolant System (RCS) Leakage. The amendment modifies the TS regarding the licensee's inservice inspection (ISI) program to include a statement of compliance with the NRC staff's position on schedule, methods, personnel, and sample expansion given in GL 88-01 and revises the RCS leakage monitoring requirements.

Date of issuance: December 23, 1992

Effective date: December 23, 1992

Amendment No: 104

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40212) The additional information contained in the supplemental letter dated December 3, 1992, was 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 December 23, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 21, 1992

Brief description of amendment: The amendment revised the Technical Specifications by reducing the steam pressure requirements for surveillance testing of the turbine-driven emergency feedwater pump.

Date of issuance: January 6, 1993

Effective date: January 6, 1993

Amendment No.: 80

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR

55579) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: August 21, 1992

Brief description of amendments: These amendments make administrative changes to the St. Lucie Unit 1 and Unit 2 Technical Specifications and achieve consistency throughout the Technical Specifications by removing outdated material, making minor text changes, and correcting errors.

Date of issuance: December 24, 1992

Effective date: December 24, 1992

Amendment Nos.: 118, 60

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47130) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 24, 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

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 7, 1992

Description of amendment request: The amendment deleted from Technical Specifications (TSs), numerous component lists as recommended in NRC Generic Letter (GL) 91-08, "Removal of Component Lists from Technical Specifications," and the reactor vessel specimen withdrawal schedule as recommended in GL 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications." Proposed TSs and Bases changes regarding primary containment and drywell average air temperature are not included in this amendment and will be handled as a separate request.

Date of issuance: December 24, 1992

Effective date: Immediately, to be implemented within 60 days

Amendment No.: 68

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40214) the Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: August 31, 1992

Brief description of amendment: This amendment makes two corrections to the core operating limits presented in Technical Specification 5.14.1. Specifically, item 5.14.1.c is deleted and item 5.14.1.i is changed to specify that the excore symmetric offset limits apply with the incore monitors operable.

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment No.: 135

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55582) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1992No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

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 28, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) 6.2.2.f and TS Table 6.2-1 to be consistent with current NRC requirements regarding supervision and performance of core alterations. The amendment requires that all core alterations be performed by qualified personnel and be supervised by a Senior Reactor Operator or by a Senior Reactor Operator Limited to Fuel Handling.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment No.: 137

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992, (57 FR 55583) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1993.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.

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: August 14, 1992

Brief description of amendments: The amendments changed the Technical Specifications to provide consistency and ensure technical accuracy between Salem, Units 1 and 2, allow entry into Mode 1 with one main feedwater pump out-of-service, and delete all reference to three and four loop operation and require the unit to be taken to one mode below the mode of applicability instead of two.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos. 138 and 116

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45087) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

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: August 2, 1991, and supplement dated September 30, 1992

Brief description of amendments: These amendments revise the fire protection license condition and relocate the fire protection technical specifications to plant procedures and to the Updated Final Safety Analysis Report in accordance with the guidance provided in Generic Letters 86-10 and 88-12.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos. 139 and 117

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11116) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: June 22, 1992

Brief description of amendment: The proposed amendment would change Technical Specifications by removing the schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specification Surveillance Requirement 4.3.1 in accordance with the guidance described in Generic Letter (GL) 91-01, "Removal of the schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specification." Further, Technical Specification 4.3.1.2 will be deleted since this specification is implicitly described in the proposed specification 4.3.1.1. In addition, RG&E shall maintain the Commission's approved version of the specimen withdrawal schedule in the Updated Final Safety Analysis Report (USFAR). The addition of this schedule will be in the next revision of the USFAR in accordance to 10 CFR 50.71(e).

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment No.: 50

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55589) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1992No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: October 29, 1992

Brief description of amendment: The amendment deletes diesel generator automatic start capability requirements in Modes 5 and 6 from the San Onofre, Unit 1 Technical Specification.

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment No.: 152

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992(57 FR 55591) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 18, 1991

Brief description of amendment: The amendment revised Technical Specification Section 4.4.9.1.2, Figures 3.4-2, 3.4-3, and 3.4-4, Tables 4.4-5 and B 3/4.4-1 and associated Bases for Reactor Coolant System Pressure/Temperature Limits by modifying plant heatup and cooldown curves and the maximum allowable PORV setpoint curve for cold overpressure protection.

Date of issuance: December 24, 1992

Effective date: December 24, 1992

Amendment No.: 76

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28206) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 12th day of January 1993.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects-III/IV/VOffice of Nuclear Reactor Regulation

[Doc. 93-1151 Filed 1-19-93; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF MANAGEMENT AND BUDGET

Financial Accounting Principles and Standards

AGENCY: Office of Management and Budget.

ACTION: Proposed New OMB Circular.

SUMMARY: Proposed new Office of Management and Budget (OMB) Circular, "Financial Accounting Principles and Standards," which establishes the policies and procedures for approving and publishing financial accounting principles and standards.

DATES: Comments on this proposal must be in writing and must be received by February 22, 1993.

ADDRESSES: Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven Arisumi, Financial Standards and Reporting Branch, Office of Federal Financial Management, (202) 395–3993.

SUPPLEMENTARY INFORMATION: OMB will issue Statements of Federal Financial Accounting Standards (SFFAS). This notice describes the process OMB will use and specifies that the SFFAS shall be considered generally accepted accounting principles for Federal agencies.

Jack Arthur,

Assistant Director for Administration.

Circular A–xxx

To the Heads of Executive Departments and Agencies

SUBJECT: Financial Accounting Principles and Standards

1. *Purpose.* This Circular establishes the policies and procedures for approving and publishing financial accounting principles and standards. It also establishes the policies to be followed by Executive Branch agencies and OMB in seeking and providing interpretations and other advice related to the standards.

2. *Background.* The Secretary of the Treasury, the Director of the Office of

Management and Budget (OMB), and the Comptroller General of the United States ("the Principals") established the Federal Accounting Standards Advisory Board (FASAB) in October 1990 by a memorandum of understanding (MOU). The role of FASAB is to deliberate upon and make recommendations to the Principals on accounting principles and standards for the Federal Government and its agencies. The MOU states that if the Principals agree with the recommendations, the Comptroller General and the Director of OMB will publish the accounting principles and standards.

3. *Coverage.* The provisions of this Circular apply to all Executive Branch departments and agencies.

4. *Definitions.* As used in this Circular:

a. *Executive agency* ("agency") means any executive branch department, independent commission, board, bureau, office, agency, or other establishment of the Federal Government, including independent regulatory commissions and boards. It does not include federally-owned or controlled corporations that are preparing financial statements in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board, or the legislative or judicial branches of the Federal Government.

b. *Accounting standards* are those conventions, rules, and procedures necessary to define acceptable accounting practice at a particular time. Accounting standards include not only broad guidelines of general application but also detailed practices and procedures.

c. *Interpretation of Federal Financial Accounting Standards* is a document of narrow scope that provides clarifications of original meaning, additional definitions, or other guidance pertaining to an existing Statement of Federal Financial Accounting Standards (SFFAS).

5. *Policy.*

a. *FASAB Recommendations.* The Director of OMB will review each statement of accounting principles, standards, or concepts recommended by FASAB and decide upon the appropriateness of the statement and its desirability for the Federal Government. If the recommended statement, or any other statement, is agreed to by the Director, the Secretary of the Treasury, and the Comptroller General, the Director will issue a SFFAS, signed by the Director. Each SFFAS, or a notice of its availability, will be published in the Federal Register and distributed throughout the Federal Government.

b. *Status of the SFFASs.* SFFASs shall be considered generally accepted accounting principles (GAAP) for Federal agencies. Agencies shall apply the SFFASs in preparing financial statements in accordance with the requirements of the Chief Financial Officers Act of 1990. Auditors shall consider SFFASs as authoritative references when auditing financial statements.

c. *Interpretations of the SFFASs.* Agencies and individuals desiring guidance relative to the standards shall request such guidance from OMB, to the attention of the Office of Federal Financial Management. OMB will respond to the request by providing technical assistance, unless it decides that the response should be an Interpretation of Federal Financial Accounting Standards. In that event, OMB will provide written copies of the request to the Comptroller General and the Secretary of the Treasury; examine, as appropriate, applicable literature and consult with knowledgeable persons; draft an Interpretation of Federal Financial Accounting Standards; consistent with the intent of the MOU, obtain the consensus of Treasury and GAO on the interpretation; and publish the Interpretation of Federal Financial Accounting Standards.

Interpretations of Federal Financial Accounting Standards will be signed by the Director or Deputy Director for Management, acting in the capacity of chief official responsible for financial management in the United States Government. Also, the Comptroller General and Secretary of the Treasury may publish a response.

d. *Applicability to Budget Execution.* The SFFASs shall have no affect on the manner in which agencies budget for, monitor and control the expenditure of budgetary resources. Those requirements are defined in OMB Circulars A–11 and A–34 and other OMB documents.

e. *Other Directives.* OMB may, from time to time, issue other instructions to the agencies regarding accounting and/or financial reporting.

6. *Inquiries.* For information concerning this Circular, contact the Financial Standards and Reporting Branch, OFFM, telephone 202–395–3993.

Richard Darman,

Director.

[FR Doc. 93–1247 Filed 1–19–93; 8:45 am]

BILLING CODE 3110–01–F

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Notice of Meeting

Summary: The Presidential Commission on the Assignment of Women in the Armed Forces will hold its final meeting on Wednesday, January 27th. The Chairman and several Commissioners will be briefed by staff on significant facts and highlights that were examined throughout the months of testimony.

Location: Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Avenue NW., suite 275 North, Washington, DC, (202) 376–6905, room: Main Conference Room.

Dates: Wednesday, January 27th, 1 p.m.–5 p.m., General Meeting, Contact: Magee Whelan or Kevin Kirk, (202) 376–6905.

Status: Open to public.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102–190). The 15-member Commission assessed the laws and policies governing the assignment of women in the military and made recommendations on such matters to the President November 15, 1992. Copies of the final report are now available by writing to the Commission at the above address.

W.S. Orr,

Staff Director.

[FR Doc. 93–1325 Filed 1–19–93; 8:45 am]

BILLING CODE 6820–CD–M

RAILROAD RETIREMENT BOARD

1993 Railroad Experience Rating Proclamation

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board is required by paragraph (1) of section 8(c) of the Railroad Unemployment Insurance Act (ACT) (45 U.S.C. 358(c)(1)), as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The Board is further required by section 8(c) of the Act to publish the amounts so determined and proclaimed. Pursuant to section 8(c), the Board gives notice of the following system-wide factors used in the computation of individual employer contribution rates for 1993:

(1) The balance to the credit of the Railroad Unemployment Insurance Act (RUI) Account, as of June 30, 1992, is $395,527,634.73;

(2) The balance of any new loans to the account, including accrued interest, is zero;

(3) The system compensation base is $2,742,248,385.35;

(4) The system unallocated charge balance is –$102,831,381.08

(5) The pooled credit ratio is 0.0531;

(6) The pooled charge ratio is zero;

(7) The surcharge rate is zero.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1992. The balance in notice (2) is based on data as of September 30, 1992. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Gerald E. Helmling, Chief of Experience Rating, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4567, (FTS) 386–4567.

Dated: January 12, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–1278 Filed 1–19–93; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0157]

Shared Ventures, Inc.; Notice of Surrender of License

Notice is hereby given that Shared Ventures, Inc., 6550 York Avenue South, Edina, Minnesota 55435 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Shared Ventures, Inc. was licensed by the Small Business Administration on September 18, 1981.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchise derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 29, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–1252 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

Los Angeles District Advisory Council; Public Meeting

The U.S. Small Business Administration Los Angeles District Advisory Council will hold a public meeting at 11 a.m. on Thursday, January 28, 1993, at the Small Business Development Center, 363 South Park Avenue, suite 100, Pomona, California, 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. Michael A. Lee, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, (213) 894–2977.

Dated: January 12, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils

[FR Doc. 93–1253 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

Newark District Advisory Council; Public Meeting

The U.S. Small Business Administration Newark District Advisory Council will hold a public meeting at 9 a.m. on Tuesday, January 19, 1993 at the New Jersey Business & Industry Association, 102 West State Street, Trenton, 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: January 6, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–1255 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

San Antonio District Advisory Council; Public Meeting

The U.S. Small Business Administration San Antonio District Advisory Council will hold a public meeting at 10 a.m. on Thursday, February 18, 1993 at the Sheraton Fiesta Hotel, 37 NE. Loop 410, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Rodney W. Martin, District Director, U.S. Small Business Administration, 7400 Blanco Road, suite 200, San Antonio, Texas 78216–4300, (210) 229–4530.

Dated: January 12, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–1256 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

Montpelier District Advisory Council; Public Meeting

The U.S. Small Business Administration Montpelier Advisory Council will hold a public meeting at 10 a.m. on Wednesday, February 3, 1993, at the Vermont Chamber of Commerce, Granger Road, Berlin, Vermont, 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. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, (802) 828–4422.

Dated: January 12, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils

[FR Doc. 93–1254 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 8, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of the date of filing.

Docket Number: 48590.

Date filed: January 5, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC23 MV/P 0193 dated December 9, 1992. Mail Vote 607—Central Africa to TC3.

Proposed Effective Date: January 15, 1993.

Docket Number: 48594.

Date filed: January 8, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC123 Reso/P 0105 dated November 13, 1992. North/Mid/South Atlanta Resos r–1 to r–26.
Proposed Effective Date: March 1, 1993.

Docket Number: 48595.
Date filed: January 8, 1993.
Parties: Members of the International Air Transport Association.
Subject: CAC/Reso/174 dated December 18, 1992. Finally Adopted Resolutions R–1 To R–5.
Proposed Effective Date: April 1, 1993.

Docket Number: 48596.
Date filed: January 8, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1334 dated November 17, 1992. Within Africa passenger resos r–1 to r–23.
Proposed Effective Date: April 1, 1993.

Docket Number: 48597.
Date filed: January 8, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1332 dated November 17, 1992. Middle East-Africa passenger resos r–1 to r–17.
Proposed Effective Date: April 1, 1993.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–1244 Filed 1–19–93; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Flight Service Station at Livingston, MT; Closing

Notice is hereby given that on or about February 17, 1993, the flight service station at Livingston, Montana, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Great Falls, Montana. This information will be reflected in the FAA Organization Statement the next time it is issued. Section 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on January 15, 1993.

Frederick M. Isaac,
Regional Administrator, Northwest Mountain Region.
[FR Doc. 93–1317 Filed 1–19–93; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement; Allegany County, MD

AGENCIES: Federal Highway Administration (FHWA), DOT. National Park Service (NPS), DOI.
ACTION: Notice of intent.

SUMMARY: The FHWA and NPS are issuing this notice to advise the public that an Environmental Impact Statement and section 4(f) Evaluation will be prepared for a proposed roadway and park improvement project in Allegany County, MD.

FOR FURTHER INFORMATION CONTACT: Mr. David Lawton, Planning, Research, Environment and Safety Engineer, Federal Highway Administration, The Rotunda—suite 220, 711 West 40th Street, Baltimore, Maryland 21211 or Mr. Jeff Knoedler, Regional Liaison—Transportation Planning, National Park Service—National Capital Region, 1100 Ohio Avenue, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The FHWA and NPS, in cooperation with the U.S. Army Corps of Engineers (COE) and the Maryland State Highway Administration, will prepare an Environmental Impact Statement (EIS) and section 4(f) Evaluation on a proposal to construct the Canal Parkway and redevelop the C&O Canal National Historical Park in Allegany County, Maryland.

The proposed improvements would involve the construction of a new roadway between MD 51 and the Wiley Ford Bridge for a distance of about two miles. Improvements to the existing Virginia Avenue railroad underpass and the redevelopment of the C&O Canal National Historical Park, from Baltimore Street to Ford Avenue, are also being considered as alternatives.

The purpose of the transportation improvements are to provide improved access into the South Cumberland area. Currently this area is served by a two-lane underpass of the CSX Railroad (Virginia Avenue "Subway"). Due to the physical constraints of the existing intersection, turning movements are difficult for trucks traveling into South Cumberland.

Further, these improvements are considered necessary because this is the only access from I–68 and Downtown Cumberland to South Cumberland and the Cumberland Regional Airport. Since it is a restricted width access point, emergency services could be interrupted due to traffic congestion, accidents, flooding and other events that could cause the underpass to be closed.

The C&O Canal National Historical Park offers visitors the opportunity to appreciate the setting in which it lies and the natural and human history that can be studied along its way. Visitors are also able to enjoy the recreational use of the canal, the parklands and the adjacent Potomac River. Improvements to this park are considered necessary to enhance the opportunities for visitors to experience these resources.

The alternatives under consideration include (1) taking no action, (2) constructing an additional two-lane underpass along Virginia Avenue, (3) constructing an interchange with MD 51 and building a two-lane roadway on new location located west of Lexington Avenue that would connect into Ford Avenue near its intersection with River Avenue, (4) constructing a two-lane parkway which would connect to MD 51 near Wineow Street and extend south along the abandoned westernmost CSX railroad tracks parallel to the C&O Canal (this alignment would pass west of Queen Street and connect into Ford Avenue near the River Avenue intersection), (5) redeveloping the C&O Canal National Historical Park from Baltimore Street to the Wiley Ford Bridge.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held in the fall of 1993. Public notice will be given of the time and place of this hearing.

The Draft EIS and section 4(f) Evaluation will be available for public and agency review and comment prior to the public hearing. A scoping meeting for this project was held in February of 1988.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and EIS should be directed to the FHWA or NPS at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program).

Issued on January 13, 1993.

A. P. Barrows,

Division Administrator, Maryland Division, Federal Highway Administration.

Robert Stanton,

Regional Director, National Capital Region, National Park Service.

[FR Doc. 93–1230 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Announcing the Second Meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the second meeting of the Crashworthiness Subcommittee to the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the April 1992 meeting to examine research questions regarding crashworthiness of vehicles under 10,000 pounds GVW.

DATES AND TIMES: The meeting is scheduled for February 8, 1993, from 10:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in room 8236 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Crashworthiness Subcommittee will include presentations on NHTSA's ongoing frontal crash testing and computer modeling and biomechanics research using finite element models.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88–01—Crashworthiness Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Office of Research and Development, 400 Seventh Street SW., Room 6206, Washington, DC 20590, telephone: (202) 366–4862.

Issued on January 14, 1993.

Ralph J. Hitchcock,

Chairman, Crashworthiness Subcommittee, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 93–1338 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 13, 1993.

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.

U.S. Customs Service

OMB Number: 1515–0127.

Form Number: None.

Type of Review: Extension.

Title: Application for Bonding of Smelting and Refining Warehouses.

Description: A manufacturer engaged in smelting or refining of metalbearing materials shall submit an application for the bonding of the plant to the district director, giving the location of the plant and the nature of the work to be performed.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours Per Respondent: 18 hours.

Frequency of Responses: Other (One-time application).

Estimated Total Reporting Burden: 576 hours.

Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

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. 93–1316 Filed 1–19–93; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 13, 1993.

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: 1545–0845.

Form Number: None.

Type of Review: Extension.

Title: Regulations Under Tax Conventions—France (part 514).

Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Businesses or other-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1138.

Regulation ID Number: INTL–955–86 Final (T.D. 8350).

Type of Review: Extension.

Title: Requirements For Investments to Qualify Under section 936(d)(4) as Investments in Qualified Caribbean Basis Countries.

Description: The collection of information is required by the Internal Revenue Service to verify that an

investment qualifies under Internal Revenue Code (IRC) section 936(d)(4). The recordkeepers will be possession corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.

Respondents: Businesses or other-profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 30 hours.

Frequency of Response: Other.

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Underhauf, (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. 93–1318 Filed 1–19–93; 8:45 am]

BILLING CODE 7830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 13, 1993.

The Department of the 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: 1545–0833

Form Number: None.

Type of Review: Extension.

Title: Regulations Under Tax Conventions—Sweden (Part 520).

Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Businesses or other profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1545–0841.

Form Number: None.

Type of Review: Extension.

Title: Regulations Under Tax Conventions—Austria (Part 516).

Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Businesses or other profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 13 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. 93–1319 Filed 1–19–93; 8:45 am]

BILLING CODE 4830–01–M

Customs Service

Transfer Pricing; Related Party Transactions

AGENCY: U.S. Customs Service, Treasury.

ACTION: The United States Customs Service is publishing this Notice in an effort to inform the public of the Customs valuation laws concerning the appraisement of transactions between related parties. In the Notice Customs will explain: (1) The definition of related parties; (2) the tests for determining whether transaction value is the proper basis of appraisement; and (3) Customs right to question the acceptability of transfer prices declared to Customs as the entered value as well as importers' rights and obligations.

Definition of Related Parties

The U.S. valuation system is based on the Agreement to Implement Article VII of the General Agreement on Tariffs and Trade ("the GATT Valuation Agreement"). The provisions of the GATT Valuation Agreement were incorporated into U.S. law through the Trade Agreements Act of 1979 (19 U.S.C. 1401a; TAA).

Transaction value is the primary basis of appraisement under Article 1 of the GATT Valuation Agreement and under the TAA. Transaction value is defined in section 402(b)(1) of the TAA as the "price actually paid or payable for the merchandise when sold for exportation to the United States" plus specified statutory additions. As will be discussed in the next section, the GATT Valuation Agreement and the TAA contain special provisions under transaction value for arrangements involving related parties.

Under section 402(g) of the TAA the following persons are treated as related:

(A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

In the Statement of Administrative Action ("the SAA"), adopted by Congress, the phase "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person" is understood to cover the following situations:

(1) Where one of them directly or indirectly controls the other;

(2) Where both of them are directly or indirectly controlled by a third person; or

(3) Where together they directly or indirectly control a third person.

Customs has not had occasion to issue any decisions pertaining to the meaning of the term "control" as set forth in section 402(g)(1)(G) and the SAA above.

At the international level, the Note to Article 15 of the GATT Valuation Agreement, Paragraph 4(e) states: For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Determinations of "control" will be made on a case by case basis within the

context of the administrative review procedures available to the importing public under sections 174 and 177 of the Customs Regulations (19 CFR part 176 and 19 CFR part 177).

Tests for Determining the Acceptability of Transaction Value for Related Party Transactions

Under 402(b)(2)(B) of the TAA transaction value between a related buyer and seller is acceptable if the buyer meets one of the following two tests: (1) Circumstances of the Sale or (2) Test Values.

Under the "Circumstances of the sale" test, Customs examines the relevant aspects of the transaction, including: (1) The way in which the buyer and the seller organize their commercial relations, and (2) the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price.

The Statement of Administrative Action contains examples that demonstrate that the price has not been influenced by the relationship. These examples include a showing that the price was settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to it. A further example is a showing that the price is adequate to ensure recovery of all costs plus a profit that is equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind.

The test value method allows the importer to demonstrate the acceptability of transaction value if the transaction value of the imported merchandise closely approximates:

(i) The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States;

(ii) The deductive value or computed value for identical merchandise or similar merchandise.

See, section 402(b)(2)(B) of the TAA.

Under the GATT Valuation Agreement, the "test" values must be values that have been previously accepted by the customs administration. See Note to Article 1, Paragraph 2, note 4. Thus, the "test" values must be previously accepted appraised values for identical or similar merchandise.

Customs Right to Question Transfer Prices and Importers' Obligations to Provide Information

Article 17 of the GATT Valuation Agreement contains the following language.

> Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

Further, in paragraph 7 of the Protocol to the Agreement, which is part of the GATT Valuation Agreement, the parties agreed that Article 17 recognized that customs administrations may need to make enquiries concerning the statements, documents and declarations presented to customs. In addition, the parties recognized that customs administrations have the right to expect the full cooperation of importers in these enquiries.

The Technical Committee on Customs Valuation ("the Technical Committee"), established under the GATT Valuation Agreement to operate under the auspices of the Customs Cooperation Council ("the CCC") addressed the rights and obligations of customs administrations and importers under the Agreement when related party transactions are involved. The Technical Committee document is Commentary 14.1 entitled "Application of Article 1, Paragraph 2".

The Technical Committee recognized at the beginning of the Commentary that transaction value is the primary basis of appraisement for imported goods and should be used to the greatest extent possible. This concept is contained in the Preamble to the GATT Valuation Agreement. Further, the Technical Committee reiterated the provisions that the parties to a transaction must be unrelated under the conditions set forth for transaction value, but if the parties are related, then transaction value is acceptable if one of the two test previously discussed is met. The Technical Committee summed up this idea as follows: "This textual construction means that the existence of a relationship between buyer and seller raises a question which serves to alert the importer and Customs as to the acceptability of the price as the basis of the transaction value." Commentary 14.1, paragraph 2.

The Technical Committee then stated that in cases where it can be shown that the test value method can be met then transaction value could be accepted and there would not be a need to enquire into the circumstances surrounding the sale. Commentary 14.1, paragraph 3. In the absence of a test value, the Technical Committee provided, in paragraphs 5 through 18 of the Commentary, the following questions and answers as guidance for Customs administrations and importers in applying the circumstances of the sale test:

Question 1: Does the existence of a relationship, as defined in paragraph 4 of Article 15, between the buyer and the seller give Customs the right to reject the transaction value?

Answer: No. Relationship, in itself, is not grounds to reject transaction value. Subparagraph 2(a) of Article 1 is clear on this point. The existence of a relationship does, though, serve to alert Customs to the fact that there may be a need to enquire as to the circumstances surrounding the sale.

Question No. 2: Does Customs need to have grounds to enquire into the circumstances surrounding the sale?

Answer: No. Subparagraph 2 (a) of Article 1 directs that the circumstances surrounding a sale between related persons shall be examined. However, the Interpretative Notes to Article 1, paragraph 2 provide, in paragraph 2 thereof, that an examination of the circumstances will not be required in every case but only in those where Customs has doubts about the acceptability of the price.

Question No. 3: Does the Agreement provide detailed guidance as to the doubts about the acceptability of a price that would cause Customs to enquire into the circumstances surrounding the sale?

Answer: No. However, the very structure of the Agreement is such that the existence of a relationship itself gives cause to question whether the price between the seller and the buyer is or is not influenced by the relationship as the price can only be used as the basis of transaction value in circumstances where the relationship has not influenced the price.

In addition, Article 17 provides that nothing in the Agreement shall prevent Customs from satisfying itself as to the truth or accuracy of any statement, document or declaration. Such a declaration would include that made by the related buyer, explicitly or implicitly depending upon the documentation and declaration requirements of the importing country, when the transaction value method is used, i.e., "the price is not influenced because of my relationship with the seller."

Question No. 4: Does Customs have to communicate its "doubts" to the importer when seeking information on the circumstances surrounding the sale or on whether the price has been influenced by the relationship between the buyer and the seller?

Answer: No. Nothing in the Agreement requires Customs to justify the reasons for it requesting information

from an importer with regard to an import transaction. Indeed, paragraph 7 of the Protocol and Article 17 recognize that Customs may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for Customs valuation purposes and have the right to expect the full cooperation of importers in those enquiries. There is no precondition placed upon Customs to the effect that it must justify its reasons for inquiring into a transaction. There is, however nothing to prevent Customs from informing an importer of the reasons for its doubts. This would be desirable if it is able to do so.

Question No. 5: If Customs has grounds for believing that the price of goods in a transaction has been influenced by the relationship does it have to advise the importer of the reason why it so believes?

Yes. Subparagraph 2(a) of Article 1 provides that, where Customs has grounds for considering that transaction value is unacceptable because the relationship has influenced the price and that Article 1 does not therefore apply to the transaction, Customs shall communicate its grounds to the importer. Moreover, the importer must be given a reasonable opportunity to respond and is entitled to be advised in writing of the grounds for Customs' beliefs.

Question No. 6: Is the importer responsible for ensuring that the price has not been influenced by the relationship before declaring the goods to be valued under the provisions of Article 1?

Answer: Yes. When declaring the Customs value under the transaction value method the importer has an obligation to ensure to the greatest extent possible that the price is not influenced. This is placed upon the importer by virtue of Article 1 which stipulates that the transaction value shall be used provided that the buyer and seller are not related or, where the buyer and seller are related, it can be shown that the relationship did not influence the price.

Question No. 7: If Customs has previously examined the circumstances surrounding a sale and the relationship between the buyer and seller in general and has found that the relationship had not influenced the price, is Customs precluded from requesting the same or further information at a later date?

Answer: No. Although it is not intended that Customs examine the circumstances surrounding each and every sale, whenever Customs has a doubt about the acceptability of a price it may direct a new enquiry to the importer.

U.S. Customs examines transfer prices by asking importers to supply information concerning which test they believe they meet for the acceptability of transaction value. In addition, Customs examines transfer pricing in the context of many audits. Customs will continue to focus on this issue and urges importers to provide the information necessary for this analysis.

In addition, Customs encourages any party that may be concerned about whether transaction value is the proper basis of appraisement for its imported merchandise to discuss the transactions with the appropriate field personnel and/or to submit a ruling request under 19 CFR 177.1 *et seq.* to the Commissioner of Customs, Attention Office of Regulations and Rulings, Commercial Rulings Division, 1301 Constitution Avenue, NW., Washington, DC 20229.

Dated: January 13, 1993.

Samual H. Banks,

Assistant Commissioner Commercial Operations.

[FR Doc. 93–1305 Filed 1–19–93; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

NIS University Partnerships Program

AGENCY: United States Information Agency.

ACTION: Notice, request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional partnerships between universities and colleges in the United States and the Newly Independent States of the former Soviet Union. The purpose of this university partnerships program is to foster curriculum development and teaching methodologies, and to modernize the administrative structure at NIS institutions of higher education. Special funding for this program is provided under the Freedom for Russian and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). With this funding USIA will support institutional relationships with the NIS through grants for a period of two (2) years beginning with the 1993–94 academic year (approximately September 1, 1993).

The NIS University Partnerships Program is limited to the following specific academic disciplines:

(1) Law;

(2) Business/economics;

(3) Education/educational reform; and

(4) Government/public policy/public administration. Proposals should focus on reform in one of these eligible disciplines.

The program invites proposals for two-way projects only and is limited to the Newly Independent States of the former Soviet Union: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. USIA will strive to achieve broad geographic diversity in awarding the grants.

Proposals may involve the development of new academic programs or the building and/or restructuring of an existing program. Participating institutions should be prepared to exchange faculty and staff for teaching/lecturing and consulting for a period not less than one month. Each year at least one U.S. participant should be in residence at the partner institution for one semester to serve in a coordinating role. Other activities which serve the purpose of this program include: Provision for team teaching; U.S. visits by foreign faculty to update their academic and professional skills, observe teaching techniques and strengthen their subject area expertise; expansion of library holdings; textbook development; development of audio-visual instructional materials; and the translation or reprinting of U.S. texts and other materials.

Participating institutions must maintain their faculty and staff in partial salary and full benefits. USIA will provide up to $300,000 for each proposal selected for funding over a two-year period. Subject to the availability of funds, USIA anticipates that approximately 10–12 grants will be awarded in the competition.

Proposals will be accepted to establish new institutional linkages or to allow for innovation and strengthening of existing partnerships. Feasibility studies to plan linkages will not be considered.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign institutions are encouraged to consult about the proposed project with U.S. Information Service (USIS) offices in countries where they exist.

DATES: Deadline for proposals: Proposals must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on April 5, 1993. Proposals received by the Agency after

this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents be accepted which are postmarked on April 5, 1993 but received at a later date. It is the responsibility of grant applicants to ensure that their proposal is received by the above deadline. Grants should begin not later than September 1, 1993.

ADDRESSES: The original and 14 complete copies of the proposal should be submitted by the deadline to: U.S. Information Agency, Ref.: NIS University Partnerships Program, Office of Grants Management, E/XE, room 357, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms and guidelines for preparing budgets, interested institutions should contact Ms. Camille Barone or Ms. Deborah Trent at (202) 619–5289, or write to the following address: Specialized Programs Unit (E/ASU), Office of Academic Programs, U.S. Information Agency, 301 4th Street, SW., room 349, Washington, DC 20547.

SUPPLEMENTARY INFORMATION

Overview

The NIS University Partnerships Program is authorized and funded under the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). USIA administers annual university affiliations programs under the authority of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act).

The NIS University Partnerships Program is separate from the USIA University Affiliations Program competition announced annually in this publication. Institutions planning to submit proposals for both competitions should note that USIA will not fund the same project activities under two different grants.

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden estimate, to USIA Clearance Office, M/ADD, room 624, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. (Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 12/31/95.)

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Guidelines

Eligibility

In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. U.S. universities and community colleges applying under this program may collaborate with U.S. scholarly, professional, or international educational associations and organizations. Overseas, participation is limited to recognized degree-granting institutions of higher education and internationally recognized and highly regarded independent research institutes. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium. Participants representing the U.S. institution, traveling under USIA grant support, must be U.S. citizens. Participants representing the foreign institution must be citizens, nationals, or permanent residents of one of the Newly Independent States.

The Agency encourages proposals from eligible Historically Black Colleges and Universities (HBCUs) and other institutions in the U.S. with significant minority student enrollment. Consortia of universities including such institutions are also strongly encouraged to apply.

Proposed Budget

A comprehensive line item budget must be submitted with the proposal by the deadline. Funds requested from the Agency must not exceed $300,000. Specific guidelines for budget preparation are available in the application packet. **Note:** Grants awarded to eligible institutions with fewer than four years of experience in conducting international exchange programs will be limited to $60,000. Funding requests from these institutions must not exceed this amount.

Allowable Costs

International travel (via American flag carriers).
Domestic travel.
Maintenance (including lodging, meals and incidental expenses).
One planning trip per institution for one participant.
Honoraria or compensation for in-country work (up to $150 per day per participant).
Membership in U.S. professional associations and attendance at professional conferences in the U.S. for foreign participants.
Educational materials, not to exceed 25% of the total requested grant amount, which may also include the translation and publication of instructional materials.
Medical insurance for foreign participants during U.S. visits.

Under direct costs, such as office supplies and communications expenses (including telephone, facsimile, postage and delivery) may not exceed 10% of the total requested grant amount.

Application Requirements

Proposals must be submitted within the deadline and conform to the selected countries and academic fields identified in this announcement. The proposal package must include one original and 14 complete copies and all required documentation. Proposals should be presented as follows:

1. *A proposal cover sheet* (in addition to the Bureau cover sheet) with names of both institutions, name of foreign country, project directors including their addresses, telephone and fax numbers, and academic field(s) of proposal. A sample cover sheet format is included in the application packet.

2. *An executive summary* (abstract) of proposed project, not to exceed one single-spaced page.

3. *A narrative*, not to exceed twenty double-spaced pages, including descriptions of institutions and participating academic departments or schools; a detailed description of the proposed partnership program, including names and qualifications of designated project directors; a statement of need for the proposed program; a detailed description of proposed activities, including who will travel, when, where, and how activities will occur for each year; anticipated benefits of the program to participating institutions; and a plan for institutional evaluation of the project.

4. *A comprehensive line item budget* outlining specific expenditures and sources from which funds are anticipated. Detailed information

concerning eligible and ineligible items and required budget format is available in the application packet.

5. *Documentation of institutional support* for the proposed linkage, including signed letters of endorsement from the president, chancellor, or director of the U.S. and foreign institutions, making specific reference to the NIS University Partnerships Program and committing the institution to maintaining its exchange participants on partial salary and customary benefits during the exchange. A general letter of support or an agreement between the participating institutions without reference to the maintenance of salaries and benefits will not fulfill this requirement. A grace period will be granted to applicants for the submission of this documentation. It must be received at USIA by 5 p.m. Washington, D.C. time on April 19, 1993. A sample letter of endorsement and commitment is included in the application packet.

6. *Brief academic resumes,* not to exceed two single-spaced pages, of participating faculty/staff from both institutions, clearly indicating level of language skills, relevant overseas experience, knowledge of prospective partner country, relevant scholarly and non-scholarly travel, publications, and research activities. Note: All pages in excess of the two-page limit will be discarded.

Review Process

The NIS University Partnerships Program review process will be conducted in three stages: technical, academic, and Agency. Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. Technically eligible proposals will be forwarded to *ad hoc* panels of area and subject specialist academics who will weigh their academic merit, potential for fostering curriculum reform and development, and feasibility. All proposals recommended for funding by the *ad hoc* academic panels will be reviewed in the Agency for relevance to the objectives of the Freedom Support Act of 1992 by the Office of Academic Programs, the European Area Office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Academic Review Criteria

Proposals are reviewed by independent academic peer panels with geographic and discipline expertise which make recommendations to the Agency based on the following criteria:

1. Soundness of proposal indicating academic quality, as reflected by a clear statement of program goals and means to accomplish the goals, and detailed description of project with statement on how the proposed project will be implemented and evaluated.

2. Probable impact of the proposed partnership in achieving Freedom Support Act goal of reforming educational administration and curricula at the NIS partner institution.

3. If the proposal requests support for an established active linkage, evidence that the NIS University Partnerships funding would result in innovation in the exchange relationship.

4. Evidence that theme(s) of proposed project fits field(s) stated in the announcement.

5. Feasibility of the program plan as it relates to the stated goals and selected topics and activities.

6. Quality of scholarly and professional credentials/experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required).

7. Appropriateness of length of exchange visits given project goals.

8. Evidence of strong institutional commitment by participating institutions.

9. Evidence of mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties.

10. Evidence from American institutions of prior experience in the NIS and previous relations with proposed NIS partner institutions.

Agency Review Criteria

USIA will consider proposals recommended by academic review panels for further review. Agency considerations will be based on:

1. Academic quality, reflected in academic review panel's comments and recommendations.

2. Promise of long-term impact in achieving Freedom Support Act objectives.

3. Feasibility of program plan.

4. USIA overseas post assessments of need and feasibility.

5. Cost-effectiveness.

6. Geographic diversity in the NIS.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 13, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–1171 Filed 1–19–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 12
Thursday, January 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

LEGAL SERVICES CORPORATION

Board of Directors Annual Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 4740.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 29, 1993, scheduled to commence at 9:30 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Legal Services Corporation, 750 1st Street, N.E., 11th Floor, The Board Room, Washington, D.C. 20002, (202) 336–8800.

CHANGES IN THE MEETING:

MATTERS TO BE CONSIDERED:

The following will be considered as sub-item "a." of agenda item number 7.

a. Presentation by Representative of the Clinical Legal Education Association on the Continued Funding of Law School Clinical Programs.

In addition, the following will be considered as sub-items "a.," "b.," and "c." of agenda item number 12.

a. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1993 Consolidated Operating Budget.
b. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1994 Appropriation Request.
c. Consideration of Recommendation on Whether to Formally Adopt, and if so, to Adopt, a Corporate Position as to the Corporation's Program Operating Responsibilities as Referred to in the Inspector General Act.

The revised agenda is as follows.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of December 7, 1992 Meeting.
3. Election of Officers.
   a. Election of Chairperson.
   b. Election of Vice Chairperson.
4. Formation of Standard Operating Board Committees.
   a. Audit and Appropriations Committee;
   b. Office of the Inspector General Oversight Committee;
   c. Operations and Regulations Committee; and
   d. Provision for the Delivery of Legal Services Committee.
5. Formation of Special Board Committees.
   a. Special Reauthorization Committee.
   b. Other.
6. Status Report on the Competition Effort.
7. Presentation by Representatives of the American Association of Law Schools on the Continued Funding of Law School Clinical Programs.
   a. Presentation by Representative of the Clinical Legal Education Association on the Continued Funding of Law School Clinical Programs.
8. Chairman's and Members's Reports.
9. Consideration of Operations and Regulations Committee Report.
   a. Consideration of Amendments to Sections 1610 and 1611 of the Corporation's Regulations.
   b. Consideration of Amendment to Section 1612 of the Corporation's Regulations.
10. Consideration of Office of the Inspector General Oversight Committee Report.
11. Consideration of Provision for the Delivery of Legal Services Committee Report.
12. Consideration of Audit and Appropriations Committee Report.
    a. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1993 Consolidated Operating Budget.
    b. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1994 Appropriation Request.
    c. Consideration of Recommendation on Whether to Formally Adopt, and if so, to Adopt, a Corporate Position as to the Corporation's Program Operating Responsibilities as Referred to in the Inspector General Act.
13. Consideration of Special Reauthorization Committee Report.
14. President's Report.
15. Inspector General's Report.

CLOSED SESSION (Continued)

16. Consideration of Board's Special Counsel's Report on the Matter of *Gawler v. LSC, et al.*
17. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party.
18. Consultation with Board by President on Personnel-Related Matters.
19. Approval of Minutes of Executive Session Held on December 7, 1992.

OPEN SESSION: (Resumed)

20. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate individuals who are blind or have visual impairment.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 15, 1993.
Patricia D. Batie,
Corporate Secretary.
[FR Doc. 93–1509 Filed 1–15–93; 3:17 pm]
BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 18, 25, February 1, and 8, 1993.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 18

Thursday, January 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by NUMARC on Industry Review of NRC Regulations and Regulatory Process (Public Meeting)
(Contact: NUMARC—Joe Colvin, 202–872–1280)

Friday, January 22

2:00 p.m.
Briefing on Status of Medical Use Activities (Public Meeting)
(Contact: John Greeves, 301–504–3334)

Week of January 25—Tentative

Friday, January 29

10:00 a.m.
Briefing on Implementing Guidance for the Maintenance Rule and Industry Verification and Validation Effort (Public Meeting)
(Contact: William Russell, 301–504–1274)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by Agreement States on Their Activities in Medical Use Area (Public Meeting)
(Contact: Carlton Kammerer, 301–504–2321)

Week of February 1—Tentative

Wednesday, February 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Monday, February 8

10:00 a.m.
Briefing by IIT on Oncology Services Incident (Public Meeting)
(Contact: Carl Paperiello, 708–790–5517)
2:00 p.m.

Periodic Briefing on EEO Program (Public Meeting) (Contact: Jim McDermott, 301–492–4661)

Tuesday, February 9

2:30 p.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: William Bateman, 301–504–1711)

4:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: (William Hill (301) 504–1661.

Dated: January 15, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-1557 Filed 1–15–93; 3:41 pm]

BILLING CODE 7590-01-M

federal register

Thursday
January 21, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Fort Peck Irrigation Project, MT; Proposed Operation and Maintenance Assessment Rate Increase; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fort Peck Irrigation Project, MT; Proposed Operation and Maintenance Assessment Rate Increase

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final notice.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register** on February 4, 1992, 57 FR 4312, a proposal to increase the operation and maintenance assessment rate of the Fort Peck Irrigation Project by 70 cents. No adverse comments were received by the project during the 30-day comment period.

DATES: Effective upon publication in the **Federal Register.**

ADDRESSES: This notice will be published and posted at the following locations:

U.S. Post Offices

Poplar, Montana 59255
Wolf Point, Montana 59201

Newspaper

Herald News
Wolf Point, Montana 59201

Bureau of Indian Affairs

Fort Peck Agency
Poplar, Montana 59255

FOR FURTHER INFORMATION CONTACT: Fort Peck Superintendent, Bureau of Indian Affairs, Fort Peck Agency, Poplar, Montana 59255.

SUPPLEMENTARY INFORMATION: The Fort Peck Irrigation Project Manager met with the Fort Peck Water Users Association on January 6, 1992 and held a public meeting with the landowners and water users of the project on January 7, 1992. In agreement with the Fort Peck Water Users Association, landowners and water users present at the meetings, the project will increase the O&M rate by 70 cents.

The Fort Peck Irrigation Project's O&M rate will increase from $13.30 per assessable acre to $14 per assessable acre.

Appeal Process

Chapter 25, part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be in writing and received by the Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101 within 30 days after publication in the **Federal Register.**

Authority: The authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of O&M rates and related information is published pursuant to the Code of Federal Regulations, chapter 25, part 171 and under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order No. 3150, section 7b.

Dated: January 8, 1993.

Deborah J. Maddox,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–1227 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
January 21, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Mission Valley Power Utility, MT; Power Rate Adjustment; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, MT; Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final notice.

SUMMARY: Pursuant to 25 CFR 175.13 the Bureau of Indian Affairs has proposed and is now finalizing a power rate adjustment to reflect increased cost of purchased power for the Mission Valley Power Utility. The final determination on power rate adjustment is based on increased cost of power purchased from Montana Power Company's Kerr Dam Hydroelectric Facility. The increased cost of purchased power is the product of Montana Power Company's authority, under their Federal Energy Regulatory Commission license for Kerr Dam, to annually adjust their power rates based on the Consumer Price Index.

DATES: Interested parties were provided the opportunity to submit written comments on the proposed pass-through power rate adjustment to the Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Ave., Portland, Oregon 97232–4169 during the period 30 days subsequent to December 4, 1992. The pass-through rate adjustment is now final and effective on the date of this publication or January 1, 1993, which ever date occurs later.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Ave., Portland, Oregon 97232–4169, telephone (503) 231–6750.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce a final decision on the adjustment in the Mission Valley Power Utility (MVP) electric power rates. This adjustment is the result of an increase in the electric power rates charged by Montana Power Company (MPC), one of three sources of electric power marketed by MVP. Pursuant to the Federal Energy Regulatory Commission license for the Kerr Dam Hydroelectric Facility, MPC is allowed to adjust their electric power rates annually based on the Comsumer Price Index.

The affected public and interested parties were provided an opportunity to provide input to the Portland Area Director's decision on the proposed pass-through rate increase during the period from November 4, 1992 to December 4, 1992. No comments were received during the 30 day comment period.

Prior to September 5, 1992 MPC's electric rate was 14.24 mills per kilowatt hour (kWh). This rate increased to 14.57 mills per kWh effective September 5, 1992, an increase of .33 mills.

Pursuant to the authority provided in 25 CFR 175.13 the Bureau of Indian Affairs has finalized the decision to adjust consumer electric power rates charged by the Mission Valley Power Utility to reflect the increased electric power cost charged by MPC. The following table identifies the finalized power rate adjustment by consumer class.

Consumer class	Present rate (per kWh)	Proposed rate (per kWh)
Residential	$0.04375	$0.04385
No. 2 General[1]	0.0516	0.05170
Irrigation	0.03440	0.3450
Commercial[2]		
Block 1 (first 18,000 kWh)	0.04135	0.04145
Block 2 (over 18,000 kWh)	0.03328	0.03338

[1] Includes metered street lighting rates.
[2] Small and large commercial classes.

Based on 1,200 kWh usage a Mission Valley Power residential customer's bill would increase from $63.50 under the current rate to $63.62 under the proposed adjusted rate.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of final determination of the power rate adjustment and related information is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order No. 3150, section 7b, and in accordance with § 175.13 of title 25 of the Code of Federal Regulations, which provides for the adjustment of electric power rates to reflect changes in the cost of purchased power or energy.

Dated: January 8, 1993.

Deborah J. Maddox,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–1258 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
January 21, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Mohegan Tribe and Nation, CT; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Mohegan Tribe and Nation, c/o Eleanor Fortin, P.O. Box 58, Voluntown, Connecticut 06384

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 6, 1992, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

Dated: January 5, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–1259 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
January 21, 1993

Part V

Environmental Protection Agency

40 CFR Part 307
Hazardous Substance Superfund:
Response Claims Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 307

[FRL–4012–6]

Response Claims Procedures for the Hazardous Substance Superfund

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is promulgating this regulation to establish the procedures for filing, evaluating, and resolving claims asserted against the Hazardous Substance Superfund (the Fund) established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), (CERCLA or the Act). These claims must be for costs incurred in responding to releases or threats of releases of hazardous substances, pollutants, or contaminants. In addition, this regulation establishes procedures for notifying concerned parties regarding limitations on the payment of response claims. This regulation is consistent with EPA's revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

EFFECTIVE DATE: This final rule is effective February 22, 1993.

ADDRESSES: The official record for this rulemaking is in the Superfund Docket, located in room 2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–3046. The record is available for inspection by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (5203 G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603–8798, or the RCRA/CERCLA Hotline, (800) 424–9346, (TDD (800) 553–7672) (or in the Washington, DC metropolitan area (703) 920–9810 (TDD (703) 486–3323)).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Response to Comments on Each Subpart (a detailed index is set forth at the beginning of this section)
III. Summary of Supporting Analyses

I. Introduction

EPA is today promulgating the Response Claims Procedures for the Hazardous Substance Superfund (40 CFR part 307) (hereafter referred to as the RCP). Today's final rule is based on the procedures proposed on September 13, 1989, at 54 FR 37892. Six commenters submitted a variety of specific comments on the **Federal Register** proposal.

This regulation provides the forms and procedures required by section 112(b)(2) of CERCLA for filing response claims authorized by sections 111(a)(2) and 122(b)(1) of the Act. The RCP applies only to claims submitted for reimbursement from the Fund established by section 517 of SARA. This regulation is intended for use by any individual, private entity, potentially responsible party (PRP), or foreign entity eligible to submit a claim pursuant to sections 111(a)(2) or 122(b)(1) of CERCLA. Such persons, as prescribed by CERCLA section 112, must use the forms and procedures as promulgated in this rule. EPA will utilize the procedures in this rule, which are issued under the authority of CERCLA section 112, to implement its authority to reimburse from the Fund parties who are potentially liable for a release and who agree to conduct response actions pursuant to section 122(b)(1) of CERCLA.

The RCP addresses only response claims; i.e., claims for necessary response costs incurred as a result of carrying out the NCP. The NCP is established under section 311(c) of the Clean Water Act, as amended (33 U.S.C. 1321 (c)) and is revised under section 105 of CERCLA. The purpose of the NCP is to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants or contaminants.

The preamble to the proposed rule provided a detailed explanation of the provisions of the RCP. The preamble to today's final rule consists mainly of responses to public comments received on the proposed RCP. Therefore, both preambles should be reviewed for clarification of issues on the meaning or intent of today's final rule. Unless directly contradicted or superseded by this preamble or rule, the preamble to the proposed rule reflects EPA's intent in promulgating today's procedures.

The preamble to today's rule responds to the public comments received on the proposed RCP. In general, a separate discussion is provided for each section of the proposed rule on which comments were received. If a particular section of the proposed rule is not listed below, comments were not received on that section.

Each of the discussions in the second section of this preamble is organized as follows: (1) A summary of the comments received on each issue is presented under the heading "Comment;" (2) EPA's response to the comments is set out under the heading "Response;" and (3) any revisions made to the proposed rule language are presented under the heading "Final Rule." Revisions to the proposed rule that are simply editorial or that do not reflect substantive changes may not be described under the heading "Final Rule." In addition, citations, particularly to the NCP, have been updated or corrected, where appropriate.

EPA recently initiated an evaluation of its policy and practices in regard to mixed funding, including preauthorization and procedures for evaluating response claims. The evaluation is being conducted in part in response to criticisms that the Agency has used its authorities for mixed funding too infrequently and has erected barriers to those interested in qualifying for mixed funding, including preauthorization. Although no conclusions are yet available from this evaluation, EPA will consider making revisions to today's rule that are deemed necessary to comport with the findings and recommendations accepted in this evaluation.

II. Response to Comments on Each Subpart

Index to Response to Comments

Section numbers used in this index and in headings in preamble sections below refer to section designations in the final rule.

Subpart A—General

Sec.
307.11 Scope and Applicability
307.13 Computation of Time
307.14 Definitions

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

307.21 Nature of Eligible Claims
307.22 Preauthorization of Response Actions
307.23 EPA's Review of Preauthorization Applications

Subpart C—Procedures for Filing and Processing Response Claims

307.30 Requesting Payment from the Potentially Responsible Party
307.32 Verification, Award, and Administrative Hearings

Subpart D—Payments and Subrogation

307.41 Subrogation of Claimant's Rights to the Fund

307.42 Fund's Obligation in the Event of Failure of Remedial Actions Taken Pursuant to Section 122

Appendix A—Application for Preauthorization of a CERCLA Response Action

Appendix B—Claim for CERCLA Response Action

Subpart A—General

Comment

One commenter indicated that the proposed RCP is straightforward and easy to comprehend. Another commenter endorsed EPA's effort to develop the proposed procedures and indicated that the proposed rule furthers the Agency's policy of encouraging private sector cleanups. However, a number of commenters expressed the opinion that the proposed rule is overly detailed, time-consuming, costly, complicated, and bureaucratic.

Response

EPA believes that the proposed RCP is not overly detailed, time-consuming, costly, complicated, or bureaucratic for the following reasons. Under section 111 of CERCLA, EPA, through delegation by the President (Executive Order (E.O.) 12580, 52 FR 2923, January 29, 1987), is assigned the responsibility of overseeing and managing the Fund. One of the Agency's primary roles in overseeing and managing the Fund is to ensure appropriate uses of Fund monies.

Specifically, CERCLA section 111(a)(2) provides that payment of any claim for necessary response costs incurred by "any other person" shall be made, provided that "such costs must be approved * * * and certified by the responsible Federal official." The Agency, therefore, believes that the RCP is consistent with Congressional intent with respect to ensuring the appropriate uses of Fund monies. In order to fulfill this responsibility, the RCP was developed in a manner under which the Agency can determine whether: (1) The response costs were "necessary"; (2) the response costs were incurred "as a result of carrying out" the NCP; (3) the response costs were "approved" under the NCP; and (4) the response costs were "certified" by the Agency.

In addition, section 112(b)(1) of CERCLA authorizes EPA, through delegation (E.O. 12580), to develop and promulgate the procedures for submitting response claims against the Fund. EPA believes that the procedures contained in the rule are necessary to ensure appropriate uses of Fund monies and to make certain that Fund monies that are available for response claims are expended in accordance with environmental and public health priorities. Through its review of applications for preauthorization and response claims under the RCP, the Agency may grant preauthorization to pay for only those response actions that are of sufficient priority to merit Fund expenditures.

EPA believes that the RCP will also reduce the likelihood that a response action undertaken by a potential claimant will either create new or exacerbate existing environmental problems at a site. As stated above, section 111(a)(2) of CERCLA requires that payment of response claims from the Fund must be for response costs incurred in carrying out the NCP. Under the RCP, the Agency will have an opportunity to review a response action proposed by an applicant in order to ensure that it is consistent with the NCP and to evaluate the technical capabilities of that applicant to conduct the proposed response action. Moreover, in order to be reimbursed for response costs incurred, a PRP must conduct the response action in a manner consistent with the NCP, the Consent Decree, and the Preauthorization Decision Document (PDD).

Finally, EPA believes that a potential claimant should have a reasonable assurance of reimbursement when presenting a claim against the Fund. This reasonable assurance is achieved by identifying and describing in the RCP the Agency's expectations and standards that will be applied when a claimant seeks reimbursement of the response costs incurred.

Final Rule

EPA is promulgating the final rule as proposed, with the exception of the specific changes discussed below.

Comment

Several commenters also stated that the unnecessarily burdensome requirements set forth in the proposed procedures may discourage PRPs from entering into mixed-funding agreements, which would run contrary to the Congressional intent in establishing the CERCLA section 122 mixed-funding provision.

One of these commenters stated that under the Agency's Superfund settlement policy, the mixed-funding policy, and the detailed procedural and substantive requirements of the proposed rule, EPA has erected a significant and largely unnecessary obstacle to the negotiation of mixed-funding settlements. According to the commenter, at a minimum, the Agency has made the settlement process more time-consuming and costly for the Federal Government and PRPs to negotiate. The commenter expressed the belief that the approach under the proposed rule, while possibly conserving Superfund monies in the short term, is counter-productive and contrary to Congressional intent in the long run, as it makes it less attractive and more costly for PRPs to enter into Superfund settlements.

Another commenter noted that mixed-funding agreements routinely provide for EPA oversight, and often for State involvement as well, and that this substantial, continuous oversight throughout the project ensures that the work is not only necessary and protective of human health and the environment, but is also managed and performed in an efficient manner. However, because the proposed rule imposes a variety of requirements that are unnecessary in the settlement context, and adds another level of EPA oversight, it will result in substantial costs being devoted to meeting excessive administrative requirements instead of being used toward the efficient cleanup of sites. The inefficiency caused by the proposed rule will, therefore, make mixed-funding settlements less attractive financially to PRPs. The commenter also stated that the imposition of these numerous requirements and additional Agency oversight in mixed-funding situations will serve to stifle not only the initiative and efficiency of PRPs, but also that of EPA and Department of Justice (DOJ) negotiators.

Finally, one of these commenters maintained that because the proposed procedures are costly and time-consuming, and because the process is complicated, it is unlikely that EPA will be willing to wait for the process to take place. Also, the burdensome process will discourage the submission of applications for preauthorization from innocent landowners of contaminated sites as well as from PRPs with less than 100 percent responsibility for contaminating a site. The commenter also noted that by imposing overly burdensome requirements concerning the filing of applications for preauthorization and the awarding of response claims, the Agency has not fulfilled the intent of Congress.

Response

The Agency disagrees with the commenters who maintained that the RCP will create an obstacle to or discourage a PRP from negotiating a mixed-funding settlement with the Federal Government because the RCP will make reaching the settlement more costly and time-consuming. EPA believes that the promulgation of the

RCP, which sets forth clearly the requirements for a PRP to obtain prior approval to conduct a response action and, subsequently, to seek reimbursement of the costs incurred, in combination with the Model CERCLA Remedial Design/Remedial Action (RD/RA) Consent Decree, will actually encourage more mixed-funding settlements and will, therefore, result in a greater number of voluntary cleanups being undertaken by PRPs at Superfund sites.

Under section 107 of CERCLA, PRP liability is strict, joint, and several, unless PRPs can clearly demonstrate that the harm at a site is divisible. Because of joint and several liability, the negotiation of a mixed-funding settlement should be preferable to PRPs. The alternative of negotiating a mixed-funding settlement with the Agency can significantly reduce the overall financial burden for a PRP.

EPA also believes that the RCP will not serve to stifle the initiative of EPA and DOJ negotiators. In situations where EPA has determined that the most effective method to clean up a site is through the use of a mixed-funding agreement, the Agency will actively pursue negotiations with PRPs.

The Agency does not agree that the RCP adds a costly, additional level of EPA oversight to response actions conducted under mixed-funding settlements. In fact, ongoing oversight may be diminished because the RCP clearly illuminates the requirements concerning overall management of the response action, procurement of response action contractors, implementation, and documentation, the ongoing oversight of these areas may be diminished. A brief discussion of the Agency's "focused approach" to overseeing a remedial design and remedial action performed by a PRP under a mixed-funding settlement should help to clarify this point.

A preauthorized response action undertaken pursuant to a mixed-funding settlement presents an unusual management situation for EPA because the response action is partially reimbursed by the Agency but is carried out by a private party. Because EPA, prior to entering the agreement, will have evaluated the applicant's capabilities to perform the response action consistent with the NCP, EPA has determined that a resource-intensive, day-to-day oversight of the preauthorized response action will not be necessary. However, the Agency has developed a focused approach to oversight in an effort to ensure that a PRP carries out the RD/RA consistent with the NCP, the Consent Decree, and the PDD, and to hold the PRP accountable and responsible for all activities at the site.

Under this approach, the Agency will focus on the most significant aspects of the response action, such as scheduling, major modifications, emergency actions, and project closeout. EPA will oversee these activities by reviewing and approving certain key documents submitted by the PRP throughout the RD/RA, such as the RD and RA work plans, project schedules, preliminary design, final design, and Construction Quality Assurance and Construction Quality Control Plans. In addition, as part of the Consent Decree, EPA may require the PRP to retain an Independent Quality Assurance Team to evaluate the remedial and quality control activities. Thus, the level of EPA's oversight effort may be increased or decreased over time, depending on the capabilities of the PRP's design and construction teams, the nature of the technology selected, and the provisions of the Consent Decree and the PDD. A more detailed discussion of this focused approach to oversight is contained in the "Interim Final Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties" (OSWER Directive 9355.5–01, February 1990).

EPA disagrees with the commenters that it is unlikely that the Agency will be willing to wait for the response claims process to take place. EPA will preauthorize a response action only if the response action is of sufficient priority to merit Fund expenditure. The Agency will consider all applications for preauthorization against the alternatives of initiating an enforcement action or conducting the remedial action through a cooperative agreement or a contract. If the Agency determines that a response action by a private party or a PRP under the response claims process is the best available means to address a release at a site, EPA will grant preauthorization for the proposed response action at the site through the response claims process. In addition, the Agency has already issued and plans to issue further guidance on the claims process for applicants and claimants that will reduce the amount of time necessary to complete the required procedures at each stage of the response claims process.

Final Rule

EPA is promulgating the final rule as proposed, with the exception of the specific changes discussed below.

Comment

Another commenter stated that the proposed NCP should be revised to allow a private-party response action to be exempt from on-site permit requirements. The commenter maintained that the EPA oversight associated with the PDD and the subsequent evaluation of the clean-up process is adequate to address the on-site environmental concerns. The commenter also encouraged EPA to publish in the **Federal Register** (on a periodic basis) the identity of those parties that have submitted either an application for preauthorization or a claim form. This commenter felt that the commitment to do this on an annual basis would document the success that the claims approach has had for encouraging PRP-lead CERCLA response actions.

Response

Suggestions concerning the permit waiver provisions of CERCLA section 121(e)(1) were considered in the revisions to the NCP and are therefore inappropriate for this rulemaking effort. Under the revised NCP, the Agency at § 300.400(e)(1), has determined that certain types of response actions may qualify for the permit waiver contained in CERCLA section 121(e)(1). CERCLA section 121(e)(1) provides that no Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site, where such remedial action is selected and carried out in compliance with CERCLA section 121. Response actions qualifying for the permit waiver include those conducted by a lead agency pursuant to CERCLA sections 104, 106, 120, 121, and 122. Response actions by a lead agency include those response actions conducted by a private party pursuant to CERCLA sections 106 or 122. Such response actions will also qualify for the permit waiver.

Because EPA does not at this time anticipate preauthorizing removals or RI/FSs, except on a limited basis, most applications for preauthorization will be for RD/RAs. However, EPA will only preauthorize remedial actions for site that is on the NPL, provided that it does not intend to: (1) compel a PRP to clean up the site using enforcement mechanisms under CERCLA section 106; or (2) initiate a Fund-financed response through a contract or cooperative agreement. Thus, EPA's use of preauthorization will be limited primarily to RD/RAs conducted by PRPs pursuant to mixed-funding settlements.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.11 Scope and Applicability

Comment

Several commenters questioned how the final rule will affect PDDs that were issued by the Agency prior to the effective date of the rule. These commenters suggested that EPA should explicitly state in the final rule that the procedures contained in the rule do not in any way alter the effect or interpretation of any pre-existing PDDs, and that the terms of any previously executed PDD will take precedence in the event of procedural or substantive conflicts with the rule.

Response

EPA concurs with these commenters that the procedures set forth in the RCP should not in any way alter the effect or interpretation of any PDDs that were issued by the Agency prior to the effective date of the final rule. In the event of a procedural or substantive conflict between the final rule and a previously issued PDD, the terms and conditions of the previously issued PDD will take precedence.

However, a potential claimant whose proposed response action was preauthorized by the Agency prior to the effective date of the RCP who determines that one or more provisions of the RCP are more favorable to him than the terms and conditions contained in the previously issued PDD may elect to comply with the provisions of the RCP. If a potential claimant elects to comply with the provisions of the RCP, he must notify the appropriate EPA Regional Office in writing of this election prior to such provisions taking effect, but not later than the time of the submittal of any claim. The Regional Office, in turn, will acknowledge receipt of such notice of election to comply with the provisions of the RCP and may revise the PDD as appropriate.

Final Rule

Section 307.11 is modified as follows:

1. Section 307.11(b) is added to the rule as follows:

"This part does not affect the terms and conditions contained in PDDs issued prior to the effective date of this part. However, a potential claimant may elect to comply with the provisions of this part, rather than the terms and conditions of a PDD issued prior to the effective date of this part, if he so chooses. Written notice of this election must be provided to EPA by the potential claimant prior to such provision taking effect, but not later than the time of the submittal of any claim to EPA. EPA will provide a written acknowledgement of the potential claimant's election and may revise the PDD as appropriate."

2. The section has been renumbered accordingly.

Section 307.13 Computation of Time

In order to clarify how EPA will compute any period of time described or allowed in the RCP, the Agency is adding new § 307.13—Computation of Time.

Final Rule

Subpart A is modified as follows:

1. New § 307.13—Computation of Time—is added to the rule as follows:

"In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day."

2. Sections 307.13 and 307.14 are redesignated as new § § 307.14 and 307.15.

Section 307.14 Definitions

Comment

A commenter stated that the definition and potential interpretation of the term "necessary costs" is critical to the operation of the procedures contained in the proposed rule. A "necessary cost" is defined as one that is determined by EPA to be "required," "reasonable," "allocable," and "otherwise allowable." The commenter expressed concern that the potential interpretation of these criteria introduces an excessive element of risk and uncertainty into the claims process. The commenter recommended that EPA should constrain its review of whether costs are "necessary" to avoid potentially unfair, inconsistent, or unduly burdensome claims review procedures. The commenter also suggested that any costs that the PRP incurred in good faith, in substantial compliance with the PDD, and that are not unreasonable, should be paid promptly and in full. Reimbursement of such costs should not be denied, reduced, or delayed due to trivial or inconsequential deficiencies in the paperwork.

Response

The Agency disagrees that the potential interpretation of the term "necessary costs" introduces an excessive element of risk and uncertainty into the claims process. Section 111(a)(2) of CERCLA authorizes the Agency, through delegation (E.O. 12580), to use the Fund to reimburse a claimant only for "necessary" response costs incurred as a result of conducting a preauthorized response action. The Agency has defined the term "necessary costs," in part, to provide more certainty as to the meaning of this term. EPA has explicitly defined the term "necessary costs" under § 307.14 of the RCP as follows:

"Necessary response costs are costs determined to be:

(1) Required (based upon the site-specific circumstances);

(2) Reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person);

(3) Allocable (incurred specifically for the site at issue); and

(4) Otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles) * * * ."

In addition, EPA has developed and will issue guidance to prospective claimants on the response claims process that addresses the determination of "necessary" response costs.

EPA generally agrees with the commenter that the PRP should be reimbursed for response costs promptly and in full if the PRP incurs response costs in good faith, in substantial compliance with the Consent Decree and the PDD, and the costs are not unreasonable. As provided for in the RCP, if a claim sufficiently fulfills the requirements established in the PDD, the Agency will promptly award the claim and reimburse the claimant in the amount of the approved response costs. Also, payment of a claim will not be denied, reduced, or delayed due to trivial or inconsequential deficiencies in the paperwork. For mixed-funding claims, once a perfected claim has been received by the Agency, EPA will pay the amount due within 60 days or interest will begin accruing on that amount. However, the Agency would like to emphasize that in order for EPA to be able to adequately evaluate a claim in a timely manner, the claimant must submit complete and accurate information and documentation.

Final Rule

In order to clarify the meaning of the term "perfected," the Agency is making a minor revision to the definition of this term in § 307.14. The definition of "perfected" will read as follows:

"Perfected means the point at which EPA determines that the written demand for a sum certain (i.e., claim) has the documentation necessary to substantiate the appropriateness of the amounts claimed; i.e., the claim is technically complete."

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

Section 307.21 Nature of Eligible Claims

Comment

One commenter urged the Agency to promulgate a final rule that would allow

for the use of mixed-funding settlements for remedial actions at both National Priorities List (NPL) and non-NPL sites. The commenter argued that the statutory language of CERCLA section 122 does not prohibit mixed-funding settlements for remedial actions at non-NPL sites. The commenter also stated that mixed-funding settlements at non-NPL sites make practical sense, since there are occasional hazardous waste sites that warrant expedited remediation, although the sites have not yet gone through the lengthy process to qualify for listing on the NPL.

Response

EPA does not agree with this commenter. Section 122(a) of CERCLA, which authorizes the use of mixed-funding agreements, requires that such agreements be facilitated, whenever practicable, that are " * * * in the public interest and *consistent with the National Contingency Plan* in order to expedite effective remedial actions and minimize litigation." (Emphasis added.) Section 111(a)(2) of CERCLA requires that payment of a claim must be for necessary response costs that were incurred " * * * as a result of *carrying out the National Contingency Plan*." (Emphasis added.)

Section 300.68(a)(1) of the 1985 NCP (and § § 300.425(b) and 300.700(d)(3)(iii) of the 1990 NCP) provides that only those releases at sites included on the NPL will be eligible for Fund-financed remedial actions. This principle was upheld in State of Ohio v. U.S. EPA, 838 F.2d 1325 (D.C. Cir., 1988). The NPL is EPA's list of the most serious hazardous waste sites identified for possible long-term remedial response. Thus, the NPL is used to identify priorities among releases and potential releases and serves as a basis to guide the allocation of Fund resources among releases. The purpose of the NPL restriction is to ensure that the limited monies in the Fund are used only at sites that have been identified as posing the greatest potential threats to human health and the environment. Inclusion on the NPL, however, is not a precondition for the preauthorization of removal actions or remedial planning activities.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Another commenter stated that the proposed rule will result in a costly process for a PRP to obtain Agency approval to conduct a cleanup. The commenter maintained that the additional planning and management costs incurred by an applicant must also be reimbursed from the Fund.

Response

The costs incurred for obtaining EPA's grant of preauthorization is a cost associated with the negotiation of a settlement and, as such, is not reimbursable from the Fund. The preauthorization process is an application for a benefit (i.e., a reimbursement from the Fund). Thus, the costs associated with such applications are not reimbursable. In addition, the preauthorization process is an opportunity for a PRP to propose his methods for management of the remediation at a site and to receive comments from EPA concerning the eventual reimbursement of the eligible response costs. Consequently, the preauthorization process is in the best interests of both the Agency and the applicant. It is the applicant, and not EPA, who determines in the first instance whether his application is sufficient and in compliance with EPA's guidance. The more complete the draft application, the more streamlined the preauthorization process becomes for both parties.

A PRP would be legally responsible for clean-up costs at a site, including planning and management costs, regardless of whether or not the PRP had entered into a mixed-funding agreement. As discussed above, section 111(a)(2) of CERCLA authorizes the reimbursement of claims only for "necessary" response costs. All costs that meet the criteria for "necessary costs" contained in the RCP will be eligible for reimbursement from the Fund. In addition, section 112(b)(3) of CERCLA provides that a claimant shall bear the burden of proving his claim. Therefore, if a claimant can demonstrate that particular planning and management costs meet the criteria for "necessary costs" and are otherwise eligible, these costs will be reimbursed from the Fund.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter raised a number of issues concerning the requirements for contractor claims under mixed-funding settlements. First, the commenter noted that § 307.21(c)(1) of the proposed rule requires that a contractor claim must arise from work within the scope of the contract. This commenter maintained that in most contracts, including those for work at Superfund sites, one of the primary types of contractor claims is for "changes" or "extras." The commenter stated that in situations where a "changes" claim does not fundamentally alter the basic response technology or scope of work, the contractor claim should be processed and reimbursed without the need for submitting a revised application for preauthorization. This commenter also recommended that the proposed rule should be clarified by allowing contractor claims that are " * * * within the general scope of work * * * " established by the contract.

Response

EPA disagrees with this commenter. The preamble to the proposed rule stated that contractor claims must " * * * arise from work that is preauthorized and that is within the scope of the contract at issue." Change orders should never be used for modifications beyond the "scope of the contract." A PDD that is issued to a potential claimant will not require a revised application for preauthorization to expand the scope of a specific contract. However, if a particular PDD, for example, authorizes both site excavation and construction, and a contract is awarded for construction only, the site excavation component cannot be "added" to this contract by a change order. Similarly, in order to be reimbursed from the Fund, a design component could not be "added" to this contract without submitting a revised application for preauthorization.

The Agency concurs with the commenter's statement that contractor claims that are within the "general" scope of work established by the contract should be allowed. However, EPA believes the addition of the word "general" to the regulatory language is unnecessary because the Agency already interprets the phrase " * * * within the scope of work * * * " as meaning within the "general" scope of work established by the contract. Moreover, the phrase is generally understood as having such a meaning.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Second, the commenter noted that § 307.21(c)(3) of the proposed rule will result in EPA denying contractor claims if the claims are "caused by the mismanagement of the claimant." This commenter maintained that the term "mismanagement" is an open-ended standard and is ambiguous. The commenter stressed that the final rule should delete the mismanagement standard and clarify that contractor claims for cost overruns are reimbursable from the Fund "unless they are due to the negligence of the PRPs or the contractor."

Response

The Agency does not agree that the mismanagement standard concerning contractor claims should be deleted or

that the term "mismanagement" is open-ended or ambiguous. In general, public funds will not be used to reimburse a claimant when there is fraud, waste, abuse, or mismanagement of the response action. Therefore, EPA believes that it is essential that claimants be held responsible for the competent management of the response action and of their contractors. In addition, § 307.32(h) of the RCP provides for the adjustment of costs where a response action is determined to be ineffective due to acts of omission or commission of the claimant himself, the claimant's employees, or the claimant's contractor.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Third, the commenter stated that § 307.21(c)(4) of the proposed rule also provides that contractor claims may be denied if they are "caused by the claimant's vicarious liability for the improper actions of others." This commenter noted that contractors hired by PRPs to perform remedial construction are usually independent contractors and, therefore, the PRPs are generally not vicariously liable for their actions. The commenter suggested that the Agency consider eliminating PRP vicarious liability as a grounds for denying Fund reimbursement of contractor claims in order to avoid unfair denials of legitimate claims. The commenter also stated that if EPA decides to continue to include the concept of vicarious liability, the rule should at least clarify that a PRP may be found vicariously liable only under the following circumstances: (1) where the PRP negligently hires an incompetent contractor; or (2) where the PRP assumes direct control of the day-to-day operations of the contractor.

Response

EPA disagrees that the claimant vicarious liability standard should be modified or deleted as a grounds for denying contractor claims. A claimant's vicarious liability refers to the liability for the actions of others that a claimant must accept as a part of his general management responsibility. The Agency believes that a claimant must accept this management responsibility if the claimant is to competently direct and oversee a response action at a site.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.22 Preauthorization of Response Actions

Comment

Several commenters discussed issues related to the preauthorization of response actions in the context of mixed-funding agreements, and emphasized the need to streamline the process. One commenter stated that in the context of mixed-funding settlements for remedial actions under Consent Decrees at NPL sites where Records of Decision (RODs) have been issued, the proposed requirements for the submission of information in the application for preauthorization are excessive and redundant. This commenter concurred with the suggestion in the preamble to the proposed rule (at 54 FR 37905) that the preauthorization process be streamlined by incorporating existing documents by reference in the application.

Another commenter indicated that because cleanups under mixed-funding settlements are subject to public comment, Federal court review, and EPA approval and oversight, the same regulatory safeguards needed for non-PRP cleanups should not apply to cleanups conducted under mixed-funding settlements. The commenter stressed that the information required by a number of the application provisions can be easily obtained from other sources (e.g., the work plan, the remedial investigation/ feasibility study (RI/FS), the Consent Decree). This commenter suggested that EPA propose a separate rule that would be applicable only to mixed-funding claims and that would contain a streamlined application process. This commenter also recommended that PRP applications not be required to include information on the identity of other PRPs or persons who may have received special or general notice letters from EPA, because the Agency will already have the desired information in its possession. Finally, this commenter stated that if the Agency elects not to propose a separate rule or not to continue with the current system of mixed-funding preauthorization which, in the commenter's view, has proven to be workable in a number of instances, the proposed rule should be revised appropriately to take into account the unique nature of mixed-funding settlements.

A commenter also noted that mixed-funding settlements are subject to Federal court approval as part of a Consent Decree. The commenter questioned whether the extent and complexity of the information required in the application for preauthorization is necessary when the settlement is already subject to court review and enforcement. In addition, the commenter suggested that EPA reevaluate the extent of the preauthorization requirements for mixed-funding settlements, because the Agency's need for adequate response claims information must be balanced with its need to maximize mixed-funding settlements, consistent with the mandate of SARA and the recent management review of the Superfund program ("A Management Review of the Superfund Program," William K. Reilly, Administrator, U.S. EPA, 1989).

Finally, one of these commenters suggested that although the proposed rule encourages private party cleanups, the Agency should simplify the process, wherever possible, to allow for PRPs to initiate cleanups promptly, without unnecessary government intervention or delay.

Response

Although a mixed-funding settlement with a PRP will provide for public comment, Federal court review and approval, and EPA oversight, the Agency believes that the preauthorization requirements for a mixed-funding settlement that are set forth in the RCP are necessary to ensure appropriate uses of Fund monies and to guarantee that Fund resources that are available for mixed-funding settlements are expended in accordance with environmental and public health priorities. EPA, however, does recognize the unique nature of mixed-funding settlements under the preauthorization process.

As referenced above, the Agency has developed guidance on the mixed-funding/response claims process for applicants and claimants. The guidance effectively streamlines the process for requesting the Agency's prior approval for a PRP to conduct a response action by allowing PRP applicants to utilize information that was developed for the Consent Decree as a basis for meeting the information requirements of the application for preauthorization. This process will reduce the amount of new information that a PRP must develop and, therefore, will reduce the time and cost required to prepare an application.

However, the Agency disagrees that a separate rulemaking is necessary for mixed-funding claims. EPA will utilize the procedures in the RCP, which are issued under the authority of section 112 of CERCLA, to implement its authority to reimburse from the Fund parties who are potentially liable for releases and who agree to conduct response actions pursuant to section 122(b)(1) of CERCLA. EPA believes that both mixed-funding claims and claims that are authorized by CERCLA section 111(a)(2) can be effectively regulated under a single rulemaking and that the

proposal of a separate rule for mixed-funding claims is neither necessary nor would it be an efficient use of Agency resources.

In addition, EPA disagrees that an applicant should not be required to provide or include information in the application for preauthorization on the identity of any known PRP, including the applicant and persons who may have received special or general notice letters from the Agency. Section 307.22(b)(3) of the RCP requires applicants to provide the identity of any such person. This requirement applies to all requests for preauthorization, by both PRP and non-PRP applicants. The emphasis of this requirement concerns applicants identifying any additional PRPs that are unknown to the Agency. In meeting this requirement, applicants may assist EPA in identifying and locating additional PRPs who can be brought into the negotiations to arrive at a mixed-funding settlement agreement or from whom EPA can recover the costs of the Fund-financed portion of the preauthorized response action. Rather than requiring an applicant to determine whether EPA has sent special or general notice letters to all parties on the applicant's list of PRPs, the Agency is requesting that the applicant provide a complete list of PRPs. In order to clarify the intended purpose of the requirement, EPA has modified the requirement to stress that the applicant must identify any known potentially responsible parties.

Final Rule

Section 307.22(b)(3) is modified as follows:

"The identity of any potentially responsible parties known to the applicant, (including the applicant), and any contact with such parties, including, but not limited to, any correspondence, agreements, or litigation with such parties;"

Comment

One commenter recommended that EPA should not rule out the preauthorization of an RI/FS, even in a situation where no agreement has been reached with the PRP concerning the PRP conducting the final response action. The commenter concluded that the legislative history of CERCLA makes it clear that mixed funding is appropriate for conducting an RI/FS, even though there is no guarantee that the PRP will conduct the response action. The commenter also noted that the use of a mixed-funding agreement for performing an RI/FS would be useful because it would establish an early precedent of cooperation between EPA and the PRP, while, at the same time, expediting the preliminary stages of the cleanup.

Response

EPA wishes to clarify that it has not ruled out the preauthorization of an RI/FS to be conducted by a PRP under a mixed-funding settlement. As noted by another commenter, in fiscal year 1989, the Agency preauthorized an RI/FS on the technical merits of a single study of the ground water at three contiguous sites in Tampa, Florida. It is Agency policy, however, that preauthorization of an RI/FS in the context of a mixed-funding agreement is generally not available unless the PRP agrees to undertake any response action that EPA may subsequently determine is necessary. This is because EPA has concluded that it would be an inefficient use of Agency resources to negotiate settlement agreements that are limited in scope to RI/FSs. In addition, there is generally insufficient information available to both a potential applicant and the Agency during the early stages of RI/FS negotiation to evaluate fully the relative merits of a mixed-funding agreement.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

A commenter recommended that the preauthorization provision in § 307.22(f)(3) requiring an applicant to obtain the assurance of State cooperation be amended to require that the PRP need only establish that he has made a "good faith" effort to obtain such an assurance of cooperation. The commenter stressed that under the proposed rule, a State's refusal to cooperate for various reasons could significantly delay or even imperil a settlement and cleanup. The commenter stated that the Agency should not expand the authorities concerning States' role in Superfund response actions that are carefully established by statute and should not provide the States with what is tantamount to veto power over all mixed-funding settlements by requiring a PRP to assure State cooperation as a condition of preauthorization.

Response

While the Agency believes that its intent is clear when § 307.22(f)(3) is read in conjunction with the instructions for the Application for Preauthorization, EPA will clarify the requirement concerning the assurance of State and Indian Tribe cooperation. Sections 104(c)(2) and 126(a) of CERCLA provide that EPA will consult with affected States or Indian Tribes before determining the appropriate remedial action to be taken at a site pursuant to section 104. Preauthorized response actions are not response actions under section 104 of CERCLA. However, as a matter of policy, the Agency, or the applicant, will seek to coordinate preauthorized response actions with the appropriate State. In the preamble to the proposed rule (at 54 FR 37903), the Agency stated that "the applicant seeking preauthorization of a remedial action is *encouraged*, at the time the application for preauthorization is filed, to obtain a letter signed by the designated State or Indian Tribe hazardous waste official that: (1) concurs with the proposed action; and (2) assures the cooperation of the State or Indian Tribe in the proposed action." (Emphasis added). The preamble also stated that "If the applicant does not supply a letter from the State or Indian Tribe official, documentation must be supplied that *every reasonable effort* was made to obtain the cooperation of the State or Indian Tribe." (Emphasis added).

The submission of a letter by an applicant will minimize or eliminate entirely the time required by EPA for coordination and consultation with States or Indian Tribes. The absence of this letter, however, will not be used as the basis for denying preauthorization to an applicant as long as documentation is supplied that indicates that "every reasonable effort" was made to obtain the cooperation of the State or Indian Tribe. Consequently, the proposed rule does not provide States or Indian Tribes with what is tantamount to veto power over all mixed-funding settlements.

Final Rule

Section 307.22(f)(3) is modified and will read as follows:

"Documentation of reasonable effort to obtain the cooperation of the State or Indian Tribe;"

Comment

One commenter suggested that the proposed policy stipulating that it is not appropriate to preauthorize a response action unless long-term operation and maintenance (O&M) will be undertaken and/or paid for by a party other than EPA is not prudent and is not required by CERCLA. The commenter stated that there is no reason to arbitrarily limit mixed-funding settlements to capital costs or to require a settling PRP to provide assurance of long-term O&M expenses. Instead, the issue of O&M expenses is better left for resolution through negotiation in an appropriate Consent Decree.

Response

EPA does not agree with this commenter. It is true that the provision concerning O&M is not specifically required by CERCLA. However, it is EPA policy, as stated in "Evaluating

Mixed-Funding Settlements Under CERCLA," 53 FR 8279, March 14, 1988, that the Agency will not pay for O&M costs necessary to maintain the effectiveness of a response measure following its completion under a mixed-funding settlement. The Agency does not believe it is appropriate to preauthorize a response action under a mixed-funding settlement that provides for the payment of O&M costs by EPA because the Agency would not utilize Fund monies for these costs under a CERCLA section 104 response action that is financed from the Fund.

Moreover, it is important to note that it is the PRP, not EPA, who remains legally responsible and accountable for the continued success of the response action. The reason for authorizing a PRP to conduct an RD/RA is to place the responsibility for a successful cleanup of hazardous waste disposal sites on those who are liable. The Agency policy not to preauthorize a remedial action unless the PRP assumes the long-term O&M costs is designed to conserve the limited resources of the Fund.

The final rule provides examples of how claimants may finance O&M costs. A PRP or other claimant may satisfy long-term O&M activities, if applicable, in one of two ways: (1) By posting a bond or other financial assurance, satisfactory to EPA, which is sufficient in amount to cover the costs of necessary long-term O&M; or (2) by submitting a written assurance from the State to provide for long-term O&M of the response action. The mixed-funding guidance (at 53 FR 8284) cited above also notes that "The Agency will generally resort to enforcement actions rather than committing Fund money for cleanup at the site when both the PRPs and the State refuse to be responsible for O&M."

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Section 307.22(i) of the proposed rule provides that if a preauthorized response action requires modification or if it appears that project costs will exceed approved costs, a revised application for preauthorization must be submitted by the PRP and approved by EPA before different or additional response activities can be undertaken at the site, if such activities are to be eligible for compensation from the Fund. One commenter maintained that this requirement is wasteful and unnecessary in mixed-funding situations. The commenter noted that if extra response work under a mixed-funding agreement is to be conducted, it is likely that EPA, in its oversight capacity, will have requested or approved the work, and the PRP should not be obligated to obtain approval for what the Agency has initiated or already has concluded is necessary.

Response

EPA does not agree with this commenter. In accordance with section 111(a)(2) of CERCLA and § 300.700(d) of the revised NCP, all response actions and costs must be approved in advance by EPA through the preauthorization process in order for a claim to be submitted against the Fund. This requirement avoids ambiguity as to whether particular activities are within the scope of the preauthorized response action, which protects the interests of both the potential claimant and the Agency. Without advance approval of response activities by EPA, a potential claimant has no assurance that the costs will be deemed eligible. The revised application for preauthorization needs, therefore, to reflect the specific changes concerning the modified response activities or the additional response costs, and the Agency will consider these changes only.

EPA's involvement in the response activities at a site, through the focused approach to oversight, will tend to minimize the time required for the approval of the activities and will, therefore, provide an indication of whether the additional work is appropriate. However, EPA's oversight does not involve constant monitoring of whether additional amounts of money are available in the Fund.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.23 EPA's Review of Preauthorization Applications

Comment

A number of commenters expressed concern about the time required for EPA's review of an application for preauthorization. One commenter suggested that the proposed rule would benefit from setting a time limit for EPA's review of a completed application. This commenter also suggested that the Agency identify a timeframe in which a PDD would be prepared. Another commenter noted that as part of its management review of the Superfund program, EPA stated that it will establish a single, integrated timeline for both enforcement and Fund-financed activities. Thus, EPA indicated that it will establish deadlines for completing negotiations, and follow-up with enforcement or response actions. At the same time, the management review acknowledged that the preparation of PDDs by EPA Headquarters has already led to delays. This commenter expressed concern that these conflicting constraints "may mean that mixed-funding settlement offers will be caught in a time squeeze and will not be accepted by the Agency."

Response

The Agency does not believe that it is advisable to include time limits within the regulatory language of the RCP for the review and evaluation of applications for preauthorization or for the preparation of a PDD. The time required by the Agency to review and evaluate an application for preauthorization and to prepare the corresponding PDD will fluctuate because of the wide range of conditions and response activities for which applicants will be seeking preauthorization. EPA has not included these time limits in the proposed or final rule because the Agency believes that it is important to thoroughly review each application for preauthorization and to carefully prepare the corresponding PDD, rather than to attempt to complete these activities under a self-imposed regulatory deadline.

However, EPA has set an internal goal of 45 days for the review and approval of an application for preauthorization under a mixed-funding settlement ("Evaluating Mixed-Funding Settlements Under CERCLA," 53 FR 8279, at page 8282, March 14, 1988). In all cases, the Agency will attempt to review applications for preauthorization and to prepare PDDs in as expeditious a manner as possible.

The Agency would also like to stress the importance of receiving complete and accurate information from applicants submitting applications for preauthorization. When reviewing an application for preauthorization, a lack of complete and accurate information can lengthen unnecessarily the time required by EPA to reach a decision concerning preauthorization. An applicant should be careful to meet the requirements contained in the RCP and to follow the corresponding guidance issued by the Agency when he is preparing an application for preauthorization.

In addition, mixed-funding settlements should not be denied by EPA because of time conflicts between any deadlines set for the completion of negotiations or follow-up enforcement actions and the time required by the Agency to prepare a PDD. Section 122(e) of CERCLA provides that EPA may not commence an action under sections 104(a) or 106 of CERCLA for 120 days after providing notice to a PRP. A PRP has 60 days from the date of receipt of

such notice to submit a good-faith offer to EPA. The time required by EPA to prepare a PDD will be significantly less than this time period. Also, as applicants and EPA gain more experience with mixed-funding, preparation of the PDD should not delay the settlement process.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter stated that even after an application for preauthorization is filed, the temptation for the Agency to deny preauthorization will be great because there are more timely ways to address the hazardous waste problems at sites and because there is such competition for Fund money. The commenter suggested that in the case of a legitimate application, this temptation must be resisted and the Agency must be required to reasonably process and approve the request for preauthorization and associated claim.

Response

In response to this comment, the Agency believes that a distinction needs to be made between an application for preauthorization that is submitted by a non-PRP and an application that is submitted by a PRP under a mixed-funding agreement. With regard to an application submitted by a non-PRP, the Agency will first consider an enforcement action against a PRP or a Fund-financed CERCLA section 104 action conducted by trained response action personnel. In evaluating a non-PRP application for preauthorization, EPA will consider the time required to implement either one of these options versus the time required to determine the capability of the applicant to undertake the proposed response activities. EPA will preauthorize a response action by a non-PRP only when it determines that such an option is the best available means to address a release at a site.

With regard to an application for preauthorization that is submitted by a PRP under a mixed-funding agreement, it is EPA's stated policy that the Agency will utilize a mixed-funding settlement, if appropriate, to settle for less than 100 percent of response costs. Pursuant to CERCLA section 122(a), EPA will consider whether: (1) Mixed funding is in the public interest for the NPL site; (2) the response action can be carried out consistent with the NCP; (3) a mixed-funding agreement will expedite the remedial action; and (4) a mixed-funding agreement will minimize the need for litigation. EPA will generally accomplish preauthorization through a mixed-funding settlement within the timeframe for settlements established by statute and EPA policy.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

A commenter noted that there does not appear to be an appeal process available to address the denial of preauthorization upon the Agency's failure to issue a PDD. The commenter maintained that this appeal process must be allowed.

Response

The RCP does not provide for an appeal process to address the denial of preauthorization because EPA's preauthorization of a proposed response action pursuant to CERCLA is entirely discretionary. CERCLA section 122(b)(2) provides that decisions regarding the availability of Fund financing for mixed-funding agreements are not subject to judicial review under CERCLA section 122(d).

The Agency will grant preauthorization of a response action through the preauthorization process only if the response action is of sufficient priority to merit Fund expenditure. Section 300.700(d)(3) of the revised NCP provides that: "All applications for preauthorization will be reviewed to determine whether the request should receive priority for funding. EPA, *in its discretion*, may grant preauthorization of a claim." (Emphasis added).

Although there is no formal process for appealing the Agency's decision to preauthorize a response action, under certain circumstances, EPA may reconsider an application. For example, § 307.23(d) of the RCP provides that if an application for preauthorization was denied because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications for or uses of the Fund, the applicant may resubmit the application in another fiscal year. Also, if an applicant was denied preauthorization because of deficiencies in the application for preauthorization, the applicant may attempt to correct the deficiencies and resubmit the revised application to the Agency.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter argued that for a number of reasons, the proposed rule should not require potential claimants who are conducting response actions under mixed-funding settlements to strictly adhere to the Federal Government procurement requirements relating to allowable costs (i.e., 48 CFR part 31, subparts 31.1 and 31.2). First, the commenter noted that cleanups by PRPs often do not involve government contractors and, therefore, the benefits of these requirements normally associated with government contract work do not apply. Nevertheless, under the proposed rule, PRPs and private contractors involved in mixed-funding cleanups must comply with government procurement cost principles that do not permit, or substantially limit, the recovery of many types of ordinary private business costs. Second, the commenter noted that compliance with government procurement cost principles will, in fact, increase the cost of mixed-funding cleanups because of the additional general and administrative expenses incurred by the PRP. Finally, the commenter stated that the concept of allowability is not relevant to most claims for remedial action costs, because most contracts for remedial construction will be awarded using sealed bidding procedures and will result, therefore, in firm fixed-price arrangements. The commenter noted that under this type of contract arrangement, reimbursement of construction contractors will be based on the contract price, rather than on the actual costs incurred.

In addition, this commenter noted that the proposed rule requires that to qualify for mixed-funding settlements, PRPs must ensure, to the maximum extent practicable, open and free competition in the selection of a private contractor to conduct the cleanup; must provide administrative procedures for the settlement of bid protests, claims disputes, and other related procurement matters; and must establish a subcontract administration system. In conclusion, the commenter recommended that the final rule should substantially streamline any required procurement procedures and tailor them to the necessity of conducting private hazardous waste cleanups quickly and efficiently.

Similarly, another commenter noted that it should be remembered that a PRP submitting claims is not a government contractor, and should not be required to adhere to the same level of detailed procedural and paperwork requirements as are government contractors. This commenter suggested that Federal procurement standards should be applied, if at all, in a flexible manner that seeks to achieve the "spirit," but not the letter, of the Federal Acquisition Regulations.

Response

EPA agrees that PRPs conducting response actions under mixed-funding

settlements should not be required to adhere strictly to the Federal procurement requirements relating to allowable costs. The Agency would like to stress that the proposed RCP did not propose this requirement, nor does the final rule contain such a requirement.

As a guide to applicants, the rule requires that applicants describe proposed procurement procedures that are consistent with the substantive provisions and limitations, or the "spirit," of appropriate Federal procurement requirements (i.e., 40 CFR part 35, subpart O, and 48 CFR part 31, subparts 31.1 and 31.2).

The RCP holds claimants to four major principles:

(1) Procurement transactions must provide, to the maximum extent practicable, open and free competition in selecting contractors, must not unduly restrict or eliminate competition, and, where applicable, must select the lowest responsive, responsible bidder; (2) contracts may be awarded to persons on the List of Parties Excluded from Federal Procurement or Non-Procurement only with EPA's prior approval; (3) all fixed-price contracts for construction must include a "differing site conditions" clause, unless EPA waives the requirement; and (4) procurement practices must be consistent with sound business judgment and good administrative practices.

EPA will use Federal cost principles as a guide in reviewing and adjusting claims. These principles should also provide some assurances to potential claimants as to which and how much of the costs the Agency will reimburse. Applying appropriate Federal cost principles to the procurement of goods and services during the course of response actions under mixed-funding settlements will not impair or prohibit quick and efficient cleanups by private parties. The applicant should, therefore, refer to Office of Management and Budget (OMB) Circular A–122 (for non-profit organizations); OMB Circular A–87 (for States and political subdivisions); and 48 CFR part 31, subparts 31.1 and 31.2 (for profit-making organizations) because the Agency will use these documents as a guide in determining whether costs are "eligible."

The Agency would like to clarify the preauthorization requirement concerning procedures for the settlement of bid protests, claims disputes, and other related procurement matters. The RCP does not require that applicants provide detailed procedures for the settlement of bid protests, claims disputes, and other related procurement matters that are in compliance, or even consistent, with Federal procurement requirements. EPA recognizes that the Federal requirements are complicated and that it would be burdensome for potential claimants to attempt to adhere to these requirements while conducting a private sector cleanup. The RCP does, however, require that applicants provide a description of the process they will use to settle bid protests, claims disputes, and other related procurement matters. The only requirement regarding this process is that it be a fair and adequate process that is consistent with sound business judgment and good administrative practice.

In addition, EPA has developed and issued guidance on procurement procedures and other management practices that an applicant may adopt to help ensure that costs are eligible for reimbursement from the Fund ("Procurement Under Preauthorization/ Mixed-Funding," OSWER Directive 9225.1–01, April 1989). This guidance should be valuable in assisting an applicant in developing procurement procedures that are not inconsistent with appropriate Federal cost principles.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter discussed the proposed requirement that claims be submitted to EPA only for completed, identifiable phases of a response action. The commenter stated that this requirement is in conflict with an existing PDD, which allows for the filing of claims at specified time intervals after certain expenditure levels are met. This commenter maintained that this requirement seems to suggest that the preauthorization process will be encumbered by the need to negotiate the identity of those "preauthorized phases" at which claims for reimbursement may be submitted. The commenter suggested that the proposed rule be revised to permit the submission of claims at specified time intervals and for amounts that may be appropriate in view of the project requirements.

Other commenters stated that EPA should re-evaluate the provision contained in the proposed rule that the Agency may require a cleanup commitment for an entire site or the completion of all site work before reimbursement is provided for the remediation of a particular operable unit. One commenter noted that with most construction projects, interim payments prior to the completion of a total activity are necessary in order to finance the completion of an entire operation. Any requirement for a commitment to clean up an entire site on a particular timeline would not promote the public policy goal of cleaning up the high risk areas of a site prior to cleaning up the low risk areas. Another commenter maintained that the deferral of claims submission and payment will certainly decrease the financial value and incentive for PRPs to settle that is created by mixed-funding settlements. These commenters suggested an approach under which the Agency would preauthorize and pay claims upon the completion of any milestones, authorized phases, or operable units agreed upon in the Consent Decree.

Response

The Agency would like to reiterate that PDDs issued before the effective date of the final RCP will remain in full force and effect. Consequently, there will not be any conflict between procedures contained in the rule and previously issued PDDs, including procedures concerning the timing of when claims may be submitted. (See RCP section 307.11(b).)

EPA does not agree that the preauthorization process will become encumbered by the need to negotiate the identity of those "preauthorized phases" at which claims for reimbursement may be submitted. Under the proposed rule, the Agency may preauthorize an entire response action, a stage of a response action (e.g., RD/RA), an operable unit, or a stage of an operable unit. The PDD, therefore, may provide that claims shall be paid from the Fund in the same manner. However, the Agency may also require a commitment to finish site cleanup, or a phase of site cleanup, prior to reimbursement. The purpose of this requirement is to ensure that a project, once initiated, is completed in a timely manner.

Reimbursements by EPA are based upon the completion of discrete, identifiable segments of response activities. In response to this comment, the Agency is revising the RCP, the application for preauthorization, and the claim form to specifically encourage applicants to propose reimbursement based upon cash-flow considerations, completion of phases of work, or discrete activities. The goal of an applicant should be to balance major capital expenditures and the completion of discrete tasks against the number and frequency of claims.

Although EPA has reserved the right to condition the payment of a claim on a commitment to clean up an entire site or on the completion of all site work, all

applications that have been preauthorized to date authorize the submission of multiple claims. In addition, the rule contemplates the submission of multiple claims (e.g., see § 307.30(e) regarding the presentation of subsequent claims to non-settling PRPs). As stated above, the RCP, the application for preauthorization, and the claim form have been revised to facilitate the negotiation of Consent Decree milestones to be completed prior to the submission of a claim.

Final Rule

Section 307.22 is modified as follows:

1. Section 307.22(b)(9) is redesignated as § 307.22(b)(10) and a new § 307.22(b)(9) is added and will read as follows:

"Proposed schedule for the submission of claims;".

2. The section has been renumbered accordingly.

Section 307.23(b)(17) is modified as follows:

"Whether the proposed schedule for filing a claim(s) is based upon the completion of the project, an operable unit, or a discrete phase of the response work."

The Application for Preauthorization is modified as follows:

Section VIII of the application is redesignated as section VIII.A. and a new section VIII.B. is added that requires the applicant to provide a proposed schedule for the submission of claims. The instructions for this new section encourage applicants to propose reimbursement based upon cash-flow considerations and to balance major capital expenditures and the completion of discrete tasks against the number and frequency of claims.

The claim form is modified as follows:

Sections III and IV.A. of the claim form are modified to use the term "preauthorized phase" instead of "operable unit."

Comment

A commenter disagreed with the preauthorization requirement in § 307.23(e) that requires an applicant to obtain the necessary site access for EPA or the lead agency. The commenter noted that under CERCLA, it is EPA, not the PRP, that has the authority to compel access to a site in order to conduct a response action. The commenter also noted that recent additions to the revised NCP confirm EPA's authority to obtain site access on behalf of a PRP who is performing work under a settlement. The commenter stated that by requiring the PRP to obtain access at the risk of losing preauthorization for a mixed-funding agreement, the proposed rule fails to acknowledge EPA's central role on questions of site access. This commenter suggested, therefore, that this requirement be eliminated for mixed-funding settlements.

Response

EPA believes that this commenter has misinterpreted the requirement concerning site access. It is true that, under CERCLA sections 104(e)(5) and (6), EPA has the legal authority to compel access to a site in order to conduct a response action. Once EPA has secured or the owner has provided such access, the PRP must *assure* EPA access at all times to the site and any property to which access is required for oversight and monitoring of implementation of the Consent Decree. Section 307.23(e) of the rule provides that "The applicant as a condition of preauthorization shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring." (Emphasis added). With the Agency's focused approach to oversight of a PRP-conducted response action, the Oversight Official is a representative of EPA who reports to the Remedial Project Manager (RPM) and supports the RPM in monitoring PRP compliance with the Consent Decree, the plans and specifications, and the Construction Quality Assurance and Quality Control Plans. The responsibilities that the RPM may choose to assign to the Oversight Official include:

- Making on-site observations of the work in progress to determine if the work is generally proceeding in accordance with the plans and specifications, and the Construction Quality Assurance and Quality Control Plans; and
- Immediately notifying the authorized representative of the Remedial Action Contractor or PRP of any observed activities presenting imminent and substantial endangerment to the public health or welfare or the environment, and following up the notification with an appraisal of the situation to the RPM.

In order to fulfill these responsibilities, the Oversight Official must be assured of access to the site, and this assurance of access must be given to the Agency at the time that the application for preauthorization is accepted by EPA and the Consent Decree is approved by the Federal district court. The potential claimant is required to provide the Oversight Official with sufficient access to the site so that EPA may fulfill its oversight and monitoring role at the site.

In addition, during the processing of a response claim, EPA will often require access to records that support the claim. Such records are often located within the physical boundaries of the site.

Final Rule

EPA is promulgating the final rule as proposed.

Subpart C—Procedures for Filing and Processing Response Claims

Section 307.30 Requesting Payment from the Potentially Responsible Party

Comment

One commenter stated that the proposed provision in § 307.30(a) that requires a claimant to present a claim to any known PRPs before submitting the claim against the Fund does not make much sense in the context of mixed-funding settlements. This commenter explained that, in many cases, the Agency decides to enter a mixed-funding settlement to pay for the recalcitrant PRPs' share and then to sue the recalcitrant PRPs to recoup its expenditures. Thus, if recalcitrant PRPs are unwilling to join a settlement with EPA, they will most certainly be unwilling to settle with other PRPs later. Therefore, the commenter expressed the opinion that this requirement is generally futile in mixed-funding situations.

Response

The Agency does not agree with this commenter. EPA will utilize the procedures in the rule, which are issued under the authority of CERCLA section 112, to implement its authority to reimburse from the Fund parties who are potentially liable for a release and who agree to conduct a response action pursuant to a mixed-funding agreement under CERCLA section 122(b). CERCLA section 112(a) provides that no claim may be asserted against the Fund unless it has first been presented to any known PRPs. After a claim against non–settling PRPs remains unsatisfied for 60 days after presentation to the non-settling PRPs, the claimant may present the claim to the Fund for payment. The claimant should submit to EPA with his claim a copy of any reply or correspondence received from the non-settling PRPs. In addition, a potential claimant may become aware of other PRPs during the course of a response action or the financial capability of PRPs may change, thus altering the probability of recovery.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Another commenter encouraged the Agency to clarify the process in

§ 307.30(e) under which a claimant may obtain a formal agreement from EPA concerning the requirement that a claimant must first present a claim to any known PRPs. The proposed rule acknowledged that the repeated submission of a claim to recalcitrant PRPs would generally constitute a futile act. The commenter noted that neither the proposed rule nor the proposed claim form indicate how the claimant is to obtain the formal agreement from EPA under which the claimant does not have to repeat the presentation of claims to recalcitrant PRPs. This commenter suggested that the process be outlined in the final rule, and that it would be useful to specify a time period after which a claimant is entitled to consider the lack of response by the Agency to be a denial of the claim.

Response

EPA does not agree that this process should be codified in the RCP. The inclusion of more detailed procedures in the rule would tend to limit the flexibility of the parties to make such determinations. In response to this comment, however, EPA is revising the claim form and has revised its mixed-funding guidance (cited above) to advise a claimant that he may request a formal agreement from EPA pursuant to § 307.30(e) concerning the presentation of any subsequent claims at the time a claim is presented to any known non-settling PRPs. Thus, if the claimant intends to file separate claims for eligible costs incurred for discrete portions of the RD/RA, he will have to present each of those claims to the other PRPs. In such instances, if the PRP to whom the first claim was presented denied liability, refused to settle, or ignored the request for payment, and EPA agrees that there is no reason to believe that the PRP will honor subsequent claims, the denial of the first claim will be considered to be a denial of any subsequent claims. Therefore, the claimant may seek EPA's agreement at any time a claim is presented. The claimant will be advised of EPA's decision when the claimant is notified in writing regarding the award or denial of the claim.

Final Rule

The claim form is modified as follows:

The instructions for section II.B. of the claim form have been modified to inform the claimant that he may seek EPA's agreement (concerning the presentation of subsequent claims to PRPs) at any time a claim is presented. The claimant will be advised of EPA's decisions when the claimant is notified in writing regarding the award or denial of the claim.

Section 307.32 Verification, Award, and Administrative Hearings

Comment

A commenter raised a number of issues concerning the evaluation and award of response claims. This commenter stated that it is essential that the claims review process be an expeditious, fair, and reasonable one, in which unnecessary "nit picking" is avoided both in determining whether a claim is technically complete (i.e., "perfected") and whether particular costs should be paid. The commenter noted that a balance must be achieved between avoiding wasteful payment of unnecessary costs and erecting an unduly bureaucratic, stringent, and costly claims review process that wastes the resources of both EPA and the PRP.

The commenter also expressed concern that, under the claims review process, EPA employees or contractors who will review the settling PRP's claims may be different from: (1) The EPA employees with whom the mixed-funding settlement and scope of work were negotiated; (2) the EPA employees who oversaw the performance of the remedial action under the Consent Decree; and (3) the EPA employees with whom the PDD was negotiated. The commenter stated that the former may question or disallow reimbursement for work directed or approved by the latter, with potentially unfair results. This commenter maintained, therefore, that it is important that the particular response actions and the resulting costs that are directed or approved by EPA Regional technical personnel are similarly approved by those responsible for reviewing claims for reimbursement of such costs.

Response

The Agency concurs with the commenter's statement that the claims review process should be expeditious and fair, and must not waste the resources of EPA or PRPs. However, the Agency must also comply with section 111(a)(2) of CERCLA and reimburse only claims for "necessary response costs" in "carrying out the NCP." In addition, EPA must fulfill its responsibility as manager of the Fund by ensuring that Fund monies are expended for appropriate purposes consistent with the scope of the preauthorized response action.

EPA cannot guarantee that the Agency personnel involved in the negotiations will also process the response claims. The claims procedures require the contributions of the Office of Regional Counsel, the Regional program office, and a Claims Adjuster. Once a claim is "perfected," the Agency will determine whether the response action was consistent with the terms and conditions of the Consent Decree; whether the response action was carried out in a manner consistent with the NCP and with the terms and conditions of the PDD; and whether the costs of the response action are otherwise "eligible."

Moreover, the Agency has developed internal guidelines concerning the negotiation of mixed-funding settlements, and the evaluation and award of claims, that will ensure that the process is carried out in a consistent and fair manner throughout each stage on a national level. As provided in the RCP at § 307.32(f), if a potential claimant performs the preauthorized response activities in accordance with the terms and conditions contained in the Consent Decree and the PDD, reimbursement of the costs of these activities will be awarded by the Agency from the Fund. EPA has sought to minimize chance of arbitrary Agency decisions through the preauthorization application process, the terms and conditions of PDDs, guidance that has been developed for all parties, and this rule.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter maintained that the proposed provision in § 307.32(g) that would deny reimbursement of a claim whenever a PRP claimant compromises and releases his claim against other PRPs without EPA's approval could inhibit the settlement of third-party disputes at Superfund sites. This commenter argued that by adding the requirement of EPA approval, the Agency is interjecting itself into the process of settling private claims and that this requirement will have the adverse effect of slowing down the settlement process and potentially inhibiting such settlements. The commenter recommended that the proposed rule should clarify that EPA approval of a private settlement among PRPs should only be required when the settlement purports to release EPA's own claims.

Response

The Agency must approve a release of liability given to a PRP by a potential claimant only if the release purports to release anyone from liability to the United States. PRPs, of course, may settle their own liability to each other on their own terms, at any time. However, no PRP has the authority to release anyone from liability to the United States.

Only when EPA pays a claim to a PRP does the Agency acquire the right to

recover those costs that have been paid. Section 112(c)(1) of CERCLA provides that payment of any claim shall be subject to the claimant subrogating to the United States all rights of the claimant to the extent that the claimant's response costs are compensated from the Fund.

The Agency is revising the RCP to clarify this provision.

Final Rule

Section 307.32(g) is modified as follows:

"No award will be made on a claim where the claimant has purported to release a potentially responsible party from liability to the United States for the same costs unless EPA has approved the release in advance."

Comment

Several commenters urged EPA to set time limits or goals for the evaluation and award of response claims. One commenter suggested that the Agency specify a time period within which EPA will review and reach a determination on a perfected claim. The commenter believed that 30 to 45 days is a reasonable period of time for this activity. This commenter also noted that there is no apparent reason why it should take EPA 50 days from the time it makes a determination to award a claim to the time it pays the claim. Another commenter maintained that internal responsiveness guidelines are necessary, especially for the first claims that are received, in order to demonstrate that the claims procedures can provide timely decisions for those parties willing to initiate site cleanups on their own.

Response

The time required to review a response claim will vary due to the wide range of site conditions and response activities that must be analyzed during the claims review process. Once a claim is "perfected," the Agency will conduct a detailed review and will award the claim as expeditiously as possible. However, § 307.32(i) of the rule provides that for claims submitted under mixed-funding agreements, once the claim has been "perfected," the Agency must pay the amount due within 60 days or interest on that amount will begin to accrue. However, EPA may request additional information during the course of a detailed review if it is determined that such information is necessary to properly evaluate the claim. In this case, the 60-day time period will be suspended from the date the Agency requests the information until the date the requested information is received.

EPA has modified section 307.32 to make clear the major time limits specified in the RCP, including those for the payment of interest on some claims, and the impact of an appeal on the payment of a disputed amount.

Final Rule

Section 307.32 is modified as follows:

1. Section 307.32(i)(2) is modified as follows:

"Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, the period as stated in paragraph (1) of this section or the accrual of interest is suspended from the date the Agency requests the information from the claimant until the date the requested information is received."

2. Section 307.32(i)(3) is redesignated as § 307.32(i)(4) and a new § 307.32(i)(3) is added to the rule as follows:

"Where a claim is denied in whole or in part by EPA, and the claimant requests an administrative hearing in accordance with paragraph (o) of this section, interest on the disputed amount begins to accrue 50 days after an award by the Administrative Law Judge, unless an appeal is filed. If either party files an appeal with a Federal district court, interest will not accrue until 20 days after the final judicial decision."

3. The section has been renumbered accordingly.

Comment

Several commenters stated that the proposed rule does not address the issue of whether EPA can and/or will reimburse PRPs for interest on the Fund-share portion of mixed-funding costs for the period of time that those monies may have been advanced by the PRP (e.g., to pay construction contractors). These commenters stressed that a claimant loses investment opportunities by funding remediation costs that will eventually be borne by the Federal Government and, in essence, is lending the Federal Government money while waiting to be paid from the Fund. These commenters urged EPA to revise the rule to provide that interest may begin to accrue at the time costs allocable to the Fund are paid by the claimant.

Response

EPA disagrees with these commenters. Pursuant to section 122(b)(1) of CERCLA, mixed-funding agreements may provide that EPA " * * * will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement * * * ." The statute, as well as the legislative history, however, does not specify a method for the calculation of this interest. EPA evaluated several different alternatives for calculating this interest. In its role as manager of the Fund, the Agency has determined that interest will accrue on amounts due to PRPs if EPA fails to pay the amount due within 60 days of perfection of the claim as set forth in § 307.32(i) of the RCP. In order to protect finite fund resources, the Agency does not believe that it is an appropriate or efficient use of Fund resources to allow that interest will begin to accrue at the time costs allocable to the Fund are paid by the claimant.

Final Rule

EPA is amending the rule at § 307.32(i)(2) and (3) to add language concerning the payment of interest on claims to PRPs under mixed-funding settlements. (See discussion above.)

Subpart D—Payments and Subrogation

Section 307.41 Subrogation of Claimant's Rights to the Fund

Comment

One commenter discussed the proposed provision in § 307.41(b) that requires a PRP to assist EPA in cost-recovery actions against other non-settling PRPs. The commenter noted that the costs of such assistance may be substantial, and that such costs can be recovered by the Agency as part of ordinary "response costs" from the non-settling PRPs. Therefore, the commenter urged that these cost-recovery assistance costs should be paid for by the Fund, rather than by the PRP who cooperated with EPA.

Response

The Agency does not agree that these costs should be paid for by the Fund as a general rule. In most cases, EPA will initiate cost-recovery actions against the non-settling PRPs and assistance from the claimant will be vital to these cost-recovery actions. Assistance from the claimant, contractors, and subcontractors may include the furnishing of personnel, the testimony of witnesses, or providing documents and any other materials needed to assist EPA in the cost-recovery action. In particular, the claimant's contractors and subcontractors must be available to testify in all proceedings relating to EPA's cost-recovery efforts.

EPA does not believe that it is an appropriate use of Fund resources to pay for the cost-recovery assistance activities of a claimant under a mixed-funding settlement because the PRP would be responsible for these costs, regardless of whether or not he were involved in a mixed-funding settlement. In addition, the claimant may recover these costs from the non-settling PRPs.

However, in certain situations, expenses incurred by the claimant as a result of assistance in cost-recovery actions initiated by the United States will be reimbursed in accordance with applicable procedures (i.e., 28 U.S.C.

1821 as implemented by 28 CFR part 21, which addresses witness fees) or court rules governing appearance fees and travel expenses.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.42 Fund's Obligation in the Event of Failure of Remedial Actions Taken Pursuant to CERCLA Section 122

Comment

Several commenters supported the concept contained in § 307.42(a) that in the event of the failure of a preauthorized remedial action, the Fund should be available to pay the same proportion of the new remedial action as was applied to the original action. These commenters stated, however, that the regulatory language should be modified to be consistent with the language of CERCLA section 122(b)(4), which provides that the Fund "shall contribute" (not "may contribute") proportionally to the further cleanup. One commenter also stated that the submission of a full new application for preauthorization should not be necessary in such instances, and that the existing PDD should simply be amended to authorize the new work.

Response

The Agency agrees that the regulatory language concerning cost share for the failure of a preauthorized remedial action should be changed to reflect the statutory language of CERCLA section 122(b)(4). Therefore, § 307.42(a) of the final rule has been changed to read: " * * * the Fund *shall be* available for the costs of any new cleanup required * * * ." (Emphasis added.)

In the event of a failure of a preauthorized remedial action, any modifications to the preauthorized remedial action or additional response costs that would be included under the new cleanup would have to be preauthorized by EPA. These modifications or additional costs must be preauthorized by the Agency through a revised application for preauthorization. This application for preauthorization, however, would only have to reflect revisions to the relevant parts of the application. EPA has determined that this requirement is valuable to both EPA and the applicant since it ensures that there is written documentation of the need for these modifications and, if approved, the Agency's commitment that the costs will be reimbursed if the response action is conducted consistent with the NCP, the Consent Decree, and the new PDD.

Final Rule

Section 307.42(a) is modified as follows:

"In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund shall be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action."

Appendix A—Application for Preauthorization of a CERCLA Response Action

Comment

One commenter endorsed the prompt publication of the application for preauthorization. This commenter stated that the application is a useful reference document that helps to clarify the application process.

Response

Prior to the promulgation of the final RCP, PRPs have been submitting preauthorization requests to the Agency for approval of proposed response actions under mixed-funding settlement agreements. EPA has been reviewing these preauthorization requests on a case-by-case basis. The Agency has provided these PRPs with a copy of the draft application for preauthorization as a guide for submitting a preauthorization request. However, neither the proposed nor the revised application for preauthorization is legally in effect until the effective date of this final rule.

Final Rule

EPA is promulgating the final rule as proposed. However, EPA is modifying the application for preauthorization to require an applicant to submit a proposed schedule for the submission of claims. (See discussion of § 307.23.)

Comment

One commenter expressed concern over the estimated amount of time required to complete the application for preauthorization. This commenter stated that the estimate set forth in the proposed rule is very low. The commenter also noted that the actual time that is likely to be required to complete the application, as well as the time necessary for the required approval by the Agency, may conflict with the special notice and negotiation deadlines imposed by EPA.

Response

It is difficult to estimate precisely the time required to complete the application for preauthorization because the application has not been officially used and because of the wide range of response activities for which applicants may seek to obtain preauthorization. Moreover, in light of the capabilities of an applicant, the applicant's management plan, and the hazardous waste problems unique to each site, no two applications for preauthorization are identical and, therefore, the time required to develop these applications will vary accordingly. However, the Agency agrees with the commenter that the estimate of 95 to 173 hours for completing the application for preauthorization is low. Therefore, based on its continuing response claims experience, the Agency is increasing the burden estimate for the application for preauthorization to 186 to 330 hours per response, with an average of 258 hours per response.

It should be noted that, as commenters stated elsewhere, much of the information required by the application, especially under mixed-funding settlements, will be available from existing EPA documents, such as the RI/FS, ROD, or Consent Decree. Also, the Agency has issued guidance (cited above) on the response claims process that addresses the preparation of the application for preauthorization. This guidance will assist applicants in preparing an application for preauthorization and will, consequently, reduce the amount of time necessary to complete the application.

EPA does not believe that the time necessary to complete the application for preauthorization, as well as the time required for review and approval by the Agency, will conflict with the special notice and negotiation deadlines imposed by EPA. Under the CERCLA section 122(e) special notice deadline, EPA may not commence an action under sections 104(a) or 106 of CERCLA for 120 days after providing such notice to a PRP. A PRP has 60 days from the date of receipt of such notice to submit a good-faith offer to EPA. The preauthorization process may begin only after the good-faith offer has been made by the PRP. The Agency has not imposed a deadline for the submission of a final application. In addition, EPA provides in its guidance (cited above) on evaluating mixed-funding settlements that it has set an internal goal of 45 days for the review and approval of an application for preauthorization under a mixed-funding settlement.

Final Rule

The application for preauthorization is modified to increase the burden estimate for completing the application from 95 to 173 hours per response, with an average of 134 hours per response, to an estimate of 186 to 330 hours per response, with an average of 258 hours per response.

Appendix B—Claim for CERCLA Response Action

Comment

One commenter endorsed the prompt publication of the claim form, and stated that the form is useful and helps to clarify the claims process. However, another commenter stated that although the claim form is short in length and general in scope, it consists of a number of open-ended essay questions. The commenter noted that although the form appears to give substantial flexibility to the claimant in explaining and documenting proposed response activities and estimated costs, the form also introduces considerable uncertainty as to the level of detail and extent of documentation that the Agency will require in order to find that claimed costs are adequately explained. This commenter suggested that some guidance should be given as to the amount and level of detail concerning the required information and documentation.

Response

In developing the claim form, the Agency attempted to provide substantial flexibility to claimants regarding the description and documentation of response activities and costs. EPA has developed a "Guidance Manual for Participating in the Response Claims Process: Preauthorizing PRP Remedial Designs/Remedial Actions" (cited above), which includes guidance on completing the claim form, and which specifically addresses the issue of the amount and level of detail of information the claim form requires. This guidance will be available from Agency Headquarters or from any EPA Regional Office.

The Agency is also modifying the claim form to add information requirements concerning the location of cost documentation and any other records and the identification of which Federal cost principles were used by the claimant. These additional requirements will allow EPA to review and reach a decision on submitted claims in a more timely and efficient manner.

Final Rule

The claim form is modified as follows:

1. A new section IV.F. is added to the claim form that requires the claimant to provide the name and address of the location where all cost documentation and any other records relating to the claim will be maintained.

2. A new requirement is added to sections V.B. and C. of the claim form that requires the claimant to specify which of the Federal cost principles were used and to explain the basis for the selection of that principle.

3. Additional modifications to the claim form have been made. (See the discussions of §§ 307.23 and 307.30.)

III. Summary of Supporting Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order (E.O.) 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order (E.O.) No. 12291

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). A Regulatory Impact Analysis is required for a "major" rule. According to E.O. 12291, "major" rules are regulations that are likely to result in:

1. An annual adverse (cost) effect on the economy of $100 million or more; or

2. A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation is a "non-major" rule under Executive Order 12291 because it is unlikely to result in any of the economic impacts identified above. Therefore, the Agency has not prepared a Regulatory Impact Analysis for this regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 generally requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." Today's rule involves reimbursement of the costs of certain parties for responding to a hazardous substance release. This is a benefit authorized by CERCLA, and does not adversely affect the private sector economy. EPA, therefore, certifies that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations, and units of government. EPA certifies that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050–0106.

Public reporting burden for the collection of information under the "Application for Preauthorization of a CERCLA Response Action," is estimated to vary from 186 to 330 hours per response, with an average of 258 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Public reporting burden for the collection of information under the "Claim for CERCLA Response Action," is estimated to vary from 25 to 59 hours per response, with an average of 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimates or any other aspects of this collection of information, including suggestions for reducing the burden, to the following addresses: Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attention: Desk Officer for EPA.

List of Subjects in 40 CFR Part 307

Administrative practices and procedures, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: December 19, 1992.

William K. Reilly,

Administrator.

Appendix to Preamble

Forms applicable to the CERCLA response claims process, EPA Form 2075–3 and EPA Form 2075–4, may be obtained from EPA Headquarters, CERCLA Response Claims, Office of Emergency and Remedial Response, (5203 G) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Forms may also be obtained from the EPA regional offices at these addresses:

(a) Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203

(b) Region II, 26 Federal Plaza, New York, New York 10278

(c) Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107

(d) Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

(e) Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604

(f) Region VI, 1445 Ross Avenue, Dallas, Texas 75202

(g) Region VII, 726 Minnesota Avenue, Kansas City, Missouri 66101

(h) Region VIII, 999 18th Street, Denver, Colorado 80202

(i) Region IX, 75 Hawthorne Street, San Francisco, California 94105

(j) Region X, 1200 Sixth Avenue, Seattle, Washington 96101

Completed forms must be submitted to the Administrator at EPA Headquarters or his designee.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding part 307 to read as follows:

PART 307—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) CLAIMS PROCEDURES

Subpart A—General

Sec.

307.10 Purpose.
307.11 Scope and applicability.
307.12 Use of number and gender.
307.13 Computation of time.
307.14 Definitions.
307.15 Penalties.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

307.20 Who may present claims.
307.21 Nature of eligible claims.
307.22 Preauthorization of response actions.
307.23 EPA's review of preauthorization applications.

Subpart C—Procedures for Filing and Processing Response Claims

307.30 Requesting payment from the potentially responsible party.
307.31 Filing procedures.
307.32 Verification, award, and administrative hearings.
307.33 Records retention.

Subpart D—Payments and Subrogation

307.40 Payment of approved claims.
307.41 Subrogation of claimants' rights to the Fund.
307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to CERCLA section 122.

Appendix A to Part 307—Application for Preauthorization of a CERCLA Response Action

Appendix B to Part 307-Claim for CERCLA Response Action

Appendix C to Part 307 —Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL

Appendix D to Part 307—Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in Public Dockets

Authority: 42 U.S.C. 9601 *et seq.*; sections 4 and 9, E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Subpart A—General

§ 307.10 Purpose.

This part prescribes the appropriate forms and procedures for presenting claims for necessary response costs as authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (herein referred to as CERCLA, or the Act) (42 U.S.C. 9601 *et seq.*). Such claims may be presented to the Hazardous Substance Superfund (the Fund) established by section 9507 of the Internal Revenue Code of 1986. See section 101(11) of CERCLA.

§ 307.11 Scope and applicability.

(a) The following may be submitted only through the procedures established by this part: claims for responses to a release or substantial threat of release of a hazardous substance into the environment; claims for responses to a release or substantial threat of release of any pollutants or contaminants into the environment, which may present an imminent and substantial danger to public health or welfare; and claims for response actions undertaken pursuant to settlement agreements in which the Federal Government agrees to reimburse a portion of the cost. Under this part, persons may bring claims for necessary costs incurred in carrying out the National Contingency Plan (NCP) (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and revised pursuant to section 105 of CERCLA. Only response actions that EPA has preauthorized are eligible for reimbursement through the claims process of section 112 of CERCLA. Authority for the payment of claims for response costs is provided by section 111(a)(2) of CERCLA. Authority for the reimbursement of certain costs incurred by parties to a settlement agreement entered pursuant to section 122 of CERCLA is provided by section 122(b) of CERCLA.

(b) This part does not affect the terms and conditions contained in Preauthorization Decision Documents (PDDs) issued prior to the effective date of this part. However, a potential claimant may elect to comply with the provisions of this part, rather than the terms and conditions of a PDD issued prior to the effective date of this part, if he so chooses. Written notice of this election must be provided to EPA by the potential claimant prior to such provision taking effect, but not later than the time of the submittal of any claim to EPA. EPA will provide a written acknowledgement of the potential claimant's election and may revise the PDD as appropriate.

§ 307.12 Use of number and gender.

As used in this part, words in the singular also include the plural and vice versa, and words in the masculine gender also include the feminine, as the case may require.

§ 307.13 Computation of time.

In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day.

§ 307.14 Definitions.

Terms that are not defined in this section or restated herein, shall have the meaning set forth in section 101 of CERCLA or the 1990 NCP or any final revision thereto. As used in this part, the following words and terms shall have the meanings set forth below:

Act or *CERCLA* both mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

Administrative hearing means an administrative adjudication required by section 112(b)(2) of CERCLA in the event a claimant contests a determination of his claim made by the U.S. Environmental Protection Agency (EPA).

Assistance agreement means the legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant or

cooperative agreement (see 40 CFR part 35) and will specify: budget and project periods; the Federal share of eligible project costs; a description of the work to be accomplished; and any special conditions.

Claim means a demand in writing for a sum certain presented to the Fund in accordance with sections 111 and 112 of CERCLA.

Claimant means any person who presents a claim to the Fund for reimbursement under section 112(b)(1) of CERCLA.

Contractor claim means the disputed portion of a written demand or written assertion by any contractor who has contracted with a person (i.e., the owner) for the conduct of a preauthorized response action, seeking as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to a contract, which has been finally rejected or not acted upon by the owner and which is subsequently settled by the owner or is awarded by a third party in accordance with the disputes clause of the contract document.

Eligible claim means any claim that has satisfied the requirements set forth in § 307.21(b).

Facility as defined by section 101(9) of CERCLA, means any:

(1) Building, structure, installation, equipment, pipe or pipeline (including any pipe into sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(2) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Fund means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Hazardous substance as defined by section 101(14) of CERCLA, means:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*);

(2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6801 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(4) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act;

(5) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of EPA (Administrator) has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under paragraphs (1) through (6) of this definition, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

National Contingency Plan, or *NCP* means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act and revised pursuant to section 105 of CERCLA.

Necessary costs means "necessary response costs" as required by section 111(a)(2) of CERCLA for Fund reimbursement of a preauthorized response action. Necessary response costs are costs determined to be:

(1) Required (based upon the site-specific circumstances);

(2) Reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person);

(3) Allocable (incurred specifically for the site at issue); and

(4) Otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles). See OMB Circular A–122 (non-profit organizations); OMB Circular A–87 (States and political subdivisions); and 48 CFR part 31, subparts 31.1 and 31.2 (profit-making organizations).

NPL means the National Priorities List established pursuant to section 105 of CERCLA and 40 CFR 300.425, which consists of uncontrolled hazardous substance facilities in the United States that need to be addressed under CERCLA authorities. Only NPL sites are eligible for Fund-financed remedial action.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable units will not impede implementation of subsequent actions, including final action at the site.

Party means EPA or a claimant.

Perfected means the point at which EPA determines that the written demand for a sum certain (i.e., claim) has the documentation necessary to substantiate the appropriateness of the amounts claimed; i.e., the claim is technically complete.

Person as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Political subdivision means any general purpose unit of a local or State government.

Pollutant or *Contaminant* as defined by section 101(33) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of the Act, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

Preauthorization means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. The process of preauthorization consists of three steps:

(1) EPA's receipt of the application for preauthorization;

(2) EPA's review and analysis of the application; and

(3) EPA's issuance of the Preauthorization Decision Document, which sets forth the terms and conditions for reimbursement.

Preauthorized response actions are response actions approved through the preauthorization process.

Respond or *Response* as defined by section 101(25) of CERCLA, means remove, removal, remedy, and remedial action, all such terms (including removal and remedial action) including enforcement activities related thereto.

Response claim means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA, including certain costs of actions referred to in section 122(b)(1) of CERCLA.

§ 307.15 Penalties.

(a) If any person knowingly gives a material statement or representation in the application for preauthorization or in the claim that is false, misleading, misrepresented, or misstated, and EPA relies upon such a statement or representation in making its decision, the preauthorization or the award by EPA may be withdrawn following written notice to the claimant.

(b) Any person who knowingly gives, or causes to be given, any false information as part of an application for preauthorization or of a claim (including any person who meets the conditions of paragraph (a) of this section) may, upon conviction, be fined or imprisoned in accordance with CERCLA section 112(b)(1) and other laws.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

§ 307.20 Who may present claims.

(a) Subject to the provisions of this subpart, claims for the costs of response actions may be asserted against the Fund by any person other than the United States Government, States, and political subdivisions thereof, except to the extent the claimant is otherwise compensated for the loss. States and political subdivisions may assert such claims if they are potentially responsible parties subject to an agreement reached pursuant to section 122(b)(1) of CERCLA.

(b) Claims presented by an individual must be signed by that individual. If, because of death, disability, or other reasons satisfactory to EPA, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent, executor, administrator, or other legal representative. A claim presented by an entity or an authorized agent, executor, administrator, or other legal representative must be presented in the name of the claimant. The claim must be signed by the authorized agent, executor, administrator, or other legal representative (including the title or legal capacity of the person signing) and be accompanied by evidence of the authority to present a claim on behalf of the claimant as authorized agent, executor, administrator, or other legal representative.

(c) A claim for response costs as to which any release from liability was executed between the claimant and a potentially responsible party may be presented against the Fund to the extent that the claimant obtained EPA's approval prior to executing such release and provided that the other requirements of this part are met.

(d) A foreign claimant may present a response claim to the Fund, to the same extent that a United States claimant may assert a claim, if:

(1) The requirements of § 307.21 and § 307.22 are met; and

(2) The release of a hazardous substance occurred in the navigable waters of the United States, including the territorial sea, or in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident; and

(3) The claimant is not otherwise compensated for the loss; and

(4)The hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*); and

(5) Recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

§ 307.21 Nature of eligible claims.

(a) Claims may be asserted against the Fund for necessary costs incurred for response actions due to a release or substantial threat of release of a hazardous substance into the environment; a release or substantial threat of release of pollutants or contaminants into the environment that may present an imminent or substantial danger to public health or welfare; or actions taken by a potentially responsible party subject to an agreement reached pursuant to section 122(b)(1) of CERCLA. Claims must be filed in accordance with § 307.22. Claims may be asserted for the costs of removal actions, remedial planning activities, and remedial actions.

(b) Costs will be considered to be eligible under this section if:

(1) The response action is preauthorized by EPA pursuant to § 307.22;

(2) The costs are incurred for activities within the scope of EPA's preauthorization;

(3) The response action is conducted in a manner consistent with the NCP; and

(4) The costs incurred are necessary costs pursuant to § 307.11 of this part.

(c)Money in the Fund may be used for paying any claim under this section for expenses incurred for the payment of contractor claims either through settlement of such claims or an award by a third party to the extent EPA determines that:

(1) The contractor claim arose from work within the scope of the contract at issue and the contract was for preauthorized response activities;

(2) The contractor claim is meritorious;

(3) The contractor claim was not caused by the mismanagement of the claimant;

(4) The contractor claim was not caused by the claimant's vicarious liability for the improper actions of others;

(5) The claimed amount is reasonable and necessary;

(6) The claim for such costs is filed by the claimant within 5 years of completion of the preauthorized response action; and

(7) Payment of such a claim will not result in total payments from the Fund in excess of the maximum amount for which claims were preauthorized.

(d) An award by a third party on a contractor claim under paragraph (c) of this section should include:

(1) Findings of fact;

(2) Conclusions of law;

(3) Allocation of responsibility for each issue;

(4) Basis for the amount of award; and

(5) The rationale for the decision.

(e) Money in the Fund may not be used for paying any claim under this section for expenses incurred for procurement transactions that were not conducted in a manner that provided to the maximum extent practicable, open and free competition; unduly restricted or eliminated competition; and did not provide where applicable for the award

of contracts to the lowest responsive, responsible bidder where the selection was made principally on the basis of price.

(f) Money in the Fund may not be used for paying any claim under this section for expenses incurred by a person operating pursuant to a procurement contract or assistance agreement with the United States.

(g) Money in the Fund may not be used for paying any claim under this section for expenses incurred for the payment of persons who are on the "List of Parties Excluded From Federal Procurement or Non-Procurement" at the time the contract is awarded, unless EPA approval is obtained in advance.

(h) Unless EPA waives this requirement prior to the award of a construction contract, money in the Fund may not be used for paying any claim under this section for expenses incurred under such a construction contract that does not contain a "differing site conditions" clause equivalent to the following:

(1) The contractor shall promptly, and before such conditions are disturbed, notify the claimant in writing of:

(i) Subsurface or latent physical conditions at the site differing materially from those listed in this contract, or

(ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Upon notification by the construction contractor, the claimant shall promptly investigate the conditions. If the claimant finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under its contract, whether or not changed as a result of such conditions, the claimant shall make an equitable adjustment and modify the contract in writing.

(3) No claim of the contractor under the differing site conditions clause shall be allowed unless the contractor has given the notice required in paragraph (h)(1) of this section. However, the claimant may extend the time prescribed in paragraph (h)(1) of this section.

(4) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(i) Where money in the Fund has been used to pay for any response costs under this section, no other claim may be paid out of the Fund for the same costs.

§ 307.22 Preauthorization of response actions.

(a) No person may submit a claim to the Fund for a response action unless that person notifies the Administrator of EPA or his designee prior to taking such response action and receives preauthorization by EPA. In order to obtain preauthorization, any person intending to submit a claim to the Fund must fulfill the following requirements before commencing a response action:

(1) Notify the lead agency through the National Response Center (as described in 40 CFR 300.125), if there is acute threat of fire, explosion, or direct human contact with hazardous substances, pollutants, or contaminants or other emergency situation, to determine if there is sufficient time to submit an application for preauthorization;

(2) Submit an application for preauthorization (EPA Form 2075–3, found at Appendix A of this part) to the Administrator or his designee; and

(3) Obtain the approval of the Administrator or his designee before initiating the response action.

(b) All applications for preauthorization must include, where available;

(1) A description of the location and nature of the release or threatened release of a hazardous substance or pollutant or contaminant (e.g., type and location of vessel or facility, population at risk, routes of exposure);

(2) A description of the nature and quantity of the hazardous substance or pollutant or contaminant which has been or may be released, including whether the substance is on the list of hazardous substances set forth pursuant to section 102 of CERCLA;

(3) The identity of any potentially responsible parties known to the applicant (including the applicant), and any contact with such parties, including, but not limited to, any correspondence, agreements, or litigation with such parties;

(4) Evidence of the applicant's eligibility to file a claim pursuant to § 307.20;

(5) An explanation of why the proposed response action is necessary, and how the proposed action is consistent with 40 CFR 300.700(d)(4)(ii);

(6) A description of the applicant's capability (including financial and technical capability) to implement the proposed response action;

(7) Proposed schedule of activities;

(8) Projected costs of response activities, with the basis for those projections (projections shall be based on actual anticipated costs without a contingency for unanticipated conditions);

(9) Proposed schedule for the submission of claims;

(10) The proposed contracting procedures;

(11) Proposed procedures for project management, EPA oversight, and reporting of progress of the project; and

(12) The assurances of timely initiation and completion.

(c) Applications for preauthorization to undertake a removal action shall, in addition to the requirements in paragraph (b) of this section, include:

(1) A summary or copy of the preliminary assessment; and

(2) A description of the proposed removal action for which the claim will be made, which environmental requirements are applicable or relevant and appropriate, and how the removal will comply with such requirements.

(d) Applications for preauthorization to undertake a remedial investigation and feasibility study shall, in addition to the requirements in paragraph (b) of this section, include:

(1) The scope of the proposed study;

(2) A proposed site sampling plan and quality assurance procedures;

(3) The plan for the development of alternatives;

(4) Approaches to consideration of alternatives to land disposal;

(5) Plans for initial screening of alternatives;

(6) Proposed procedures for the detailed analysis of alternatives; and

(7) Proposed considerations in selection of the remedy.

(e) Applications for preauthorization to undertake a remedial alternative other than that selected by EPA, or where EPA has not selected a remedy, shall, in addition to the requirements in paragraph (b) of this section, include a discussion of how the proposed remedy:

(1) Differs from the one selected by EPA, if applicable;

(2) Achieves protection of public health and welfare and the environment and complies with legally applicable or otherwise relevant and appropriate Federal, State, and local requirements pursuant to 40 CFR 300.400(g) or waivers to those requirements in 40 CFR 300.430(f)(1)(ii)(C). The application shall also include a discussion of pertinent Federal and State guidance, advisories, and criteria;

(3) Will be cost-effective as set out in section 121(a) of CERCLA and 40 CFR 300.430(f)(1)(ii)(D);

(4) Mitigates and minimizes future risks;

(5) Improves the reliability of the remedy;

(6) Utilizes new or innovative technology, if appropriate;

(7) Employs treatment that reduces the volume, toxicity or mobility of the hazardous substances;

(8) Impacts projected costs; and

(9) Takes into account Appendix D of 40 CFR part 300.

(f) Applications for preauthorization to undertake a remedial action, including those described in paragraph (e) of this section, shall in addition to the requirements in paragraph (b) of this section, include:

(1) A description of the proposed remedial action for which the claim will be made;

(2) A proposed site sampling plan and quality assurance procedures;

(3) Documentation of reasonable effort to obtain the cooperation of the State or Indian Tribe;

(4) A bond or other financial assurance to cover the costs of necessary long-term operation and maintenance of the response action or written assurance from the State to provide such long-term operation and maintenance;

(5) Proposed procedures using sealed bidding to select the construction contractor, or an explanation of why the applicant intends to use any other method; and

(6) Documentation showing that the response will be carried out in accordance with applicable or relevant and appropriate environmental requirements. Documentation should include the potential impacts on any environmentally sensitive areas.

(g) Claims of business confidentiality may be asserted for information submitted to EPA under this subpart. Information claimed confidential will be disclosed by EPA only to the extent permitted by CERCLA, this subpart, and part 2, subpart B, of this chapter.

(1) Any claim of business confidentiality must accompany the information when it is submitted to EPA. Claims must be asserted as prescribed on the forms. Items claimed confidential on the forms and attachments to the forms must be clearly marked by circling or bracketing them.

(2) The applicant or response claimant must provide EPA with two copies of its submittal if any information is claimed confidential.

(i) One copy of the submittal must be complete, with items claimed confidential clearly marked in accordance with paragraph (g)(1) of this section.

(ii) The second copy must be complete except that all information claimed as confidential in the first copy must be deleted. EPA may make this second copy available to the public.

(iii) If the applicant does not provide a redacted copy, the application for preauthorization is incomplete. If the claimant does not provide a redacted copy, the claim against the Fund will not be perfected by EPA. EPA will not process such submittals until it receives the redacted copy.

(3) If a submitter of a response claim or an application for preauthorization does not assert a claim of business confidentiality for information at the time the information is submitted to EPA, the Agency may make the information public without further notice to the submitter.

(h) In addition to the foregoing, an application for preauthorization filed by a potentially responsible party for partial reimbursement of response costs shall include:

(1) A copy of the settlement agreement, or the most recent draft of any pending agreement, reached between such parties and the Federal Government; and

(2) If the application is to undertake a remedial investigation and feasibility study, an affirmation that the applicant will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contractor with respect to the site at issue and an agreement to reimburse the Fund for any costs incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study.

(i) If it is subsequently determined that the preauthorized response actions require modification or if it appears that project costs will exceed approved costs, a revised application for preauthorization must be approved by EPA before different, or additional, actions can be undertaken, if such actions are to be eligible for compensation from the Fund.

(j) Unless otherwise specified and agreed to by EPA, the terms, provisions, or requirements of a court judgment, Consent Decree, administrative order (whether unilateral or on consent), or any other consensual agreement with EPA requiring a response action do not constitute preauthorization to present a claim to the Fund.

§ 307.23 EPA's review of preauthorization applications.

(a) EPA shall review each preauthorization application and will notify the applicant of the decision to grant or deny preauthorization. Decisions to grant preauthorization will be memorialized in a PDD.

(b) Each application for preauthorization must include information sufficient for EPA to determine whether the response will be consistent with 40 CFR 300.700(d). EPA will evaluate applications based on the following non-exclusive list of criteria, as appropriate:

(1) Whether the release is within the scope of CERCLA;

(2) The seriousness of the problem or importance of the response activity when compared with competing demands on the Fund;

(3) Whether there is sufficient time to process the request for preauthorization (e.g., if a removal action is proposed);

(4) Whether the party liable for the release or threat of release of the hazardous substance is unknown, or if known, has been notified of the application for preauthorization and is unwilling or incapable of performing the response in a reasonable period of time;

(5) Whether the State, a political subdivision, or an Indian Tribe is willing to undertake the response action through a contract or a cooperative agreement;

(6) The cost and effectiveness of the proposed response actions when compared with other alternatives;

(7) Whether proposed response can be carried out in accordance with the NCP and other environmental requirements;

(8) The applicant's eligibility to file a claim; his capabilities, experience, and technical expertise; and his knowledge and familiarity with the NCP and relevant guidance;

(9) Whether the party is proposing to conduct a cleanup through an administrative order or a Consent Decree with the Government regarding the site for which the request is made (if the applicant is a potentially responsible party);

(10) Whether the applicant, if he is a potentially responsible party seeking to undertake a remedial investigation and feasibility study, has affirmed that he will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contract with respect to the site at issue, and agrees to reimburse the Fund for any cost incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study;

(11) Whether the proposed costs are eligible and the applicant has proposed appropriate procurement, contract management, project management, financial management and documentation procedures;

(12) Whether the applicant has met the necessary assurances, financial responsibilities, and other requirements;

(13) Provisions for long-term operation and maintenance of the site, if appropriate;

(14) Whether the applicant has consulted with the State or Indian Tribe on the proposed response action;

(15) The applicant's proposed procedures for oversight and the reporting of project issues and progress;

(16) Cooperation of the applicant at any earlier stage of response activity; and

(17) Whether the proposed schedule for filing a claim(s) is based upon the completion of the project, an operable unit, or a discrete phase of the response work.

(c) The Administrator may grant preauthorization for all or part of a proposed response action, but not less than a stage of an operable unit or of a response action.

(1) The Administrator may set a limit on the amount that may be claimed as reimbursement from the Fund for any response action.

(2) The Administrator may condition the preauthorization on such inspection, monitoring, reporting, safety, and long-term operation and maintenance requirements as he deems necessary. The costs of such requirements may not necessarily be reimbursed from the Fund.

(3) The Administrator may condition the preauthorization on such time period for starting and completing the response action as he may deem necessary.

(4) The Administrator may condition the preauthorization on such financial or other assurance from the claimant or other entity as he may deem necessary to ensure completion of work at the site.

(5) The Administrator will not subject potentially responsible parties who may wish to undertake a remedial investigation and feasibility study to a lesser standard of liability nor will he give such parties preferential treatment in EPA's review of applications for preauthorization.

(d) If EPA denies a preauthorization because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications or uses of the Fund, the applicant may resubmit the application in another fiscal year. If preauthorization is denied because of the inability of the applicant to demonstrate his experience and capabilities, the applicant may resubmit the application form only after correcting the deficiencies, or by proposing an alternative approach.

(e) If EPA grants preauthorization, the applicant may begin the approved response action subject to the terms and conditions contained in the PDD. The applicant, as a condition of preauthorization, shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring.

(f) If the applicant is unable to initiate or complete the preauthorized response action, the applicant shall immediately notify EPA in writing.

(g) EPA will not grant preauthorization for any response actions where:

(1) The proposed action is not a response action authorized under CERCLA;

(2) There is a significant threat to the public health or the environment caused by acute threat of fire, explosion, direct human contact with a hazardous substance, or other similar hazardous situations requiring immediate action, and there is insufficient time to process an application for preauthorization;

(3) The proposed response is a remedial action and the site is not on the NPL; or

(4) The action is to be performed by a State, political subdivision, Indian Tribe through an assistance agreement with the United States, or a person operating pursuant to a contract with the United States.

(h) EPA will deny preauthorization to a person whom the Agency believes is a liable party under section 107 of CERCLA unless negotiations are underway aimed at reaching a judicial or administrative settlement. Such parties may be preauthorized under this paragraph to submit claims to the Fund for response costs up to the maximum amount specified in the PDD.

Subpart C—Procedures for Filing and Processing Response Claims

§ 307.30 Requesting payment from the potentially responsible party.

(a) A claimant must present all claims to any person who is known to the claimant and who may be liable under section 107 of CERCLA at least 60 days before filing a claim against the Fund. The presentation to the potentially responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name of the claimant (commercial entity or individual);

(2) The name, title, and address of any authorized representative;

(3) The location of the release and cleanup;

(4) The date of the release, if known;

(5) The owner of the property, if other than the claimant;

(6) A description of the response action taken; and

(7) The amount of the request (in dollars);

(8) If applicable, notice of intent to file a subsequent application for preauthorization or claim against the Fund for additional operable units or for a stage of a response action.

(b) Where the potentially responsible party is unknown, the claimant must make a good-faith effort to identify the potentially responsible party prior to submitting a claim. If the potentially responsible party is identified, the claimant must then comply with the procedures of § 307.30(a). Where a potentially responsible party cannot be identified, the claimant may submit a claim to the Fund pursuant to § 307.31. Claims submitted under this paragraph must be accompanied by documentation of efforts to identify potentially responsible parties.

(c) If the claimant and the potentially responsible party agree to a settlement involving a release from liability, the claimant may submit a claim against the Fund for any costs that are not recovered provided the claimant complies with the provisions of § 307.20(c), which require EPA's prior approval of such releases from liability.

(d) If the claim is denied by the potentially responsible party, or has not been satisfied after 60 days of presentation to such party, the claimant may submit a claim to the Fund in accordance with § 307.31.

(e) If the first claim was denied by the potentially responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such potentially responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

§ 307.31 Filing procedures.

(a) A response claim must be submitted on EPA Form 2075–4 and must include:

(1) Documentation showing that the claimed response activities were preauthorized by EPA;

(2) Documentation showing that the response activity was accomplished in a manner consistent with the PDD, noting any deviation from preauthorized activities;

(3) Documentation that a search to identify potentially responsible parties was conducted in accordance with § 307.30 and of any contacts with such parties; and

(4) Substantiation that all claimed costs are necessary costs.

(b) Claimants (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and must be signed by the claimant or authorized representative. The time limitations of § 307.32(i) refer to the date by which an amendment is filed.

(c) Claimants may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same response costs. EPA will return claims presented under this subpart when the Agency determines that a claimant has initiated an action for recovery of the same response costs, in court, against a party potentially liable under section 107 of CERCLA.

§ 307.32 Verification, award, and administrative hearings.

(a) Upon receipt of a response claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the claimant with written notification of its deficiencies.

(b) A claim returned to the claimant for failure to comply with the filing requirements may be resubmitted to EPA.

(c) For purposes of this part, a response claim is deemed perfected when EPA determines that the claim complies fully with the specified filing requirements; i.e., the claim is technically complete. When the claim is perfected, a notice will be provided to the claimant of EPA's receipt and acceptance of the claim for evaluation.

(d) EPA may adjust claims and in making a determination whether costs are allowable, EPA will be guided by the Federal cost principles (non-profit organizations—OMB Circular A–122; States and political subdivisions—OMB Circular A–87; profit-making organizations—48 CFR part 31, subparts 31.1 and 31.2).

(e) In evaluating claims, EPA will determine whether the claimant has settled and satisfactorily completed in accordance with sound business judgment and good administrative practice all contractual and administrative matters arising out of agreements to perform preauthorized response actions. This includes the issuance of invitations for bids or requests for proposals, selection of contractors, approval of subcontracts, settlement of protests, claims disputes, and other related procurement matters. EPA will examine how the claimant assured (e.g., by the use of a subcontract administration system) that work was performed in accordance with the terms, conditions, and specifications of such agreements.

(f) Awards will be made:

(1) Only for necessary costs of completing the response action or stage of an operable unit or of a response action;

(2) Only to the extent that the response actions were preauthorized by EPA pursuant to § 307.23;

(3) Only to the extent that the cleanup was performed effectively, as provided in 40 CFR 300.120(e)(3) and 300.400(h); and

(4) Only to the extent that the cleanup was performed in compliance with the terms and conditions of the PDD.

(g) No award will be made on a claim where the claimant has purported to release a potentially responsible party from liability to the United States for the same costs unless EPA has approved the release in advance.

(h) Where a response action is determined to have been ineffective due to acts or omissions of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(i) For claims submitted in connection with a settlement reached under section 122(b)(1) of CERCLA only, interest will be paid on amounts due if EPA fails to pay the amount within 60 days of a perfected claim.

(1) Interest shall accrue on the amounts due the claimant where EPA fails to pay the claim for the preauthorized response action within 60 days of EPA's receipt of a perfected claim.

(2) Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, the period as stated in paragraph (i)(1) of this section or the accrual of interest is suspended from the date the Agency requests the information from the claimant until the date the requested information is received.

(3) Where a claim is denied in whole or in part by EPA, and the claimant requests an administrative hearing in accordance with paragraph (o) of this section, interest on the disputed amount begins to accrue 50 days after an award by the Administrative Law Judge, unless an appeal is filed. If either party files an appeal with a Federal district court, interest will not accrue until 20 days after the final judicial decision.

(4) The rate of interest paid on a claim is the rate of interest on investments of the Fund established by Subchapter A of Chapter 98 of the Internal Revenue Code of 1954.

(j) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA, a preauthorized potentially responsible party will be entitled to full reimbursement only where the response action is conducted in complete satisfaction of the requirements set forth in the consent order or decree.

(k) Future site-specific actions required by preauthorized potentially responsible parties, and any future obligations on the Fund, shall be governed by § 307.42.

(l) Any withdrawal of preauthorization will be preceded by written notice from EPA. The application for preauthorization will be deemed invalid and no award will be made from the Fund where the claimant is determined by EPA to be liable under section 107 of CERCLA for the costs for which the claim is made, and the application for preauthorization did not disclose that the claimant may be a person described as follows:

(1) The owner and operator of a vessel or a facility;

(2) Any person, who at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

(4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.

(m) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the claimant. If EPA determines that it cannot complete its evaluation of a claim because the records, documents, and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any

reason inadequate to demonstrate that claimed costs are necessary costs, EPA will adjust the claim accordingly. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 30 days, unless a different period of time is specified by EPA. The failure of the claimant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the claim.

(n) Once the claim is perfected, EPA will proceed to:

(1) Make an award on the claim; or

(2) Decline to make an award.

(o) If the claimant is dissatisfied either with EPA's denial of a claim or with the amount of an award, the claimant may request that EPA arrange an administrative hearing in accordance with section 112(b) of CERCLA. The request for an administrative hearing must occur within 30 days of being notified of EPA's decision.

(p) Notice of an award under paragraph (f) of this section will be given by First Class Mail within five (5) days of the date of the decision. Payment of approved claims will be made according to § 307.40.

§ 307.33 Records retention.

A claimant receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim, and to provide EPA with access to such records. These records must be maintained until cost recovery is initiated by EPA. If, after ten (10) years from the date of award of the final claim, EPA has not initiated a cost recovery action, the claimant need no longer retain the records. The claimant shall, however, notify EPA of the location of the records, and allow EPA the opportunity to take possession of the records before they are destroyed. The claimant shall cause to be inserted in all agreements between itself and contractors performing work at the site a clause providing for the same requirement to maintain records and to provide access to records as that required of the claimant.

Subpart D—Payments and Subrogation

§ 307.40 Payment of approved claims.

(a) Payment of claims will be made, as applicable, within:

(1) 50 days of EPA's decision to make an award, if the claimant does not request an administrative hearing;

(2) 50 days of an award by an administrative tribunal if no appeal of such award is taken; or

(3) 20 days of the final judicial decision of any appeal taken.

(b) Payment of a claim shall not be seen as EPA's final acceptance of the claimant's response action. Final acceptance shall await EPA's determination that the response action was conducted in accordance with the terms and conditions of the PDD or the consent order or decree, as applicable.

§ 307.41 Subrogation of claimants' rights to the Fund.

(a) The United States acquires by subrogation all rights of the claimant to recover the amount of the claim paid by the Fund from the person or persons liable under section 107 of CERCLA for the release giving rise to the response action.

(b) Claimants shall assist in any cost recovery action that may be initiated by the United States. The claimant and the claimant's contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the claimant or the claimant's contractors at the particular site in order to aid in cost recovery efforts. The claimant and the claimant's contractors shall also provide all requested assistance in the interpretation of documents detailing work and costs that may be needed as evidence, and shall testify on behalf of the United States in any judicial or administrative cost recovery proceeding regarding the response costs claimed. All of the claimant's contracts for implementing the PDD shall expressly require their contractors to provide this cost recovery assistance.

§ 307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to CERCLA Section 122.

(a) In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund shall be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action.

(b) The Fund is not obligated by preauthorization of a response action to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant to properly perform authorized activities or otherwise comply with the terms and conditions of the PDD, and the Consent Decree or order regarding the site cleanup entered into by EPA and the claimant.

Appendix A to Part 307—Application for Preauthorization of a CERCLA Response Action

United States Environmental Protection Agency
Washington, DC 20460

Form Approved. OMB No. 2050-0106
Expiration Date 12-31-94

Application for Preauthorization of a CERCLA Response Action

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your preauthorization request, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Applicant(s):

B Name of Site:

C. Eligibility:
- ☐ Individual
- ☐ PRP
- ☐ Firm
- ☐ Other
- ☐ Foreign Applicant

D. Name, Title and Address of Agent (if any) Authorized to Represent the Applicant:

II. Relates to Actual or Threatened Release of a Hazardous Substance, Pollutant or Contaminant

A. Date/time (am/pm) of release (if known):

B. Location of the release:

C. Is the release or threat of release at an NPL site? ☐ Yes ☐ No If yes, what is the site name on the NPL?

D. Provide a short description of the release or threat of release.

E. Did you contact the National Response Center? ☐ Yes If yes, provide the date and the manner of the notice:

☐ No If no, explain why not:

III. Relates to Potentially Responsible Parties (PRPs)

A. Are you a person whom EPA previously identified as a PRP for the site in question? ☐ Yes ☐ No
If yes, provide date of notice letter

B. If you have not been identified as a PRP, do you fall within one of the four categories of potentially liable parties set forth in section 107(a) of CERCLA? ☐ Yes ☐ No
If yes, describe why.

C. Is this application to be approved in the context of a consent order or decree? ☐ Yes ☐ No
If yes, provide information as to the status of the settlement negotiations, provide the name of the relevant EPA contact person, and attach the most recent draft of any settlement agreement.

D. Have you identified any PRPs for the release or threat of release in question? ☐ Yes ☐ No
If yes, attach a list of known PRPs and describe the results of any contacts with them.
If no, describe efforts to identify PRPs.

IV. Relates to Proposed Response Action

A. Briefly summarize the proposed response action and attach a schedule of major response activities.

B. Identify which provisions of the National Contingency Plan (NCP) are applicable for the proposed types of response activity (e.g., removal, RI/FS) and describe how the proposed action will be conducted in accordance with those provisions.

C. Address how the proposed response action will be consistent with the NCP with regard to the following performance standards:

1. Worker training, health and safety, and the safety of the public.
2. Community relations plan.
3. Compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs).

V. Relates to Applicant's Capabilities

Describe your capabilities to carry out the proposed response actions.

VI. Relates to State or Indian Tribe Consultation

Has a letter signed by the designated State or Indian Tribe official been attached? ☐ Yes ☐ No If no, explain.

VII. Relates to Long-Term Operations and Maintenance (O&M) (if applicable)

☐ I will provide a bond or other financial assurance for O&M. ☐ The State has agreed to provide for O&M.

Attach documentation to support your assertion.

VIII. Relates to Projected Costs

A. Provide the projected costs for each proposed response activity and attach an explanation of why each of these costs is "necessary."

1. _____ $_____
2. _____ $_____
3. _____ $_____
4. _____ $_____

TOTAL $_____

B. Provide a proposed schedule for the submission of claims.

IX. Relates to Project Management

A. Describe the management structure to be put in place to implement the proposed project and to control financial matters.

B. Describe your procedures for comprehensively documenting the work performed and the costs incurred for all phases of the proposed response action.

C. Describe your procedures for reporting to EPA on the progress of the proposed project and for EPA oversight.

D. Describe your proposed procurement procedures.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Applicant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS TO APPLY FOR PREAUTHORIZATION OF A CERCLA RESPONSE CLAIM

This form is to allow parties to apply for EPA preauthorization of a claim against the Hazardous Substances Superfund (Fund) as authorized by sections 111(a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA preauthorization is required before a party can begin response work if that party desires Fund reimbursement of his/her response costs. The regulatory procedures for obtaining preauthorization from EPA are found at 40 CFR Part 307. The public reporting burden for the completion of this form is estimated to vary between 186 and 330 hours -- averaging 258 hours per application. These estimates include the time needed to review instructions, search existing data services, gather and maintain the data needed for completing and reviewing the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) or any other aspect of this form should be sent to the following addresses.

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, N.W.
Washington, D.C. 20503
Attention: Desk Officer for EPA

The applicant bears the burden for demonstrating that scarce Fund resources should be utilized for this project. Consequently, all preauthorization applications should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the applicants' best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the applicant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the applicants provide appendices. In these appendices, the applicants shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the applicant shall provide clear cross-references between this form and the appendices.

Applicants should consult 40 CFR section 307.22(g) to assert any claims of business confidentiality.

When completed this form should be sent to:

U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention: Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

I A. Provide the name, title and address of the person(s) submitting this application. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B. Self-explanatory.

C. Check all that apply.

D. "Agent" refers to any duly authorized agent, executor, administrator or other legal representative of the applicant. If this preauthorization application is submitted by such an agent, he/she must present evidence of authority to so represent the applicant. (See 40 CFR Section 307.20).

II A-C. Self-explanatory.

D. This description must include the following information: the type of vessel and facility; the type and quantity of hazardous substance (including whether the substance is listed under CERCLA section 102); and a description of the surrounding population and/or environmental risk.

E. Self-explanatory.

III A. Check whether you are a person who EPA previously identified as a potentially responsible party (PRP).

B. Check whether you have reason to believe, without regard to whether a defense under Section 107(b) may be available, that you may be a person described as follows:

1) the owner or operator of a vessel or facility;

2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;

3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release, or a threatened release of a hazardous substance, which causes the incurrence of response costs.

C. If you checked YES for item A or B and NO for this item, explain why this application is not to be approved in the context of a consent order or decree. Describe the status of any settlement negotiations.

D. List all PRPs known to you. Describe any contacts with PRPs and any reply from such parties. If PRPs are unknown, describe efforts to locate PRPs.

IV A. Self-explanatory.

B. Describe the response action(s) that is the subject of this request (e.g., removal, RI/FS, selection of remedy, design, construction), and methods proposed for carrying out such actions, including site sampling plan and quality assurance procedures. Address the requirements contained in 40 CFR 307.22.

C. Worker/community health and safety plan: The worker plan must comply with OSHA Safety and Health standards at 29 CFR Part 1910.120. The community plan must address the protection of area residents from the physical, chemical and/or biological hazards particular to the site and the selected response.

Community Relations Plan: The applicant need not develop a plan if the response action is of short duration or a community relations plan already exists for the site at issue.

ARARs: See 40 CFR Sections 300.400(g), 300.430(f)(3)(iv).

V. Include a discussion of financial and technical/scientific capabilities.

VI. If a letter of cooperation signed by the designated State or Indian Tribe is not attached to an application to undertake a remedial action, explain efforts made by the applicant to obtain such cooperation.

VII. Self-explanatory.

VIII A. The figures provided on the form should be the overall cost for a particular type of response activity (e.g., removal, RI/FS, design). Documentation should be attached to support each cost figure. In addition, the applicant must explain why each of the proposed costs is "necessary." "Necessary" costs are those which are 1) required, 2) reasonable, 3) allowable and 4) allocable according to Federal cost principles. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local government and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR sections 31.1 - 31.2 (profit-making organizations).

B. A proposed schedule for the submission of claims should be provided. Applicants are encouraged to propose reimbursement based upon cash-flow considerations. The goal of an applicant should be to balance major capital expenditures and the completion of discussed tasks against the number and frequency of claims.

IX. Self-explanatory.

United States Environmental Protection Agency
Washington, DC 20460

Claim for CERCLA Response Action

Form Approved. OMB No. 2050-0106
Expiration Date 12-31-94

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your claim, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Claimant(s):

B. Name of Site:

C. Preauthorization Decision Document (PDD):
Number _____
Date _____
(attach copy)

D. Name, Title and Address of Agent (if any) Authorized to Represent the Claimant:

II. Relates to Potentially Responsible Parties (PRPs)

A. Has the claimant made a reasonable effort to identify any PRPs (other than any who may be parties to this claim)? Describe those efforts.

B. Has the claimant presented a request for reimbursement to known PRPs (other than any who may be parties to the claim)?
☐ Yes ☐ No
Attach names, addresses and dates of presentation. Describe any responses.

C. If a partial settlement was reached with PRPs after presentation of the claim as described in II.B., did EPA approve any release?
☐ Yes ☐ No If no, explain.

D. Is there any action pending in court regarding this site or response actions?
☐ Yes ☐ No If yes, explain.

III. Relates to Claims for a Preauthorized Phase

A. Is this a claim for a preauthorized phase? ☐ Yes ☐ No
If no, provide the completion date of the subject response action and skip B, C, D and E.

B. How many claims are authorized in the PDD?

C. For which preauthorized phase are you filing a claim at this time?

D. Is completion of the next preauthorized phase on schedule?
☐ Yes ☐ No If no, explain.

E. Estimated date for submitting claim for the next preauthorized phase.

IV. Relates to Response Action

A. Was the response/preauthorized phase completed in accordance with the PDD? ☐ Yes ☐ No If yes, skip B

B. Was a modification to the preauthorization request submitted to and approved by EPA?
☐ Yes -- Supply number and date _____
☐ No -- Explain how and why response differs from PDD.

C. Was the response completed in accordance with the Statement of Work and the Work Plan? ☐ Yes ☐ No If yes, skip D

D. Explain how and why the response differs from the Statement of Work and/or the Work Plan.

E. Address how each of the PDD terms and conditions were met (in the order that they appear in the PDD). Provide documentation of such adherence in an appendix.

F. Provide the name and address of the location where all cost documentation and any other records relating to the claim will be maintained.

V. Relates to Amount of Response Claim

A. Provide the following summary information:

Re Current Claim Submission.

Type of Response Activity(ies) Represented by Claim - _____

Total Eligible Response Costs Represented by Claim - $_____

Percentage of Claimed Costs to Total Response Costs - _____ %

Dollar Amount of Reimbursement Claimed - $_____

Re Any Past Claim Awards Under the Subject PDD

Number of Previous Claims - _____

Total Sum of Previous Awards - $_____

Re PDD

Reimbursement Cap Set For All Claim Submissions - $_____

B. Provide the following breakdown of the eligible response costs asserted in this claim submission

Labor	$_____
Travel	$_____
Equipment	$_____
Materials and Supplies	$_____
Contractual Services	$_____
Other Direct Costs	$_____
Indirect Costs	$_____

TOTAL RESPONSE COSTS $_____

With the exception of contractual services, provide detailed summaries of the components of each of the above cost categories. Address how the costs incurred were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.

C. Provide a cost breakdown of all contractual services performed for this claim submission. Explain how the incurred costs were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Claimant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS FOR SUBMITTING A CLAIM FOR A CERCLA RESPONSE ACTION

This form is for claims against the Hazardous Substances Superfund as authorized by sections 111 (a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Claims can only be awarded for reasonable response costs incurred pursuant to a preauthorization decision document (PDD) issued by EPA. The regulatory procedures for obtaining preauthorization from EPA and for the submission and award of claims are found at 40 CFR Part 307

The public reporting burden for the completion of this form is estimated to vary between 25 and 59 hours -- averaging 42 hours per claim. These estimates include the time needed to: review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) and any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, N.W
Washington, D.C. 20503
Attention: Desk Officer for EPA

The claimant bears the burden for demonstrating that his response costs should be reimbursed. Consequently all claim submissions should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the claimant's best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the claimant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the claimants provide appendices. In these appendices, the claimant shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the claimant shall provide clear cross-references between this form and the appendices.

Claimants should consult 40 CFR Section 307.22 (g) to assert any claims of business confidentiality

When completed, this form should be sent to: U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

I A. Provide the name, title and address of the person(s) submitting this claim. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B Provide the site name as it appears on the PDD

C Supply the number and date of the PDD for this claim. A copy of the PDD shall also be provided in an appendix. If the claimant has been granted preauthorization to modify the PDD, these amendments must be described and copies provided.

D "Agent" refers to any duly authorized agent, executor administrator or other legal representative of the claimant. If this claim is submitted by such an agent, he/she must present evidence of authority to so represent the claimant.

II. A. Self-explanatory.

B. Pursuant to 40 CFR Section 307.33(e), if 1) the first claim was denied by the responsible party or not responded to within 60 days, and 2) EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered a denial of every subsequent claim. The claimant may seek EPA's agreement at any time a claim is presented. The claimant will be advised of EPA's agreement when the clairmant is notified in writing regarding the award or denial of the claim.

C.-D. Self-explanatory

III.-IV Self-explanatory

V A. Self-explanatory

B. This item is concerned with the actual response costs incurred during the time period represented by this claim submission -- not the percentage of those response costs for which the claimant is seeking reimbursement. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local governments and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR 31.1, 31.2 (profit-making organizations). If the claim represents more than one stage of response activity, indicate this on the form and provide similar cost breakdown in an appendix. These instructions are applicable to Item V.C. below.

C. Contractual services will vary depending on the response action performed and the operable unit represented by the claim submission. Typical categories of response activity include:

Security
Groundwater sampling
Construction
    Administrative Expenses
    Materials
Operation & Maintenance.

Appendix C to Part 307—Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL

Limitations on the Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at [insert January 21,1993 citation of publication of this rule], 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "preauthorization," from EPA.

Appendix D to Part 307—Notice of Limitations on the Payment of Claims for Response Actions Which is to be Placed in Public Dockets

Statutory Limitations on the Payment of Claims for Response Actions Filed Pursuant to Sections 111(a)(2) and 122(b)(1) of CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) authorizes a number of mechanisms for responding to a release, or threat of release, of hazardous substances or pollutants or contaminants. One of these mechanisms is response claims. Section 111(a)(2) of CERCLA authorizes the Environmental Protection Agency (EPA or the Agency) to compensate claimants for necessary response costs if certain conditions are met. Section 122(b)(1) of CERCLA authorizes EPA to reimburse certain potentially responsible parties for a portion of the costs of response actions conducted pursuant to a settlement agreement. These conditions are outlined below.

First, only private parties, parties to section 122(b)(1) agreements (including States and political subdivisions thereof) and foreign entities are eligible for payment through the response claims mechanism. Federal, State, and local government units, and Indian Tribes can receive funding for response activities through other authorities of section 111(a) or section 123 of CERCLA.

Second, eligible claimants can only be reimbursed for costs that are incurred in carrying out the National Contingency Plan (NCP), 40 CFR part 300. In order to be in conformity with the NCP, all claims must receive prior approval, or "preauthorization," from EPA. This means that before response work is initiated, the party must:

(1) Notify EPA of its intent to file a claim;

(2) Demonstrate that the release merits priority consideration;

(3) Propose activities to remedy the release that can be carried out consistent with the NCP; and

(4) Demonstrate the capabilities necessary to carry out such activities in a safe and effective manner.

In order for potentially responsible parties to be eligible for reimbursement they must conduct the response actions as specified in a Consent Decree or administrative order. Only if EPA preauthorizes a response action can the party begin work, and later file a claim for reimbursement of costs.

The limitations placed on the payment of claims for response actions and the procedures for filing such claims are described in more detail at [insert January 21, 1993 citation of publication of this rule], 40 CFR part 307. Additional information can be obtained by contacting William O. Ross, Office of Emergency and Remedial Response (5203 G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603–8798, or the RCRA/CERCLA Hotline, (800) 424–9346 (or (703) 920–9810 in the Washington, DC metropolitan area).

[FR Doc. 93–1228 Filed 1–19–93; 8:45 am]

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federal register

Thursday
January 21, 1993

Part VI

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1304, 1305, and 1308
Head Start Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1304, 1305, and 1308

RIN 0970–AB01

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Final rule.

SUMMARY: This final rule adds to the existing regulations governing Head Start grantee and delegate agency policies a new part 1308 pertaining to performance standards for services to children with disabilities in the Head Start program. These regulations set forth specific performance standards, including eligibility criteria, and provide guidance to Head Start grantees and delegate agencies.

In addition, this final rule makes changes in parts 1304 and 1305 to:

(1) Assure that services are provided promptly to such children; and

(2) Make technical and conforming changes to comport with part 1308 and with changes in the definition of children with disabilities in the Individuals with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act (EHA).

DATES: This rule is effective February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families, Administration for Children and Families, P.O. Box 1182, Washington, DC, 20013, (202) 245–0572.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement in a proposed and final rule. This final rule contains information collection requirements in sections: 1308.19, Developing individualized education programs (which was section 1308.5 in the NPRM); 1308.4, Purpose and scope of disabilities service plan; and 1308.18 Disabilities health services coordination, (which was section 1308.15 in the NPRM). The information collection in the NPRM was approved earlier by OMB (Approval Number 0980–0203). That approval has expired.

The public reporting burden for the collection of information requirements in this final regulation, including the time for reviewing instructions, gathering and maintaining the data needed, and completing the records, is estimated as follows:

Requirement	Annual No. of respondents	Average time per response	Average annual frequency	Annual burden hours
§ 1308.4: Purpose and Scope of Disabilities Service Plan	(1 plan per program) 1910	10 hours	One	19,100
§ 1308.19: Developing Individualized Education Programs	(1 plan per child) 70,053 children (37 children average per program).	1.5 hours per child	One	105,079
§ 1308.18(d)(3): Disabilities Health Services Coordination	1910 programs	1 minute (average per program).	One	32
Total Annual Burden Hours				124,211

None of these requirements asks grantees to undertake substantially new recordkeeping or reporting tasks beyond general present practice.

We are currently requesting reapproval for the information collection. However, comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden may be sent to the Head Start Bureau, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503.

II. Program Description

Head Start, as authorized under the Head Start Act (the Act), is a national program providing comprehensive child development services. These services are provided primarily to low-income children, age three to five, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children. Parents receive training and education that foster their understanding of and involvement in the development of their children. They also become involved in the development, conduct, and direction of local programs. In fiscal year 1991, Head Start was funded to serve 596,295 children through a network of 1,910 grantees and delegate agencies. Delegate agencies have approved written agreements with grantees to operate Head Start programs.

While Head Start is intended to serve primarily low-income children and their families, Head Start's regulations permit up to 10 percent of the children in local programs to be from families that are not low-income. The Act also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to children with disabilities. Such children are expected to participate in the full range of Head Start activities with their non-disabled peers, and to receive needed special education and related services.

Each grantee is required to report annually on the services provided to children with disabilities as part of the Head Start Program Information Report (PIR). In FY 1991, Head Start served 70,053 children who were certified by professionals as having disabilities. This constituted 12.8 percent of the total enrollment.

Head Start Services to Children With Disabilities

Beginning in 1972, Head Start mounted a major initiative to provide services to children with disabilities. It is now the largest provider of services for preschool children with disabilities in a mainstream setting in the nation.

Since that time, the number of children with disabilities receiving services has tripled.

During those early years, advances were made in providing services to preschool children with disabilities and in helping Head Start programs improve their ability to meet individual special needs. Recent research and demonstration activities have provided new information on effective practices in working not only with children with disabilities, but also with their parents. Improvements have occurred in the ability to assess how a child is functioning in the motor, communication, social and cognitive areas; in the development of technology to help young children with disabilities meet their potential; and in curriculum development and program evaluation. Also, new evidence of the importance of early assistance and of the role of parents in programs for children with disabilities has become available. We have attempted to incorporate these new developments into this final rule.

Head Start services to children with disabilities are delivered in the context of and are influenced by the requirements in section 504 of the Rehabilitation Act of 1973 and the Individuals With Disabilities Education Act (IDEA), (22 U.S.C. 1400 et seq.) formerly the Education of the Handicapped Act.

As a result of this legislation and a variety of advocacy efforts, during the last decade many States have passed laws requiring that services be provided to younger children with disabilities. Special education and related services, such as physical therapy, were mandated as of 1991 for all three through five year olds with disabilities under IDEA. The responsibilities of State Education Agencies in ensuring that all eligible children receive a free appropriate public education have been clarified in the guidelines, facilitating coordination. Many Head Start programs now provide services through a combination of Head Start staff and personnel from other agencies. Coordination with specialized community agencies has become necessary to make the best use of limited resources. Currently, 54 percent of enrolled children with disabilities receive services from both Head Start and other agencies.

III. Purpose and Provisions of the Final Rule

Currently, all Head Start programs must meet all of the requirements of the Program Performance Standards as specified in the regulations at 45 CFR part 1304 including §§ 1304.2–2, 1304.3–3(b)(10), 1304.3–4(a)(1) and 1304.3–8(a)(5) which refer to services for children with disabilities. These Performance Standards clearly define the services for children who do not have disabilities. Some standards for services to children with disabilities and services to meet the special needs of their parents were distributed to grantees between 1973 and 1983 through various transmittal memoranda and other policy issuances. However, no standards previously have been set forth in regulation. The new part 1308 establishes standards in regulation, including eligibility criteria for enrollment of children with disabilities, and offers general guidance, in an appendix to part 1308, for the provision of services to children with disabilities and for services to meet the special needs of their parents. Specifically, these regulations will require Head Start programs to:

—Design comprehensive services which meet program standards for locating and serving children with disabilities and their parents;

—Develop an Individualized Education Program (IEP) to provide appropriate special services for each child who meets eligibility criteria for such services because of disability;

—Screen children by 45 calendar days after program services begin in the Fall, rather than within 90 days as currently recommended, in order that services may be provided in a timely manner;

—Use revised evaluation criteria to determine eligibility for special education and related services and for assistance in obtaining them;

—Designate a coordinator of services for children with disabilities, with special responsibilities; and

—Operate in accordance with standard guidance on the use of funds for special services for children who have disabilities.

These regulations also include some technical amendments to certain sections of 45 CFR parts 1304 and 1305 which are mandated by legislation. We are making changes in parts 1304 and 1305 to:

(1) Assure that services are provided promptly to children with disabilities; and

(2) To comport with part 1308 and with changes in the definition of children with disabilities in the IDEA.

Section 640(d) of the Head Start Act (42 U.S.C. 9835) requires the program to use the same definition of children with disabilities found in IDEA.

IV. Rulemaking History

During 1984 and 1985, extensive consultation was held with the field concerning the adequacy and usefulness of the eligibility criteria described in Transmittal Notice 75.11, issued September 11, 1975, and on the comprehensiveness of the guidance in Transmittal Notice 73.4, issued February 28, 1973, on services to children with disabilities. Head Start directors, coordinators, professional organizations, and technical assistance providers of Head Start services for children with disabilities provided suggestions, comments, and recommendations. The comments indicated a need to correlate, combine and update the various pieces of information available to Head Start grantees, providing comprehensive standards which incorporate legislative changes and advances in the state-of-the-art in the last decade.

On October 19, 1988, the Department published, with a 60-day comment period, a Notice of Proposed Rulemaking (NPRM) (53 FR 41088) for services to children with disabilities in the Head Start program. The NPRM proposed regulations to complement the Head Start Program Performance Standards which govern services to all enrolled children.

A new part 1308 was proposed to provide standards for serving children with disabilities and their families. In addition, non-binding guidance to assist grantees and delegate agencies in meeting the provisions of part 1308 was provided in an appendix. The NPRM also contained technical and conforming changes in 45 CFR parts 1304 and 1305 to mainly (1) make the definition of children with disabilities comport with the current definition in the IDEA; and (2) revise the timeline for the screening of children to allow for timely provision of needed services.

In response to the NPRM, the Department received a total of 500 letters and memoranda with 2,000 comments from grantees, State agencies, professional associations, universities, public schools, advocacy groups, parents and interested parties.

V. Section by Section Discussion of the Final Rule

General

The 500 letters and memoranda we received provided 2,000 comments pertaining to one or more of the sections in the proposed regulation. The majority of the comments were in favor of aligning the regulation more closely with applicable provisions of the IDEA, as amended.

The overwhelming majority of the comments expressed concern about the proposed requirement to complete screening of children earlier in the program year to allow for timely services. Nearly all commenters approved of the concept of timely screening and agreed with its importance, but reported that additional resources would be necessary to make this possible.

Many of the comments expressed support for the more specific information provided in the regulation and, particularly, in the accompanying guidance. A number also expressed specific concerns regarding particular sections of the proposed regulation.

We have reviewed all of the comments received and have responded to the major recommendation to bring the regulations into closer alignment with the IDEA. This recommendation affected many of the sections because of the comprehensiveness of the IDEA and because of the fiscal year 1990 and 1991 amendments made to the definitions and requirements in IDEA. For example, the amendments added a new category of disability, traumatic brain injury. Autism was made a separate category. Developmental delay was added at State discretion. Assistive technology services and devices were added as related services. We have included these changes.

In response to many requests to delineate the responsibilities of Head Start grantees and delegate agencies with respect to the responsibilities of State Education Agencies (SEAs) and Local Education Agencies (LEAs) in providing services for three- through five-year-old children with disabilities who meet Head Start income eligibility requirements, we have stated requirements governing grantees in the performance standards and described ways in which they can coordinate with SEAs and LEAs in the guidance.

In addition, we have responded where feasible to the commenters' concerns by modifying several sections of the NPRM. A section has been added to incorporate eligibility criteria for serving four- and five-year-old children with learning disabilities. Attention deficit disorders was added under the Health Impairment category.

We have also responded to the concern about the need for more resources to carry out timely screening and evaluation of children by delineating recent legislative and other changes, such as an expanded mandate for the Early and Periodic Screening, Diagnosis and Treatment program, which make timely screening feasible. To allow time for accessing these resources, the final rule includes a provision that screening may begin in the spring before program services begin in the fall.

In addition, we have revised the order in which the performance standards appear in order to make the regulation easier to use.

The regulation still begins with a discussion of the basic overall framework provided by the disabilities service plan as it did in the NPRM, but in the final rule the order of activities begins with the recruitment and identification of children and proceeds chronologically in the order in which grantees carry out the work of a program year, beginning with planning and screening. The major component headings remain the same as those in the NPRM and in the Head Start Program Performance Standards in 45 CFR part 1304. These regulations can therefore easily be merged with those Performance Standards at a future date. Several commenters noted that it would be much less difficult to understand the complex information involved in serving children with disabilities if the topics were presented in chronological order.

Part 1308

Sections 1308.1 and 1308.2 Purpose and Scope

These first two sections explain that Head Start grantees and delegate agencies must meet the requirements of part 1308.

Section 1308.3 Definitions

Comment: A number of commenters noted that some of the definitions of terms, such as "related services," which also appear in the IDEA regulations were not defined in the same way in the NPRM. They stated a belief that consistent definitions would reduce confusion and facilitate coordination and transition of children from Head Start to local education agencies. Some commenters asked that "day" be defined in order to clarify whether we mean "calendar" or "work" day when the term is used in the rule.

Response: We have made the definitions consistent with those in the IDEA, which includes "individualized education program" and expanded "related services," with minor adjustments to the others for clarification purposes and to make them age-appropriate for preschool children enrolled in Head Start. We deleted the term "mainstream" as the term does not appear in legislation and have defined the word "day".

We have updated the definition of children with disabilities to comport with the amended definition in IDEA. The Head Start Act at section 640(d) requires the Head Start Program to use the IDEA definition of children with disabilities. It now includes children with traumatic brain injury and adds, at State discretion, children experiencing developmental delay.

Section 1308.4 Disabilities Service Plan

The purpose of this section is to assure that each Head Start grantee or delegate agency has a plan for providing services to children with disabilities in as organized a manner as possible. The section does not require lengthy written information, but calls for specificity.

Comment: Favorable comments were received on this section. Commenters believed that the disability service plan provisions are helpful. The consensus among those who replied to this section was that Head Start program standards for children with disabilities should be consistent with those of the IDEA. Many commenters requested clarification on what services Head Start should provide for children with disabilities in light of the mandate in IDEA to extend services to children beginning at age three in the 1991–92 program year. In addition, the commenters asked what qualifications are necessary for professionals providing those services in Head Start. The majority requested more training for teachers and supervisors serving children with disabilities so that grantees and delegate agencies could provide the quality of special services they would like to be able to provide, and so that they would continue to be recognized as placement sites by other agencies. The majority of the commenters stated that additional resources would be necessary to provide and administer comprehensive services.

Many stated that the amount of funds available to them under Program Account 26 for special expenses due to a child's disability was insufficient to meet needs.

Response: We have stated the responsibilities of Head Start programs in providing services in § 1308.4 and clarified the related responsibilities of the SEAs and LEAs in the accompanying guidance. In addition, in the guidance we describe resources which have become available because of legislative changes in the EPSDT/Medicaid program and the expanded scope of the services for children from the Supplementary Security Income program and from title V of the Social Security Act, as well as those which can be negotiated through interagency agreements with LEAs now that States have extended their mandates to serve

children in the three through five age range. We believe that these and other additional resources will make timely services possible.

Since the NPRM was published, ACYF has consolidated a number of program accounts and developed a new grant application form. The new grantee application form lists line items for expenditures to meet needs caused by a disability, but grantees will no longer use a number of the separate program accounts which they used when the NPRM was published, including Program Account 26. Therefore, references to this account in the NPRM at § 1308.4 (e) and (f) have been eliminated. However, the final rule provides for expenditures for the same essential services and expenditures, including salaries. The provisions of the NPRM at § 1308.4(f)(1) have been made more specific in the final rule at § 1308.4(o) (1) and (3).

In paragraph (g), we have added a requirement that the plan must address strategies, as appropriate, for the transition from infant toddler programs, as well as the transition from Head Start into the next placement. The purpose of this is to assure continuity in services for the children and their parents.

Also, in paragraph (j) we have added two options for consideration in preparing the plan which are:

(1) Shared supervisory personnel when necessary to meet State requirements or qualifications; and

(2) Having two children share one enrollment slot when each child's IEP calls for part-time service.

We believe these two options, if used, will help with cost containment and enable more children to receive services.

Paragraph (o) on allowable expenditures includes references to the Americans with Disabilities Act as it applies to the participation of persons with disabilities and the elimination of architectural barriers.

Section 1308.5 Recruitment and Enrollment of Children With Disabilities

In this section, we require that Head Start outreach and recruitment efforts include specific approaches to recruiting children with disabilities. This section has been reordered. It was § 1308.17 in the NPRM. This section has been expanded as a result of: (1) The passage of IDEA, which extends the right to services to all three- through five-year-old children with disabilities, (2) the Americans With Disabilities Act of 1990, (3) State legislation regarding immunizations, and (4) requests to clarify the nature of the mandate to assure that at least ten percent of enrollment opportunities are made available to children with disabilities. In addition, the section has been modified to reflect recent clarification by ACYF of the primary responsibility of the grantee rather than the social services coordinator for outreach and recruitment.

Comment: Commenters requested clarification of the responsibilities of staff members for the recruitment and enrollment of children with disabilities. Some commenters stated the opinion that children with severe disabilities are not appropriately placed in Head Start.

Response: We have clarified the primary responsibility of the grantee rather than the social services coordinator as proposed in the NPRM for recruiting and enrolling children with disabilities. This change has been made in response to comments and clarification by ACYF.

The guidance reiterates the provisions of Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794) and cites the Americans with Disabilities Act (42 U.S.C. 12101) which was passed after the publication of the NPRM regarding services for children with severe disabilities. It clarifies that the Individualized Education Program (IEP) determines appropriate placement on an individual basis.

Paragraph (b) in the NPRM has been clarified and strengthened in paragraph (c) of the final regulation in response to comments asking for more information on when Head Start is an appropriate placement for a child with a disability. Paragraph (c)(4) has been added in response to requests to delineate the responsibility of a grantee which has already enrolled children with disabilities as ten percent of its enrollment in the event that more children with disabilities apply. This section states that in this case children who have a disability and non-disabled children would compete for the available enrollment opportunities.

In paragraph (e)(3), we have added a requirement that grantees must meet applicable State laws regarding immunization of preschool children to reduce the spread of communicable diseases. In most states these laws have been passed since the publication of the NPRM. Attention to immunization during recruitment and enrollment can prevent disabilities which can follow some diseases.

Section 1308.6 Assessment of Children

The name of this section of the NPRM has been changed from "Evaluation of children" to "Assessment of children" to conform with best current practice and eliminate confusion. It proposes timely screening of children (by 45 days after program services begin in the fall) and timely evaluation of any children who need further assessment to determine whether they have a disability.

Comment: The largest number of comments were made in response to this section of the NPRM. Commenters asked for clarification of days, as calendar or work days. They asked for modification of date of enrollment to date when program services begin in the fall, because children enroll at various times beginning in the spring for the following year.

The vast majority of commenters stated that the proposed timeline for completing screening of children by 45 days after program services for children begin in the fall was unrealistic under the conditions which were in effect at the time of the comment period. They cited these conditions as: Lack of sufficient qualified personnel to conduct the screening; barriers to interagency coordination; scarcity of health providers, including dentists and doctors willing to serve as EPSDT/Medicaid providers; problems in rural areas with few professionals, long distances and weather problems; and some uncooperative parents. Nevertheless, these commenters were philosophically in favor of screening which would allow special services to be provided earlier in the Head Start program year.

Several commenters cited a perceived need for time for children to adjust prior to screening, at least 90 days. A few commenters apparently misconstrued the NPRM, thinking that screening would exclude parents. They recommended that parents be present if possible to allay any fears children might have. Other commenters stated that they already complete screening by 45 days after program services have begun in the fall with no negative effects. They stated that for them screening is a very positive activity with high community involvement. A number of commenters noted that lack of summer staff makes timely screening more difficult.

Response: The name of this section has been changed from "Evaluation of children" to "Assessment of children" because it discusses all three steps in the overall process of assessment of children, which includes screening and evaluation. This wording is consistent with the IDEA and general usage in the field and should facilitate coordination.

Currently, there is no standard for the screening period, but guidance in the Head Start Program Performance Standards suggests a period of up to 90

days. While this was intended as the outside limit of the timeframe, it has been interpreted by some as the standard which grantees should strive to reach. In response to many questions we have defined days as calendar days, in the definitions, § 1308.3, which we discussed earlier. We elected to use calendar days instead of working days because they are consistent everywhere.

In paragraph (b)(1), we have also adopted the suggestion to change the wording from "screening is to be completed within 45 days after enrollment" to "by 45 days after program services begin in the fall." This is consistent for all programs and removes any misconception that screening should be compressed within 45 days in the early fall.

The guidance for paragraph (b) points out that the timeline does not preclude beginning the screening process early, including the spring before a child enters Head Start. This enables a grantee to complete parts of the screening, such as physical examinations, which do not require familiarity and orientation, early. Sufficient time would still remain in the fall to accustom children to the Head Start program and to other parts of the screening process, such as hearing tests and simple developmental tasks.

Assessment is a complex process, and it was clear from some of the examples cited by commenters that there continues to be confusion in the field about the differences between two steps in the overall assessment process: (1) Screening for all the children, and (2) subsequent evaluation for only those children needing further assessment to determine whether or not they have a disability. A number of the concerns cited about screening described problems with the lengthier evaluation process instead of with the screening process. In the final rule we have clarified the distinction between screening and evaluation, numbering and highlighting the steps in the overall assessment process. In addition, we have added a clarification in paragraph (e)(ii) that the personnel performing the evaluation must be State certified or licensed in response to numerous questions and comments. This provision was added to assure quality of services and to reflect current best practice.

In the guidance for paragraph (b), information has been provided on resources which have recently become available from other agencies as a result of legislative and judicial actions. Guidance is provided on the development of effective State and local interagency agreements to help reduce barriers to coordination. A Federal level agreement between the Departments of Health and Human Services and Education is described. These developments should improve access to assessment services for grantees, including those in rural areas.

We agree with the comment that best practice in screening involves the parents whenever possible. We have reiterated in the guidance for paragraph (d) that parental involvement is highly desirable.

With respect to the commenters' requests for a statement of the level of qualifications to be required for staff serving children with disabilities in Head Start, we have required in § 1308.4(k) that services be provided by or supervised by staff meeting State qualifications by the 1994–95 program year. Suggested resources and strategies to achieve this goal were listed in the guidance.

Comment: With respect to the evaluation of children referred for further assessment to determine whether they may have a disability, many commenters said it would be difficult to meet the timeline proposed in the NPRM to initiate evaluation within 15 days after screening or referral. The reasons given were the same as those cited in the comments on the proposed timeline for screening. A second factor was raised by some commenters who stated that the proposed timeline is not the same as that used by LEAs in their area.

Response: We have reiterated that the increases in resources available through recent legislative and other changes which were cited in response to concerns about the timing of screening apply to evaluation also. These changes make timely action more feasible. Since the passage of IDEA, a child can be referred for an evaluation as early as on the child's third birthday, which should help expedite the process. The guidance for § 1308.4(a) clarified that the LEA has responsibility to assure that an evaluation meeting the requirements of IDEA is provided for all children who are referred to the LEA for evaluation.

The IDEA does not specify a timeline for initiating evaluation. Each LEA can determine its own timeline. We have decided to encourage the initiation of evaluation when Head Start provides the evaluation as soon as possible after screening or referral, but not to require it within 15 days because many grantees receive evaluations from the LEAs. We have also added guidance for § 1308.4(a) to encourage completing steps in the process of evaluation which are consistent with LEA standards at a minimum.

Comment: The proposed regulations require that a multidisciplinary team evaluate all children, including those referred for possible speech or language disabilities. Most of the commenters approved of the requirement that a multidisciplinary team conduct the evaluations of children who need further assessment. Many, however, expressed concern about cost and availability of qualified and willing professionals. Some commenters believed that a qualified speech/language pathologist or other communication specialist alone could evaluate children with possible speech and language problems and that a team is not needed. Others supported the use of a team because speech and language problems can be indications of other disabilities. They believe a thorough evaluation is needed to determine the scope and, if possible, the cause of the problem.

Response: We have retained the requirement at § 1308.6(e)(5) that a team be used, but allowed for leeway in professional judgment as to how many tests or procedures may be needed for an accurate evaluation of an individual child.

Comment: Grantee commenters unanimously disapproved of the proposed provision that if Head Start is providing for an evaluation one member of the evaluation team who is not a Head Start employee certify the child as having a disability. Commenters supported their comments by stating that this provision was duplicative, costly and unnecessary.

Response: This provision in the NPRM stemmed from practice in prior years, when one professional member of an evaluation team who was not a Head Start employee certified that a child had a disability. We agree with the commenters and have modified this provision at paragraph (e)(2)(iv) so that when Head Start provides for the evaluation, a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability makes the evaluation. A qualified professional employed by Head Start would therefore be eligible as a member of the multidisciplinary team. To insure sufficient Head Start staff involvement, the grantee is to assure that information from observations by teachers and other staff, information from parents and knowledge of cultural and linguistic factors are taken into account in making the determination.

Section 1308.7 Eligibility Criteria: Health Impairments

Comment: A number of commenters recommended that the term diagnostic criteria used in previous guidance

memoranda and in the NPRM be replaced by the term eligibility criteria. These criteria state the conditions which a child must meet in order to be eligible for services for children with disabilities in the Head Start program. The term eligibility criteria is more precise, less medically oriented and reflects current usage.

Response: We have accepted the recommendation for this section and the other appropriate sections of this final rule.

Comment: A number of commenters noted that there were inconsistencies among the eligibility criteria which were proposed in the NPRM, those set forth in the IDEA, as amended, and those established in the various States by State Education Agencies. Commenters stated that this created difficulties in assessment and evaluation procedures, transition to public school, coordination with other agencies and conferring with parents. The clear majority of commenters recommended that eligibility criteria be made generally consistent with the IDEA regulations. There was divided opinion, however, about three of the proposed eligibility criteria: learning disabilities, emotional/behavioral disorders and mental retardation. They are discussed in the section analyses to follow.

Many commenters complimented the increased specificity of the proposed criteria.

Response: We have accepted the recommendation that eligibility criteria be made as consistent as feasible with the criteria in the IDEA. This course of action allows for the exercise of professional judgment by the evaluation team and recognizes the importance of reducing confusion for parents and service providers. This decision will facilitate coordination.

Comment: Opinion was divided concerning the proposed classification of autism. The NPRM had classified autism as an emotional or behavioral impairment. A number of commenters stated that it should be classified as a health impairment. One reason cited for this opinion is that many parents of children with autism felt strongly that this impairment is properly classified as a health impairment; another reason is that it was so classified in the predecessor to IDEA—the Education of the Handicapped Act. Others believed it should be a separate category. In 1990 IDEA listed autism as a separate category.

Response: We have accepted the recommendation to classify autism as a separate category for consistency. It is included at § 1308.15.

Comment: There were also divided opinions on the inclusion of severe dental caries as a health impairment as proposed in the NPRM. Many grantees expressed concern about the serious dental problems of many of the children and the difficulty of obtaining and paying for treatment. They were in favor of retaining this category as a means of obtaining services, but were concerned about potential cost. Many other respondents favored omitting serious dental problems because they were not convinced that they affect learning and require special education. They, too, expressed concern about cost.

Response: We have decided to omit this category for two reasons. Since the NPRM was published, there have been legislative changes to the EPSDT program. These changes require that children meeting income eligibility requirements must receive dental treatment from EPSDT. Secondly, many commenters approved of the concern shown for dental problems, but did not believe they should be considered as disabilities. They cited difficulties in coordinating with the IDEA if they were included. As one of the major overall recommendations was to strive for consistency with the IDEA as far as appropriate, we are omitting severe dental problems as a disability category.

Comment: Many commenters disagreed with the inclusion of obesity and malnutrition as disabilities. It was pointed out by some commenters that obesity may be culturally sensitive matter and that the nutrition component of Head Start provides assistance in obtaining food supplements as needed.

Response: We agree and have eliminated these conditions from the health impairment category.

Comment: A number of commenters requested that severe asthma be included as one of the examples of health impairments listed in this section. It was not listed in the NPRM. Fewer respondents asked that HIV, AIDS, substance abuse, Hepatitis B and Fetal Alcohol Syndrome be listed as well.

Response: We have added asthma because this is a prevalent health problem for children whose families meet income eligibility criteria. We concurred with the recommendation to list AIDS, because it is increasingly prevalent among young children. The other conditions are addressed in the guidance and are not specifically listed because the section states that the list is not restricted to the conditions named. If a child with Fetal Alcohol Syndrome, for example, is found to need special education and related services, the child would qualify under the disability manifested by the child.

Comment: A number of commenters requested that attention deficit disorders, including hyperactivity, be included as a disability. They stated parent concerns that if these disabilities are not attended to early, the prognosis for learning and social/emotional development is poor.

Response: We have added a paragraph on attention deficit disorders, recognizing that the age of onset is during the early childhood and preschool years. Head Start staff have requested additional assistance to deal with attention problems and hyperactivity. The Office of Special Education Programs in the United States Department of Education issued a policy statement in 1991 which gives SEAs permission to use this category if they choose to. In accordance with the recommendations of professionals working with young children with this disorder, we have incorporated regulations on this disability in the section on health impairments at paragraph (d). Paragraph (d), among other things, requires that grantees use caution so that only the children whose functioning is most severely affected be classified as having an attention deficit disorder. This stipulation is made based upon experience and best practice in order to assure that young children are not over-referred.

Section 1308.8 Eligibility Criteria: Emotional/Behavioral Disorders

Comment: We received conflicting opinions concerning the proposed category "behavior disorders" which we had proposed in the NPRM. We had proposed this term to replace the term previously used in Head Start guidance, "seriously emotionally disturbed." We had taken that action because some grantees, parents and diagnosticians found the term seriously emotionally disturbed objectionable. On the other hand, the majority of commenters recommended consistency with the eligibility criteria in the IDEA, which include serious emotional disturbance. Some of these commenters stated they made this recommendation to assure that children with severe problems would be included in the definition and receive services. A number suggested that a category combining the terms behavioral and emotional would best represent current thinking in the field.

Response: Balancing the valid but differing points of view, we have decided to use the term "emotional/behavioral disorder" in response to the concerns of parents, grantees and professionals and to include within the

definition descriptive language which encompasses the IDEA definition of serious emotional disturbance.

In § 1308.8(c), we deleted the requirement for a physical examination that was in the NPRM. As a child will already have had a regular physical examination, we are requiring a review of the results of the physical examination.

Section 1308.9 Eligibility Criteria: Speech or Language Impairments

Comment: Many commenters stated that the information provided in the guidance for this section is helpful and requested that it be incorporated into the standard. A number of commenters, including professional associations in the field of speech, language and hearing, recommended that the term "communication impairment" which was proposed in the NPRM be replaced with "speech and language impairments" for consistency with IDEA.

Response: We have made those changes.

Comment: The NPRM proposed that a child with a delay of one year below the norm in speech or language level be eligible for services. A number of respondents believed the proposed one year delay would be too stringent.

Response: Further analysis of the effect of the proposed NPRM criterion on children who are three or four years old shows it is more stringent for them than five year olds. The criterion proposed in the NPRM has been replaced by functional criteria with less dependence on formal testing. This brings the criterion into alignment with the IDEA criterion.

Comment: The NPRM proposed using the term communication disorders to encompass both speech and language impairments. One rationale for doing so was that speech problems have received a great deal more attention than language problems. Also, both these problems are listed in the IDEA definition. A number of commenters stated that it would be helpful to them in coordinating with LEAs and obtaining related services if the final regulation would use the term speech or language impairments and include the IDEA criteria found in 34 CFR part 300.

Response: We have made that change.

Section 1308.10 Eligibility Criteria: Mental Retardation

Comment: The NPRM contained language which retains the term "mental retardation." We received a number of requests to change this term to "developmentally delayed." A number of commenters believed that the proposed criterion based upon standardized testing is too stringent and requested that it be eliminated. Some commenters stated they would prefer the term "deferred diagnosis."

Response: We have decided to retain the term mental retardation for clarity and to avoid confusion with delays which may be caused by factors other than a disability.

Using the term mental retardation is responsive to the overall recommendation to be consistent with the eligibility criteria in the IDEA regulations. We have removed the proposed criterion based on standardized testing and brought the standard into conformity with the requirements of the IDEA.

Beginning in 1991, three through five year old children may be served as developmentally delayed at State discretion under IDEA if they meet State eligibility criteria. We have incorporated this option in the eligibility criterion category termed Other Impairments at § 1308.17 of this final rule. The Other Impairments category, which was proposed in the NPRM, therefore now includes children who may be designated as developmentally delayed by an SEA. This option is more specific than the term "deferred diagnosis" suggested by some commenters, but serves the same purpose of providing services for children who do not meet the other eligibility criteria.

Section 1308.11 Eligibility Criteria: Hearing Impairment Including Deafness

Comment: The NPRM contained only one section to encompass both deafness and less severe hearing losses. The NPRM did, however, contain standards for each of the two levels of hearing impairment. Some commenters suggested we separate deafness and less severe hearing losses into two levels for clarity. A number of professional organizations suggested that we use criteria more in accord with the IDEA criteria in lieu of using decibel levels, which are insufficient to describe functional hearing.

Response: In accord with the overall recommendation that we align the regulations more closely with the IDEA, we have adapted the criteria to conform to the IDEA language.

Comment: Many of the comments about the section which discussed milder hearing loss in the NPRM (§ 1308.11) focused on the proposed inclusion of otitis media, recurrent middle ear infections with fluctuating hearing loss, as a disability. Commenters were divided on the issue: those who agreed with including the condition had concerns about the additional costs for qualified staff and services, while those who disagreed with the inclusion of the condition thought that it was not severe enough to warrant inclusion. Some commenters noted that otitis media is one of the most prevalent childhood illnesses and that, when it occurs during the early language learning years, it can result in delays in speech and language. Speech and language problems are the most common disabilities among preschool children.

Response: We have decided to retain this condition, but have made some modifications. We have provided that only children with persistent recurrent problems are included and have stipulated that, when the condition is no longer present, they are no longer considered to have a disability. We believe the inclusion of this condition can have a significant positive impact on the effectiveness of Head Start services and prevent later learning, hearing and communication disabilities. It can also reduce long-term costs. An additional rationale for inclusion is that fluctuating hearing loss is included in the IDEA definition of hearing impairment-hard of hearing. Our inclusion of this category is therefore in accord with the major overall recommendation for consistency with the IDEA.

Section 1308.12 Eligibility Criteria: Orthopedic Impairment

Commenters did not raise any issues with this section. We made technical clarifications to paragraph (a) in order to have the criteria comport with the IDEA criteria regulations.

Section 1308.13 Eligibility Criteria: Visual Impairment

Comment: One commenter stated that under the NPRM definition in paragraph (a)(1), the child is sightless or has such limited vision that the child must rely on hearing and touch as the child's chief means of learning, was unnecessary because under paragraph (a)(2) the vision loss meets the definition of legal blindness in the State of residence. The commenter thought that using the State definition was sufficient and provided more useful information. One commenter requested that vision training be listed as a possible related service in the guidance section.

Response: We agree with the recommendation to eliminate paragraph (a)(1). Services related to functional vision services for children with diagnosed visual impairments are already listed as a possible related service and are considered more appropriate for this population.

Section 1308.14 Eligibility Criteria: Learning Disabilities

This is a new section. The NPRM did not include learning disabilities as a category, but instead stressed cooperating with the education staff in efforts to prevent future learning problems. For some years prior to the publication of the NPRM learning disabilities had been included as a category. A number of grantees had reported that it was difficult to use, especially for younger children, and there was disagreement among professionals on its appropriateness for preschool children. For those reasons the NPRM did not include a learning disabilities category. This section has been added to the final regulation in response to comments.

Comment: Opinion was strongly divided on whether learning disabilities should be included as a category for Head Start. Many advocacy groups, a number of professional associations, some parents and some grantees urged inclusion of learning disabilities. Specific learning disabilities are included in the IDEA, 20 U.S.C. 1401, but not all SEAs elect to include learning disabilities in their eligibility criteria for preschoolers.

Many other commenters, however, particularly grantees, responded favorably to the omission of learning disabilities as a criterion in the NPRM, particularly for three-year-olds, since the definition relates to problems with reading, writing and mathematical skills. A number of respondents stated a belief that it is difficult or impossible to determine whether a three-year-old child has a learning disability. They believe that including the category may inadvertently focus unduly on pre-academic skills, especially for three-year-olds. Other commenters, however, cited examples of obtaining valuable assistance for preschoolers as a result of early diagnosis of a learning disability from their experience in Head Start. These commenters included some parents whose children had benefitted from early assistance for learning problems.

Response: After considering the overall recommendation for consistency with the IDEA, the recommendations of advocates, parents, interested professionals and grantees, and the varying professional opinions in the fields of early childhood education and special education, we have decided to include the category with an emphasis on precursor skills for four- and five-year-old children, but not for three-year-olds. In the rule, the term includes such conditions as perceptual disabilities, brain injury and aphasia.

We have, however, stated that when a three-year-old child is referred with a professional diagnosis as having a learning disability, or if the grantee wishes to exercise the option, the grantee may serve the child as learning disabled.

Section 1308.15 Eligibility Criteria: Autism

This is a new section. While autism was previously included as a disability in Head Start, it had not been listed as a separate disability category. The 1990 amendments to IDEA established autism as a separate disability.

Comment: A considerable number of commenters requested that autism be included under "Health impairment" or listed as a separate category. Most of the commenters, particularly parents and professionals citing new research on the probable causes of autism, disapproved of including children with this disability under the category "Behavior disorders" as proposed in the NPRM.

Response: We have accepted the recommendation that autism be considered a separate disability for consistency with IDEA and to facilitate coordination with LEAs.

Section 1308.16 Eligibility Criteria: Traumatic Brain Injury

This is a new section. The 1990 amendments to IDEA established traumatic brain injury as a separate category in recognition of the large number of children suffering injuries, especially in car accidents, which necessitate special education and related services.

Comment: While commenters did not address this disability by name, they recommended that the criteria be consistent with IDEA.

Response: We have accepted the recommendation. The rationale is to foster consistency, ease of coordination and transition.

Section 1308.17 Eligibility Criteria: Other Impairments

This section has been reordered and expanded. It was § 1308.14 of the NPRM and provided that if the State criteria developed by the SEA contains a category in addition to the eligibility criteria in the NPRM §§ 1308.7 through 1308.18 §§ 1308.7 through 1308.17 of the final rule) under which the child would be eligible for special education and related services, the child would also be eligible for special education and related services in Head Start. Examples are categories such as "preschool disabled," "educationally handicapped," "in need of special education services" or "non-categorically disabled."

In 1991, IDEA included "developmentally delayed" for three through five year old children meeting State criteria at State option as a disability. Numerous commenters responding to the NPRM section on mental retardation requested that "developmentally delayed" be included in these performance standards.

Comment: Commenters uniformly approved of this section as facilitating coordination, simplifying transition for parents, and ensuring that a child in Head Start would not be denied services which would be available to a preschool child in an SEA-sponsored program. The respondents requested that further information and examples be provided.

Response: We have retained this section to ensure equal access to services for children three through five years old whom the State considers in need of special education and related services. We have added "developmentally delayed" as a disability in States which elect to use that option for children three through five years old to this section for consistency with IDEA, in response to comments, and because it is optional at State discretion.

Comment: Some commenters recommended that a category be provided for children who are deaf-blind for consistency with IDEA regulations.

Response: We have accepted this recommendation and the final rule includes "deaf-blindness" under this category. A few children who are deaf-blind are served in Head Start and this will allow for accurate accounting.

Comment: Several commenters recommended that a category be provided for children with two or more disabilities, other than deaf-blindness, for consistency with IDEA regulations and for complete reporting.

Response: We have accepted this recommendation.

Section 1308.18 Disabilities/Health Coordination

Comment: Commenters stated that the information on the administration of medications to children with disabilities should be clarified.

Response: It has been made more specific.

Section 1308.19 Individualized Education Programs

This section has been re-ordered and was § 1308.5 in the NPRM. It requires Head Start programs to develop an IEP for each child with disabilities if the

LEA does not do so. It specifies requirements for an IEP developed by a grantee, including, among other things, statements of the child's present level of functioning, annual goals, activities to meet the goals and dates for initiation of these activities. It also requires that a team, including the Head Start disabilities coordinator, the child's teacher or home visitor, a member of the team which evaluated the child and determined the need for special education and related services, and others develop the IEP, with parental involvement. The accompanying guidance for this section provides information on the areas for which the SEA and LEA have responsibility and suggests ways for Head Start to coordinate with LEAs and other agencies.

Comment: There were 209 comments on this section of the NPRM, including 115 from grantees. A significant number of comments were favorable about the content as proposed in the NPRM, but reflected the opinion that requirements for the IEP process should be modified to be consistent with those of the LEA. Commenters specified that when Head Start rather than the LEA develops an IEP for a Head Start eligible child, these standards should contain requirements for procedures to assure specific parental rights (e.g., parental permission for initial evaluation, notice of intent to change the child's IEP and use of assessment procedures and instruments which are free of cultural bias) in accordance with the provisions of the IDEA regulations. Many of these commenters also indicated that it has become more difficult to access resources, that fiscal support for services for children with disabilities within Head Start and from other agencies has eroded, and that additional funds would be required to hire or contract with qualified personnel to provide the services outlined in the IEPs. Commenters requested clarification of the role of Head Start and of the LEA in the IEP process.

Response: We have responded by including the parental rights procedures in § 1308.19(k) and by making the IEP process consistent with that of the LEA insofar as appropriate. In the guidance we have described the areas for which the LEA has primary responsibility for all children with disabilities and provided optional suggestions for collaboration.

Comment: An overwhelming majority of those responding asserted that it would be impossible under present conditions to meet the 30 day timeline proposed in the NPRM between the date of determination that a child has a disability, with the subsequent development of an IEP, and the beginning of special services to meet the child's need. The reasons included: Shortages of transportation; shortages of qualified personnel; barriers to interagency coordination; time believed needed for children to adjust to being in the program; excessive staff burden; and lack of cooperation by some parents.

Response: We have decided to modify the language of the requirement to conform to the IDEA regulations language, requiring that grantees hold the IEP meeting within 30 days after the determination that the child has a disability but eliminating the proposed requirement that services begin within 30 days after the development of the IEP. Instead we are asking that services begin as soon as possible after the development of the IEP, which is consistent with IDEA regulations.

Comment: A number of commenters who asked for delineation of the relative responsibilities under the Head Start mandate to serve children with disabilities and under IDEA asked for clarification of Head Start staff involvement in the development of IEPs, since they are often prepared by LEAs. Some also recommended that the IEP include consideration of the strengths of the child and family as well as the child's disability.

Response: We have included in § 1308.19(c) a requirement that a representative from Head Start must participate in the IEP meeting and subsequent placement decision for any child meeting Head Start eligibility requirements. This will assure mutual decision-making when both Head Start and the LEA are the potential service providers. We have also required that when Head Start develops the IEP, the child's unique strengths, developmental potential and the family strengths and circumstances be considered along with the child's needs and disability, in keeping with the Head Start family focus and philosophy.

Comment: Many commenters requested requirements for parental involvement and rights in the IEP process which are consistent with those in the IDEA regulations.

Response: We have incorporated in § 1308.19(d) requirements for parental notification, efforts to assure that parents understand the purpose and proceedings and are encouraged to participate, receive information in their native language, and are offered a copy of the IEP. Requirements to document efforts to involve the parents in cases when the efforts fail, are delineated. The purpose of including these requirements is to ensure that parents are given every opportunity for informed participation consistent with the opportunities offered under IDEA.

Section 1308.20 Nutrition Services

Comment: This section was reordered. It was § 1308.16 of the NPRM and discusses special nutritional concerns related to children with disabilities. The only comments on this section requested that speech therapists, occupational therapists and nutritionists be listed as appropriate consultants for feeding and eating problems of children with disabilities.

Response: We have incorporated that suggestion which is in accord with current accepted practice. In addition, we have added parents of children with severe disabilities as recipients of assistance from consultants on nutrition problems. This will assure that parents will learn about proper nutrition for their children and develop feeding skills.

Section 1308.21 Parent Participation and Transition of Children

Comment: This section of the NPRM was § 1308.18 and discussed enabling parents to access services and the need to prepare ahead to help families make the transition to another program following Head Start. Commenters found this section helpful, but requested that transition into Head Start from infant/toddler programs be discussed along with the information on transition after Head Start.

Response: After the publication of the NPRM, the passage of IDEA extended parent participation provisions to the parents of all preschool children with disabilities who are entitled to special education and related services. In addition, changes were made to the Supplemental Security Income (SSI) Program and to the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Parents of children enrolled in Head Start programs need to be informed about these programs. We have added a requirement in paragraph (6) that parents be informed of their rights under IDEA and a requirement in paragraph (7) that parents be informed of resources which may be available to their children from SSI and EPSDT. We have accepted the useful suggestion that transition into Head Start from infant/toddler programs be addressed, in paragraph (1).

Comment: Commenters also asked for more specific information on the responsibilities of Head Start staff and of the LEA for helping children make the transition to public schools and for fostering family involvement.

Response: Such information, together with information on the usefulness of interagency agreements which include plans for transition, has been added to the guidance in response.

Technical Revisions to Parts 1304 and 1305

We have made technical revisions to certain sections of 45 CFR parts 1304 and 1305 to (1) assure that services are provided promptly to children with disabilities; and (2) to comport with part 1308 and with changes in the definition of children with disabilities in IDEA.

Section 1304.1–2 Definitions

The definition of children with disabilities in paragraph (b)(3) of this section has been amended for the reasons stated in the above paragraph. While the definition has been used in Head Start for a number of years, amendments to the definition previously have not been incorporated in Head Start regulations. There were no comments on this section.

Section 1304.3–3 Medical and Dental History, Screening and Examination

This section requires that health screening be completed by 45 days after program services for children begin in the fall, or for a child who enters late, by 45 days after the child enters, to comport with § 1308.6. No comments were received addressed to this section. Comments on this topic were addressed to § 1308.6 which delineated the requirement in detail.

Section 1305.2 Definitions

This section brings the definition of children with disabilities into conformity with the definition in §§ 1308.3 and 1304.1–2, cited above. There were no comments on this section.

VI. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that this rule is not a major rule within the Executive Order because it will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, it will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-born enterprises in domestic or import markets.

The final rule provides performance standards and guidance for Heat Start grantees and delegate agencies serving children with disabilities and their parents. It requires, among other things, that Head Start grantees (1) design comprehensive services which meet program standards for locating and serving children with disabilities and their parents; (2) develop an individualized education program for each child who meets eligibility criteria for such services because of disability; and (3) screen children by 45 calendar days after program services begin in the fall to assure services may be provided in a timely manner. The final rule will not have a significant economic impact on Head Start grantees and delegate agencies as the rule will not significantly increase costs to the Head Start program.

As stated earlier, many Head Start programs now provide services through a combination of Head Start staff and personnel from other agencies. They carry out coordination activities with specified community agencies and other appropriate Federal programs such as SSI in order to make the best use of limited resources.

Therefore, we see no appreciable increase in costs to the Head Start program. The Department concluded that this final rule is not a major rule within the meaning of the Executive Order because it does not meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," we prepare an analysis describing the rules impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities.

While this regulation would affect small entities, it is not substantial, and in many instances the small entities already meet some of the requirements. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects

45 CFR Part 1304

Dental health, Education of disadvantaged, Grant program/social programs, Health care, Mental health programs, Nutrition, Parental involvement, Reporting requirements.

45 CFR Part 1305

Education of children with disabilities, Education of disadvantaged, Grant program/social programs, Handicapped.

45 CFR Part 1308

Education of children with disabilities, Grant program/social program, Health care, Parental involvement, Reporting requirements.

(Catalog of Federal Domestic Assistance Program Number 93,600, Project Head Start)

Editorial Note: This document was received at the Office of the Federal Register on January 13, 1993.

Date: May 20, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: July 10, 1992.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, title 45, chapter XIII, subchapter B of the Code of Federal Regulations is amended as follows:

1. Part 1308 is added to read as follows:

PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.

1308.1 Purpose.
1308.2 Scope.
1308.3 Definitions.

Subpart B—Disabilities Service Plan

1308.4 Purpose and scope of disabilities service plan.

Subpart C—Social Services Performance Standards

1308.5 Recruitment and enrollment of children with disabilities.

Subpart D—Health Services Performance Standards

1308.6 Assessment of children.
1308.7 Eligibility criteria: Health impairment.
1308.8 Eligibility criteria: Emotional/behavioral disorders.
1308.9 Eligibility criteria: Speech or language impairments.
1308.10 Eligibility criteria: Mental retardation.
1308.11 Eligibility criteria: Hearing impairment including deafness.
1308.12 Eligibility criteria: Orthopedic impairment.
1308.13 Eligibility criteria: Visual impairment including blindness.
1308.14 Eligibility criteria: Learning disabilities.

1308.15 Eligibility criteria: Autism.
1308.16 Eligibility criteria: Traumatic brain injury.
1308.17 Eligibility criteria: Other impairments.
1308.18 Disabilities/health services coordination.

Subpart E—Education Services Performance Standards

1308.19 Developing individualized education programs (IEPs).

Subpart F—Nutrition Performance Standards

1308.20 Nutrition services.

Subpart G—Parent Involvement Performance Standards

1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

Appendix to Part 1308—Head Start Program Performance Standards on Services to Children With Disabilities

Authority: 42 U.S.C. 9801 et seq.

Subpart A—General

§ 1308.1 Purpose.

This rule sets forth the requirements for providing special services for 3- through 5-year-old children with disabilities enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304. The purpose of this part is to ensure that children with disabilities enrolled in Head Start programs receive all the services to which they are entitled under the Head Start Program Performance Standards at 45 CFR part 1304, as amended.

§ 1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

§ 1308.3 Definitions.

As used in this part:

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

(b) The term *children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities; and who, by reason thereof, need special education and related services. The term *children with disabilities* for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

(d) The term *day* means a calendar day.

(e) The term *delegate agency* means a public or private non-profit agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.

(f) The term *disabilities coordinator* means the person on the Head Start staff designated to manage on a full or part-time basis the services for children with disabilities described in part 1308.

(g) The term *eligibility criteria* means the criteria for determining that a child enrolled in Head Start requires special education and related services because of a disability.

(h) The term *grantee* means the public or private non-profit agency which has been granted financial assistance by ACYF to administer a Head Start program.

(i) The term *individualized education program* (IEP) means a written statement for a child with disabilities, developed by the public agency responsible for providing free appropriate public education to a child, and contains the special education and related services to be provided to an individual child.

(j) The term *least restrictive environment* means an environment in which services to children with disabilities are provided:

(1) to the maximum extent appropriate, with children who are not disabled and in which;

(2) special classes or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(k) The term *Performance Standards* means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(l) The term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services, and parent counseling and training. It includes other developmental, corrective or supportive services if they are required to assist a child with a disability to benefit from special education, including assistive technology services and devices.

(1) The term *assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(2) The term *assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: The evaluation of the needs of an individual with a disability; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and training or technical assistance to professionals who employ or provide services involved in the major life functions of individuals with disabilities.

(m) The term *responsible HHS official* means the official who is authorized to make the grant of assistance in question or his or her designee.

(n) The term *special education* means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability. These services include classroom or home-based instruction, instruction in hospitals and institutions, and specially designed physical education if necessary.

Subpart B—Disabilities Service Plan

§1308.4 Purpose and scope of disabilities service plan.

(a) A Head Start grantee, or delegate agency, if appropriate, must develop a disabilities service plan providing strategies for meeting the special needs of children with disabilities and their parents. The purposes of this plan are to assure:

(1) That all components of Head Start are appropriately involved in the integration of children with disabilities and their parents; and

(2) That resources are used efficiently.

(b) The plan must be updated annually.

(c) The plan must include provisions for children with disabilities to be included in the full range of activities and services normally provided to all Head Start children and provisions for any modifications necessary to meet the special needs of the children with disabilities.

(d) The Head Start grantee and delegate agency must use the disabilities service plan as a working document which guides all aspects of the agency's effort to serve children with disabilities. This plan must take into account the needs of the children for small group activities, for modifications of large group activities and for any individual special help.

(e) The grantee or delegate agency must designate a coordinator of services for children with disabilities (disabilities coordinator) and arrange for preparation of the disabilities service plan and of the grantee application budget line items for services for children with disabilities. The grantee or delegate must ensure that all relevant coordinators, other staff and parents are consulted.

(f) The disability service plan must contain:

(1) Procedures for timely screening;

(2) Procedures for making referrals to the LEA for evaluation to determine whether there is a need for special education and related services for a child, as early as the child's third birthday;

(3) Assurances of accessibility of facilities; and

(4) Plans to provide appropriate special furniture, equipment and materials if needed.

(g) The plan, when appropriate, must address strategies for the transition of children into Head Start from infant/toddler programs (0–3 years), as well as the transition from Head Start into the next placement. The plan must include preparation of staff and parents for the entry of children with severe disabilities into the Head Start program.

(h) The grantee or delegate agency must arrange or provide special education and related services necessary to foster the maximum development of each child's potential and to facilitate participation in the regular Head Start program unless the services are being provided by the LEA or other agency. The plan must specify the services to be provided directly by Head Start and those provided by other agencies. The grantee or delegate agency must arrange for, provide, or procure services which may include, but are not limited to special education and these related services:

(1) Audiology services, including identification of children with hearing loss and referral for medical or other professional attention; provision of needed rehabilitative services such as speech and language therapy and auditory training to make best use of remaining hearing; speech conservation; lip reading; determination of need for hearing aids and fitting of appropriate aids; and programs for prevention of hearing loss;

(2) Physical therapy to facilitate gross motor development in activities such as walking prevent or slow orthopedic problems and improve posture and conditioning;

(3) Occupational therapy to improve, develop or restore fine motor functions in activities such as using a fork or knife;

(4) Speech or language services including therapy and use of assistive devices necessary for a child to develop or improve receptive or expressive means of communication;

(5) Psychological services such as evaluation of each child's functioning and interpreting the results to staff and parents; and counseling and guidance services for staff and parents regarding disabilities;

(6) Transportation for children with disabilities to and from the program and to special clinics or other service providers when the services cannot be provided on-site. Transportation includes adapted buses equipped to accommodate wheelchairs or other such devices if required; and

(7) Assistive technology services or devices necessary to enable a child to improve functions such as vision, mobility or communication to meet the objectives in the IEP.

(i) The disabilities service plan must include options to meet the needs and take into consideration the strengths of each child based upon the IEP so that a continuum of services available from various agencies is considered.

(j) The options may include:

(1) Joint placement of children with other agencies;

(2) Shared provision of services with other agencies;

(3) Shared personnel to supervise special education services, when necessary to meet State requirements on qualifications;

(4) Administrative accommodations such as having two children share one enrollment slot when each child's IEP calls for part-time service because of their individual needs; and

(5) Any other strategies to be used to insure that special needs are met. These may include:

(i) Increased staff;

(ii) Use of volunteers; and

(iii) Use of supervised students in such fields as child development, special education, child psychology, various therapies and family services to assist the staff.

(k) The grantee must ensure that the disabilities service plan addresses grantee efforts to meet State standards for personnel serving children with disabilities by the 1994–95 program year. Special education and related services must be provided by or under the supervision of personnel meeting State qualifications by the 1994–95 program year.

(l) The disabilities service plan must include commitment to specific efforts to develop interagency agreements with the LEAs and other agencies within the grantee's service area. If no agreement can be reached, the grantee must document its efforts and inform the Regional Office. The agreements must address:

(1) Head Start participation in the public agency's Child Find plan under Part B of IDEA;

(2) Joint training of staff and parents;

(3) Procedures for referral for evaluations, IEP meetings and placement decisions;

(4) Transition;

(5) Resource sharing;

(6) Head Start commitment to provide the number of children receiving services under IEPs to the LEA for the LEA Child Count report by December 1 annually; and

(7) Any other items agreed to by both parties. Grantees must make efforts to update the agreements annually.

(m) The disabilities coordinator must work with the director in planning and budgeting of grantee funds to assure that the special needs identified in the IEP are fully met; that children most in need of an integrated placement and of special assistance are served; and that the grantee maintains the level of fiscal support to children with disabilities consistent with the Congressional mandate to meet their special needs.

(n) The grant application budget form and supplement submitted with applications for funding must reflect requests for adequate resources to implement the objectives and activities in the disability services plan and fulfill the requirements of these Performance Standards.

(o) The budget request included with the application for funding must address the implementation of the disabilities service plan. Allowable expenditures include:

(1) *Salaries.* Allowable expenditures include salaries of a full or part-time coordinator of services for children with disabilities (disabilities coordinator), who is essential to assure that programs have the core capability to recruit, enroll, arrange for the evaluation of children, provide or arrange for services to children with disabilities and work with Head Start coordinators and staff of other agencies which are working cooperatively with the grantee. Salaries of special education resource teachers who can augment the work of the regular teacher are an allowable expenditure.

(2) *Evaluation of children.* When warranted by screening or rescreening results, teacher observation or parent request, arrangements must be made for evaluation of the child's development and functioning. If, after referral for evaluation to the LEA, evaluations are not provided by the LEA, they are an allowable expenditure.

(3) *Services.* Program funds may be used to pay for services which include special education, related services, and summer services deemed necessary on an individual basis and to prepare for serving children with disabilities in advance of the program year.

(4) *Making services accessible.* Allowable costs include elimination of architectural barriers which affect the participation of children with disabilities, in conformance with 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Program and Activities Receiving or Benefiting from Federal Financial Assistance and with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101). The Americans with Disabilities Act requires that public accommodations including private schools and day care centers may not discriminate on the basis of disability. Physical barriers in existing facilities must be removed if removal is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing the services must be offered, if those methods are readily achievable. Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered areas (and the bathrooms, telephones and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Program funds may be used for ramps, remodeling or modifications such as grab bars or railings. Grantees must meet new statutory and regulatory requirements that are enacted.

(5) *Transportation.* Transportation is a related service to be provided to children with disabilities. When transportation to the program site and to special services can be accessed from other agencies, it should be used. When it is not available, program funds are to be used to provide it. Special buses or use of taxis are allowable expenses if there are no alternatives available and they are necessary to enable a child to be served.

(6) *Special Equipment and Materials.* Purchase or lease of special equipment and materials for use in the program and home is an allowable program expense. Grantees must make available assistive devices necessary to make it possible for a child to move, communicate, improve functioning or address objectives which are listed in the child's IEP.

(7) *Training and Technical Assistance.* Increasing the abilities of staff to meet the special needs of children with disabilities is an allowable expense. Appropriate expenditures may include but are not limited to:

(i) Travel and per diem expenses for disabilities coordinators, teachers and parents to attend training and technical assistance events related to special services for children with disabilities;

(ii) The provision of substitute teaching staff to enable staff to attend training and technical assistance events;

(iii) Fees for courses specifically related to the requirements of the disabilities service plan, a child's IEP or State certification to serve children with disabilities; and

(iv) Fees and expenses for training/technical assistance consultants if such help is not available from another provider at no cost.

Subpart C—Social Services Performance Standards

§ 1308.5 Recruitment and enrollment of children with disabilities.

(a) The grantee or delegate agency outreach and recruitment activities must incorporate specific actions to actively locate and recruit children with disabilities.

(b) A grantee must insure that staff engaged in recruitment and enrollment of children are knowledgable about the provisions of 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and of the Americans with Disabilities Act of 1990, (42 U.S.C. 12101).

(c) A grantee must not deny placement on the basis of a disability or its severity to any child when:

(1) The parents wish to enroll the child,

(2) The child meets the Head Start age and income eligibility criteria,

(3) Head Start is an appropriate placement according to the child's IEP, and

(4) The program has space to enroll more children, even though the program has made ten percent of its enrollment opportunities available to children with disabilities. In that case children who have a disability and non-disabled children would compete for the available enrollment opportunities.

(d) The grantee must access resources and plan for placement options, such as dual placement, use of resource staff and training so that a child with a disability for whom Head Start is an appropriate placement according to the IEP is not denied enrollment because of:

(1) Staff attitudes and/or apprehensions;

(2) Inaccessibility of facilities;

(3) Need to access additional resources to serve a specific child;

(4) Unfamiliarity with a disabling condition or special equipment, such as a prosthesis; and

(5) Need for personalized special services such as feeding, suctioning, and assistance with toileting, including catheterization, diapering, and toilet training.

(e) The same policies governing Head Start program eligibility for other children, such as priority for those most in need of the services, apply to children with disabilities. Grantees also must take the following factors into account when planning enrollment procedures:

(1) The number of children with disabilities in the Head Start service area including types of disabilities and their severity;

(2) The services and resources provided by other agencies; and

(3) State laws regarding immunization of preschool children. Grantees must observe applicable State laws which usually require that children entering State preschool programs complete immunizations prior to or within thirty

days after entering to reduce the spread of communicable diseases.

(f) The recruitment effort of a Head Start grantee must include recruiting children who have severe disabilities, including children who have been previously identified as having disabilities.

Subpart D—Health Services Performance Standards

§ 1308.6 Assessment of children.

(a) The disabilities coordinator must be involved with other program staff throughout the full process of assessment of children, which has three steps:

(1) All children enrolled in Head Start are screened as the first step in the assessment process;

(2) Staff also carry out on-going developmental assessment for all enrolled children throughout the year to determine progress and to plan program activities;

(3) Only those children who need further specialized assessment to determine whether they have a disability and may require special education and related services proceed to the next step, evaluation. The disabilities coordinator has primary responsibility for this third step, evaluation, only.

(b) *Screening, the first step in the assessment process,* consists of standardized health screening and developmental screening which includes speech, hearing and vision. It is a brief process, which can be repeated, and is never used to determine that a child has a disability. It only indicates that a child may need further evaluation to determine whether the child has a disability. Rescreening must be provided as needed.

(1) Effective with the beginning of the 1993–94 program year, grantees must provide for the health and developmental screening of all Head Start children by 45 calendar days after the start of program services in the fall, or for children who enroll after program services have begun by 45 calendar days after the child enters the program. This does not preclude starting screening in the spring before program services begin in the fall.

(2) Grantees must make concerted efforts to reach and include the most in need and hardest to reach in the screening effort, providing assistance but urging parents to complete screening before the start of the program year.

(3) Developmental screening is a brief check to identify children who need further evaluation to determine whether they may have disabilities. It provides information in three major developmental areas: visual/motor, language and cognition, and gross motor/body awareness for use along with observation data, parent reports and home visit information. When appropriate standardized developmental screening instruments exist, they must be used. The disabilities coordinator must coordinate with the health coordinator and staff who have the responsibility for implementing health screening and with the education staff who have the responsibility for implementing developmental screening.

(c) Staff must inform parents of the types and purposes of the screening well in advance of the screening, the results of these screenings and the purposes and results of any subsequent evaluations.

(d) *Developmental assessment, the second step,* is the collection of information on each child's functioning in these areas: gross and fine motor skills, perceptual discrimination, cognition, attention skills, self-help, social and receptive skills and expressive language. The disabilities coordinator must coordinate with the education coordinator in the on-going assessment of each Head Start child's functioning in all developmental areas by including this developmental information in later diagnostic and program planning activities for children with disabilities.

(e) *The disabilities coordinator must arrange for further, formal, evaluation of a child who has been identified as possibly having a disability, the third step.* (1) The disabilities coordinator must refer a child to the LEA for evaluation as soon as the need is evident, starting as early as the child's third birthday.

(2) If the LEA does not evaluate the child, Head Start is responsible for arranging or providing for an evaluation, using its own resources and accessing others. In this case, the evaluation must meet the following requirements:

(i) Testing and evaluation procedures must be selected and administered so as not to be racially or culturally discriminatory, administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(ii) Testing and evaluation procedures must be administered by trained (State certified or licensed) personnel.

(iii) No single procedure may be the sole criterion for determining an appropriate educational program for a child.

(iv) The evaluation must be made by a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability.

(v) Evaluators must use only assessment materials which have been validated for the specific purpose for which they are used.

(vi) Tests used with children with impaired sensory, manual or communication skills must be administered so that they reflect the children's aptitudes and achievement levels and not just the disabilities.

(vii) Tests and materials must assess all areas related to the suspected disability.

(viii) In the case of a child whose primary disability appears to be a speech or language impairment, the team must assure that enough tests are used to determine that the impairment is not a symptom of another disability and a speech or language pathologist should be involved in the evaluation.

(3) Parental consent in writing must be obtained before a child can have an initial evaluation to determine whether the child has a disability.

(4) Confidentiality must be maintained in accordance with grantee and State requirements. Parents must be given the opportunity to review their child's records in a timely manner and they must be notified and give permission if additional evaluations are proposed. Grantees must explain the purpose and results of the evaluation and make concerted efforts to help the parents understand them.

(5) The multidisciplinary team provides the results of the evaluation, and its professional opinion that the child does or does not need special education and related services, to the disabilities coordinator. If it is their professional opinion that a child has a disability, the team is to state which of the eligibility criteria applies and provide recommendations for programming, along with their findings. Only children whom the evaluation team determines need special education and related services may be counted as children with disabilities.

§ 1308.7 Eligibility criteria: Health impairment.

(a) A child is classified as health impaired who has limited strength, vitality or alertness due to a chronic or acute health problem which adversely affects learning.

(b) The health impairment classification may include, but is not limited to, cancer, some neurological disorders, rheumatic fever, severe asthma, uncontrolled seizure disorders, heart conditions, lead poisoning, diabetes, AIDS, blood disorders,

including hemophilia, sickle cell anemia, cystic fibrosis, heart disease and attention deficit disorder.

(c) This category includes medically fragile children such as ventilator dependent children who are in need of special education and related services.

(d) A child may be classified as having an attention deficit disorder under this category who has chronic and pervasive developmentally inappropriate inattention, hyperactivity, or impulsivity. To be considered a disorder, this behavior must affect the child's functioning severely. To avoid overuse of this category, grantees are cautioned to assure that only the enrolled children who most severely manifest this behavior must be classified in this category.

(1) The condition must severely affect the performance of a child who is trying to carry out a developmentally appropriate activity that requires orienting, focusing, or maintaining attention during classroom instructions and activities, planning and completing activities, following simple directions, organizing materials for play or other activities, or participating in group activities. It also may be manifested in overactivity or impulsive acts which appear to be or are interpreted as physical aggression. The disorder must manifest itself in at least two different settings, one of which must be the Head Start program site.

(2) Children must not be classified as having attention deficit disorders based on:

(i) Temporary problems in attention due to events such as a divorce, death of a family member or post-traumatic stress reactions to events such as sexual abuse or violence in the neighborhood;

(ii) Problems in attention which occur suddenly and acutely with psychiatric disorders such as depression, anxiety and schizophrenia;

(iii) Behaviors which may be caused by frustration stemming from inappropriate programming beyond the child's ability level or by developmentally inappropriate demands for long periods of inactive, passive activity;

(iv) Intentional noncompliance or opposition to reasonable requests that are typical of good preschool programs; or

(v) Inattention due to cultural or language differences.

(3) An attention deficit disorder must have had its onset in early childhood and have persisted through the course of child development when children normally mature and become able to operate in a socialized preschool environment. Because many children younger than four have difficulty orienting, maintaining and focussing attention and are highly active, when Head Start is responsible for the evaluation, attention deficit disorder applies to four and five year old children in Head Start but not to three year olds.

(4) Assessment procedures must include teacher reports which document the frequency and nature of indications of possible attention deficit disorders and describe the specific situations and events occurring just before the problems manifested themselves. Reports must indicate how the child's functioning was impaired and must be confirmed by independent information from a second observer.

§ 1308.8 Eligibility criteria: Emotional/behavioral disorders.

(a) An emotional/behavioral disorder is a condition in which a child's behavioral or emotional responses are so different from those of the generally accepted, age-appropriate norms of children with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress or classroom behavior. A child is classified as having an emotional/behavioral disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) Seriously delayed social development including an inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers);

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative);

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Has a professional diagnosis of serious emotional disturbance.

(b) The eligibility decision must be based on multiple sources of data, including assessment of the child's behavior or emotional functioning in multiple settings.

(c) The evaluation process must include a review of the child's regular Head Start physical examination to eliminate the possibility of misdiagnosis due to an underlying physical condition.

§ 1308.9 Eligibility criteria: Speech or language impairments.

(a) A speech or language impairment means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's learning.

(b) A child is classified as having a speech or language impairment whose speech is unintelligible much of the time, or who has been professionally diagnosed as having speech impairments which require intervention or who is professionally diagnosed as having a delay in development in his or her primary language which requires intervention.

(c) A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).

(d) A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).

(e) A child should not be classified as having a speech or language impairment whose speech or language differences may be attributed to:

(1) Cultural, ethnic, bilingual, or dialectical differences or being non-English speaking; or

(2) Disorders of a temporary nature due to conditions such as a dental problem; or

(3) Delays in developing the ability to articulate only the most difficult consonants or blends of sounds within the broad general range for the child's age.

§ 1308.10 Eligibility criteria: Mental retardation.

(a) A child is classified as mentally retarded who exhibits significantly sub-average intellectual functioning and exhibits deficits in adaptive behavior which adversely affect learning. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.

(b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records. An assessment of the child's functioning must also be made in settings outside the classroom.

(c) Valid and reliable instruments appropriate to the age range must be used. If they do not exist for the language and cultural group to which the child belongs, observation and

professional judgement are to be used instead.

(d) Determination that a child is mentally retarded is never to be made on the basis of any one test alone.

§ 1308.11 Eligibility criteria: Hearing impairment including deafness.

(a) A child is classified as deaf if a hearing impairment exists which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and learning is affected. A child is classified as hard of hearing who has a permanent or fluctuating hearing impairment which adversely affects learning; or

(b) Meets the legal criteria for being hard of hearing established by the State of residence; or

(c) Experiences recurrent temporary or fluctuating hearing loss caused by otitis media, allergies, or eardrum perforations and other outer or middle ear anomalies over a period of three months or more. Problems associated with temporary or fluctuating hearing loss can include impaired listening skills, delayed language development, and articulation problems. Children meeting these criteria must be referred for medical care, have their hearing checked frequently, and receive speech, language or hearing services as indicated by the IEPs. As soon as special services are no longer needed, these children must no longer be classified as having a disability.

§ 1308.12 Eligibility criteria: Orthopedic impairment.

(a) A child is classified as having an orthopedic impairment if the condition is severe enough to adversely affect a child's learning. An orthopedic impairment involves muscles, bones, or joints and is characterized by impaired ability to maneuver in educational or non-educational settings, to perform fine or gross motor activities, or to perform self-help skills and by adversely affected educational performance.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

§ 1308.13 Eligibility criteria: Visual impairment including blindness.

(a) A child is classified as visually impaired when visual impairment, with correction, adversely affects a child's learning. The term includes both blind and partially seeing children. A child is visually impaired if:

(1) The vision loss meets the definition of legal blindness in the State of residence; or

(2) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A child is classified as having a visual impairment if central acuity with corrective lenses is between 20/70 and 20/200 in either eye, or if visual acuity is undetermined, but there is demonstrated loss of visual function that adversely affects the learning process, including faulty muscular action, limited field of vision, cataracts, etc.

§ 1308.14 Eligibility criteria: Learning disabilities.

(a) A child is classified as having a learning disability who has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak or, for preschool age children, acquire the precursor skills for reading, writing, spelling or doing mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, and aphasia.

(b) An evaluation team may recommend that a child be classified as having a learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (a) above when provided with appropriate learning experiences for the age and ability; or

(2) The child has a severe discrepancy between achievement of developmental milestones and intellectual ability in one or more of these areas: oral expression, listening comprehension, pre-reading, pre-writing and pre-mathematics; or

(3) The child shows deficits in such abilities as memory, perceptual and perceptual-motor skills, thinking, language and non-verbal activities which are not due to visual, motor, hearing or emotional disabilities, mental retardation, cultural or language factors, or lack of experiences which would help develop these skills.

(c) This definition for learning disabilities applies to four and five year old children in Head Start. It may be used at a program's discretion for children younger than four or when a three year old child is referred with a professional diagnosis of learning disability. But because of the difficulty of diagnosing learning disabilities for three year olds, when Head Start is responsible for the evaluation it is not a requirement to use this category for three year olds.

§ 1308.15 Eligibility criteria: Autism.

A child is classified as having autism when the child has a developmental disability that significantly affects verbal and non-verbal communication and social interaction, that is generally evident before age three and that adversely affects educational performance.

§ 1308.16 Eligibility criteria: Traumatic brain injury.

A child is classified as having traumatic brain injury whose brain injuries are caused by an external physical force, or by an internal occurrence such as stroke or aneurysm, with resulting impairments that adversely affect educational performance. The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.

§ 1308.17 Eligibility criteria: Other impairments.

(a) The purposes of this classification, "Other impairments," are:

(1) To further coordination with LEAs and reduce problems of recordkeeping;

(2) To assist parents in making the transition from Head Start to other placements; and

(3) To assure that no child enrolled in Head Start is denied services which would be available to other preschool children who are considered to have disabilities in their State.

(b) If the State Education Agency eligibility criteria for preschool children include an additional category which is appropriate for a Head Start child, children meeting the criteria for that category must receive services as children with disabilities in Head Start programs. Examples are "preschool disabled," "in need of special education," "educationally handicapped," and "non-categorically handicapped."

(c) Children ages three to five, inclusive, who are experiencing developmental delays, as defined by their State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who by reason thereof need special

education and related services may receive services as children with disabilities in Head Start programs.

(d) Children who are classified as deaf-blind, whose concomitant hearing and visual impairments cause such severe communication and other developmental problems that they cannot be accommodated in special education programs solely for deaf or blind children are eligible for services under this category.

(e) Children classified as having multiple disabilities whose concomitant impairments (such as mental retardation and blindness), in combination, cause such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments are eligible for services under this category. The term does not include deaf-blind children, for recordkeeping purposes.

§ 1308.18 Disabilities/health services coordination.

(a) The grantee must ensure that the disabilities coordinator and the health coordinator work closely together in the assessment process and follow up to assure that the special needs of each child with disabilities are met.

(b) The grantee must ensure coordination between the disabilities coordinator and the staff person responsible for the mental health component to help teachers identify children who show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications, including prescription and over-the-counter drugs, to children with disabilities in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Obtain the doctor's instructions and parental consent before any medication is administered.

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents.

(3) Record changes in a child's behavior which have implications for drug dosage or type and share this information with the staff, parents and the physician.

(4) Assure that all medications, including those required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary.

Subpart E—Education Services Performance Standards

§ 1308.19 Developing individualized education programs (IEPs)

(a) When Head Start provides for the evaluation, the multidisciplinary evaluation team makes the determination whether the child meets the Head Start eligibility criteria. The multidisciplinary evaluation team must assure that the evaluation findings and recommendations, as well as information from developmental assessment, observations and parent reports, are considered in making the determination whether the child meets Head Start eligibility criteria.

(b) Every child receiving services in Head Start who has been evaluated and found to have a disability and in need of special education must have an IEP before special education and related services are provided to ensure that comprehensive information is used to develop the child's program.

(c) When the LEA develops the IEP, a representative from Head Start must attempt to participate in the IEP meeting and placement decision for any child meeting Head Start eligibility requirements.

(d) If Head Start develops the IEP, the IEP must take into account the child's unique needs, strengths, developmental potential and the family strengths and circumstances as well as the child's disabilities.

(e) The IEP must include:

(1) A statement of the child's present level of functioning in the social-emotional, motor, communication, self-help, and cognitive areas of development, and the identification of needs in those areas requiring specific programming.

(2) A statement of annual goals, including short term objectives for meeting these goals.

(3) A statement of services to be provided by each Head Start component that are in addition to those services provided for all Head Start children, including transition services.

(4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a Head Start program. This includes services provided by Head Start and services provided by other agencies and non-Head Start professionals.

(5) The identification of the personnel responsible for the planning and supervision of services and for the delivery of services.

(6) The projected dates for initiation of services and the anticipated duration of services.

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short-term objectives are being achieved or need to be revised.

(8) Family goals and objectives related to the child's disabilities when they are essential to the child's progress.

(f) When Head Start develops the IEP, the team must include:

(1) The Head Start disabilities coordinator or a representative who is qualified to provide or supervise the provision of special education services;

(2) The child's teacher or home visitor;

(3) One or both of the child's parents or guardians; and

(4) At least one of the professional members of the multidisciplinary team which evaluated the child.

(g) An LEA representative must be invited in writing if Head Start is initiating the request for a meeting.

(h) The grantee may also invite other individuals at the request of the parents and other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's disability.

(i) A meeting must be held at a time convenient for the parents and staff to develop the IEP within 30 calendar days of a determination that the child needs special education and related services. Services must begin as soon as possible after the development of the IEP.

(j) Grantees and their delegates must make vigorous efforts to involve parents in the IEP process. The grantee must:

(1) Notify parents in writing and, if necessary, also verbally or by other appropriate means of the purpose, attendees, time and location of the IEP meeting far enough in advance so that there is opportunity for them to participate;

(2) Make every effort to assure that the parents understand the purpose and proceedings and that they are encouraged to provide information about their child and their desires for the child's program;

(3) Provide interpreters, if needed, and offer the parents a copy of the IEP in the parents' language of understanding after it has been signed;

(4) Hold the meeting without the parents only if neither parent can attend, after repeated attempts to establish a date or facilitate their participation. In that case, document its efforts to secure the parents' participation, through records of phone calls, letters in the parents' native language or visits to parents' homes or places of work, along with any responses or results; and arrange an

opportunity to meet with the parents to review the results of the meeting and secure their input and signature.

(l) Grantees must initiate the implementation of the IEP as soon as possible after the IEP meeting by modifying the child's program in accordance with the IEP and arranging for the provision of related services. If a child enters Head Start with an IEP completed within two months prior to entry, services must begin within the first two weeks of program attendance.

Subpart F—Nutrition Performance Standards

§ 1308.20 Nutrition services.

(a) The disabilities coordinator must work with staff to ensure that provisions to meet special needs are incorporated into the nutrition program.

(b) Appropriate professionals, such as physical therapists, speech therapists, occupational therapists, nutritionists or dietitians must be consulted on ways to assist Head Start staff and parents of children with severe disabilities with problems of chewing, swallowing and feeding themselves.

(c) The plan for services for children with disabilities must include activities to help children with disabilities participate in meal and snack times with classmates.

(d) The plan for services for children with disabilities must address prevention of disabilities with a nutrition basis.

Subpart G—Parent Involvement Performance Standards

§ 1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the staff must carry out the following tasks:

(1) Support parents of children with disabilities entering from infant/toddler programs.

(2) Provide information to parents on how to foster the development of their child with disabilities.

(3) Provide opportunities for parents to observe large group, small group and individual activities describe in their child's IEP.

(4) Provide follow-up assistance and activities to reinforce program activities at home.

(5) Refer parents to groups of parents of children with similar disabilities who can provide helpful peer support.

(6) Inform parents of their rights under IDEA.

(7) Inform parents of resources which may be available to them from the Supplemental Security Income (SSI) Program, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program and other sources and assist them with initial efforts to access such resources.

(8) Identify needs (caused by the disability) of siblings and other family members.

(9) Provide information in order to prevent disabilities among younger siblings.

(10) build parent confidence, skill and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) Grantees must plan to assist parents in the transition of children from Head Start to public school or other placement, beginning early in the program year.

(c) Head Start grantees, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment.

Appendix to Part 1308—Head Start Program Performance Standards on Services to Children with Disabilities

This appendix sets forth guidance for the implementation of the requirements in part 1308. This guidance provides explanatory material and includes recommendations and suggestions for meeting the requirements. This guidance is not binding on Head Start grantees or delegate agencies. It provides assistance and possible strategies which a grantee may wish to consider. In instances where a permissible course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirement. This programmatic guidance is included as an aid to grantees because of the complexity of providing special services to meet the needs of children with various disabilities.

Section 1308.4 Purpose and scope of disabilities service plan

Guidance for Paragraph (a)

In order to develop an effective disabilities service plan the responsible staff members need to understand the context in which a grantee operates. The Head Start program has operated under a Congressional mandate, since 1972, to make available, at a minimum, ten percent of its enrollment opportunities to children with disabilities. Head Start has exceeded this mandate and serves children in integrated, developmentally appropriate programs. The passage of the Individuals With Disabilities Education Act, formerly the Education of the Handicapped Act, and its amendments, affects Head Start, causing a shift in the nature of Head Start's responsibilities for providing services for children with disabilities relative to the responsibilities of State Education Agencies (SEA) and Local Education Agencies (LEA).

Grantees need to be aware that under the IDEA the State Education Agency has the responsibility for assuring the availability of a free appropriate public education for all children with disabilities within the legally required age range in the State. This responsibility includes general supervision of educational programs in all agencies, including monitoring and evaluating the special education and related services to insure that they meet State standards, developing a comprehensive State plan for services for children with disabilities (including a description of interagency coordination among these agencies), and providing a Comprehensive System for Personnel Development related to training needs of all special education and related service personnel involved in the education of children with disabilities served by these agencies, including Head Start programs.

Each State has in effect under IDEA a policy assuring all children with disabilities beginning at least at age three, including those in public or private institutions or other care facilities, the right to a free appropriate education and to an evaluation meeting established procedures. Head Start is either:

- The agency through which the Local Education Agency can meet its obligation to make a free appropriate public education available through a contract, State or local collaborative agreement, or other arrangement; or
- The agency in which the family chooses to have the child served rather than using LEA services.

Regardless of how a child is placed in Head Start, the LEA is responsible for the identification, evaluation and provision of a free appropriate public education for a child found to be in need of special education and related services which are mandated in the State. The LEA is responsible for ensuring that these services are provided, but not for providing them all. IDEA stresses the role of multiple agencies and requires their maintenance of effort.

The Head Start responsibility is to make available directly or in cooperation with other agencies services in the least restrictive environment in accordance with an individualized education program (IEP) for at least ten percent of enrolled children who meet the disabilities eligibility criteria. In addition, Head Start continues to provide or arrange for the full range of health, dental, nutritional, developmental, parent involvement and social services provided to all enrolled children. Head Start has a mandate to recruit and enroll income-eligible children and children with disabilities who are most in need of services and to coordinate with the LEA and other groups to benefit children with disabilities and their families. Serving children with disabilities has strengthened Head Start's ability to individualize for all children. Head Start is fully committed to the maintenance of effort as required for all agencies by the IDEA and by the Head Start Act (Section 640(a)(2)(A)). Head Start is committed to fiscal support to assure that the services which children with disabilities need to meet their special needs will be provided in full, either directly or by

a combination of Head Start funds and other resources.

These Head Start regulations facilitate coordination with the IDEA by utilizing identical terms for eligibility criteria for the most part. However, Head Start has elected to use the term "emotional/behavioral disorder" in lieu of "serious emotional disturbance," which is used in the IDEA, in response to comments and concerns of parents and professionals. Children who meet State-developed criteria under IDEA will be eligible for services from Head Start in that State.

In order to organize activities and resources to help children with disabilities overcome or lessen their disabilities and develop their potential, it is essential to involve the education, health, social services, parent involvement, mental health and nutrition components of Head Start. Parents, staff and policy group members should discuss the various strategies for ensuring that the disabilities service plan integrates needs and activities which cut across the Head Start component areas before the plan is completed.

Advance planning and scheduling of arrangements with other agencies is a key factor in assuring timely, efficient services. Local level interagency agreements can greatly facilitate the difficult tasks of locating related service providers, for example, and joint community screening programs can reduce delays and costs to each of the participating agencies.

Guidance for Paragraph (b)

The plan and the annual updates need to be specific, but not lengthy. As changes occur in the community, the plan needs to reflect the changes which affect services.

Guidance for Paragraph (c)

Grantees should ensure that the practices they use to provide special services do not result in undue attention to a child with a disability. For example, providing names and schedules of special services for children with disabilities in the classroom is useful for staff or volunteers coming into that classroom but posting them would publicize the disability of the individual children.

Guidance for Paragraph (d)

Staff should work for the children's greater independence by encouraging them to try new things and to meet appropriate goals by small steps. Grantees should help children with disabilities develop initiative by including them in opportunities to explore, to create, and to ask rather than to answer questions. The children need opportunities to use a wide variety of materials including science tools, art media and costumes in order to develop skills, imagination and originality. They should be included on field trips, as their experience may have been limited, for example, by an orthopedic impairment.

Just as a program makes available pictures and books showing children and adults from representative cultural, ethnic and occupational groups, it should provide pictures and books which show children and adults with disabilities, including those in active roles

Staff should plan to answer questions children and adults may have about disabilities. This promotes acceptance of a child with disabilities for him or herself and leads to treating the child more normally. Effective curricula are available at low cost for helping children and adults understand disabilities and for improving attitudes and increasing knowledge about disabilities. Information on these and other materials can be obtained from resource access projects contractors, which offer training and technical assistance to Head Start programs.

There are a number of useful guides for including children with disabilities in regular group activities while providing successful experiences for children who differ widely in developmental levels and skills. Some of these describe activities around a unit theme with suggestions for activities suitable for children with different skill levels. Staff need to help some children with disabilities move into developmentally appropriate play with other children.

Research has shown the effectiveness of work in small groups for appropriately selected children with disabilities. This plan allows for coordinating efforts to meet the needs of individual children as listed in their IEPs and can help focus resources efficiently.

If a deaf child who uses or needs sign language or another communication mode is enrolled, a parent, volunteer or aide who can use that mode of communication should be provided to help the child benefit from the program.

In order to build the language and speech capabilities of many children with disabilities who have communication problems, it has been found helpful to enlist aides, volunteers, cooks, bus drivers and parents, showing them how to provide extra repetition and model gradually more advanced language as children improve in their ability to understand and use language. Small group activities for children with similar language development needs should be provided regularly as well as large group language and listening games and individual help. Helping children with intellectual delays or emotional problems or those whose experiences have been limited by other disabilities to express their own ideas and to communicate during play and throughout the daily activities is motivating and can contribute greatly to their progress.

Guidance for Paragraph (e)

The Disabilities Service Coordinator should possess a basic understanding of the scope of the Head Start effort and skills adequate to manage the agency to serve children with disabilities including coordination with other program components and community agencies and work with parents.

Guidance for Paragraph (f)

For non-verbal children, communication boards, computers and other assistive technology devices may be helpful. Technical assistance providers have information on the Technology Related Assistance for Individuals with Disabilities Act of 1988, 29 U.S.C. 2201 *et seq.* States are funded through this legislation to plan Statewide assistive technology services, which should include services for young children. Parents should be helped to understand the necessity of including assistive technology services and devices in their child's IEP in order to obtain them.

The plan should include any renovation of space and facilities which may be necessary to ensure the safety of the children or promote learning. For example, rugs or other sound-absorbing surfaces make it easier for some children to hear stories or conversation. Different surfaces on floors and play areas affect some children's mobility.

45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance which implements the Rehabilitation Act of 1973 and the Americans with Disabilities Act require that all Federally assisted programs, including Head Start, be accessible to persons with disabilities including staff, parents and children. This does not mean that every building or part of a building must be physically accessible, but the program services as a whole must be accessible. Structural changes to make the program services available are required if alternatives such as reassignment of classes or moving to different rooms are not possible. Information on the accessibility standards is available from RAPs or the U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, P.O. Box 66118, Washington, DC 20035–6115.

Staff should ensure that children with physical disabilities have chairs and other pieces of furniture of the correct size and type for their individual needs as they grow. Agencies such as United Cerebral Palsy, Easter Seal Societies or SEAs can provide consultation on adapting or purchasing the appropriate furniture. The correct positioning of certain children is essential and requires expert advice. As the children grow, the furniture and equipment should be checked by an expert, such as a physical therapist, because the wrong fit can be harmful. Efforts should be made to use furniture sized and shaped to place children at the same level as their classmates whenever possible.

Guidance for Paragraph (h)

The plan should specify:

- Overall goals of the disability effort.
- Specific objectives and activities of the disability effort.
- How and when specific activities will be carried out and goals attained.
- Who will be responsible for the conduct of each element of the plan.
- How individual activities will be evaluated.

The plan should address:

- Enrollment information, including numbers of children and types of disabilities, known and estimated.
- Identification and recruitment of children with disabilities. Participation in Child Find and list of major specialized agencies approached.
- Screening.
- Developmental Assessment.
- Evaluation.
- The multidisciplinary team and its work.
- The process for developing IEPs.

- The provision of program services and related services.
- Program accessibility.
- Recordkeeping and reporting.
- Confidentiality of information.
- Any special safety needs.
- Medications.
- Transportation.
- The process for identifying and meeting training and technical assistance needs.
- Special parent involvement needs.
- Planned actions to increase the ability of staff to serve children with more severe disabilities and the number of children with more severe disabilities served.
- Transitioning of children in and out to the next program.

Particular attention should be given to addressing ways to:

- Involve parents throughout the disability effort, and
- Work with other agencies in serving children with disabilities. It should be possible for a reader to visualize how and by whom services will be delivered. Coordination with other agencies should be described, as well as the process for developing local agreements with other agencies. The RAPs can provide samples and models for the process of developing agreements with LEAs.

Guidance for Paragraph (j)

Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program such as an Easter Seal Society or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child. All services to be provided, including those provided by collaborating agencies, should be described in the IEP. Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication.

Individual services such as occupational, physical or speech therapy, staff training, transportation, services to families or counseling may be shared by Head Start and other agencies. For example, Head Start might provide equipment and transportation while a development center might provide a facility and physical therapy for a Head Start child. Some LEAs provide resource teachers while Head Start provides a developmentally appropriate program in an integrated setting.

Hiring additional staff may be necessary to meet the needs of children with severe disabilities. Hiring an aide may be necessary on a full-time, part-time, temporary or as needed basis to assist with the increased demands of a child with a severe disability. However, aides should not be assigned the major responsibility for providing direct services. Aides and volunteers should be guided and supervised by the disabilities service coordinator or someone with special training. It is desirable to have the services of a nurse, physical therapist or licensed practical nurse available for children with severe health or physical disabilities.

Volunteers trained by professionals to work specifically with children with disabilities can provide valuable individualized support. For example, a volunteer might be trained by a physical therapist to carry out specific follow-up activities with individual children.

Guidance for Paragraph (k)

State standards for qualifications of staff to provide special education and related services affect Head Start's acceptance as a placement site for children who have been evaluated by an LEA. Head Start grantees, like LEAs, are affected by shortages of staff meeting State qualifications and are to work toward the goal of meeting the highest State standards for personnel by developing plans to train current staff and to hire new staff so that eventually the staff will meet the qualifications. Grantees should discuss their needs for pre-service and in-service training with SEAs during annual updates of interagency agreements for use in the planning of joint State level conferences and for use in preparation of Comprehensive State Personnel Development plans. They should also discuss these needs with LEAs which provide in-service training.

The program should provide training for the regular teachers on how to modify large group, small group or individual activities to meet the needs of children with disabilities. Specific training for staff should be provided when Head Start enrolls a child whose disability or condition requires a special skill or knowledge of special techniques or equipment. Examples are structuring a language activity, performing intermittent nonsterile catheterization, changing collection bags, suctioning, or operating leg braces. Joint training with other agencies is recommended to stretch resources and exchange expertise.

Staff should have access to regular ongoing training events which keep them abreast of new materials, equipment and practices related to serving children with disabilities and to preventing disabilities. Ongoing training and technical assistance in support of the disabilities effort should be planned to complement other training available to meet staff needs. Each grantee has the responsibility to identify or arrange the necessary support to carry out training for parents and staff.

The best use of training funds has resulted when programs carry out a staff training needs assessment and relate current year training plans to previous staff training with the goal of building core capability. Staff who receive special training should share new knowledge with the rest of the staff.

The core capability of the program is enhanced when speech, language and other therapy is provided in the regular site whenever possible. This allows for the specialist to demonstrate to regular staff and plan for their follow through. It also reduces costs and time spent transporting children to clinics and other settings. When university graduate students are utilized to provide special services as part of their training, it is helpful to arrange for their supervisors to monitor their work. Grantees arranging for such assistance are providing a valuable internship site and it is to the university's advantage to have their students become familiar with programs on-site. Grantees should negotiate when developing interagency agreements to have services provided on-site to the greatest extent possible.

The Head Start Act, Section 648 (42 U.S.C. 9843) (a)(2), calls for training and technical assistance to be offered to all Head Start programs with respect to services for children with disabilities without cost through resource access projects which serve each region of the country. The technical assistance contractors contact each grantee for a needs assessment and offer training. While their staffs are small and their budgets limited, they are experienced and committed to meeting as many needs as they can and welcome inquiries. A brochure with names and addresses of the technical assistance providers is available from ACYF/HS, P.O. Box 1182, Washington, DC 20013.

The SEA is responsible for developing a Comprehensive System of Personnel Development. It is important that Head Start training needs be conveyed to this group for planning purposes so that all available resources can be brought to bear for staff training in Head Start. Grantees should take advantage of free or low-cost training provided by SEAs, LEAs, community colleges and other agencies to augment staff training.

Many agencies offer free training for staff and parents. An example is the Epilepsy Foundation of America with trained volunteers throughout the country. The Lighthouse of New York City has developed a training program on early childhood and vision which was field-tested in Head Start and is suitable for community agencies. Head Start and the American Optometric Association have signed a memorandum of understanding under which member optometrists offer eye health education and screening. State-funded adult education and training programs or community colleges make available parenting, child development and other courses at low or no cost. Grantees should consider the need for training in working with parents, in developing working collaborative relationships and in networking when planning training.

The disabilities coordinator needs to work closely with the education and health coordinators to provide or arrange training for staff and parents early in each program year on the prevention of disabilities. This should include the importance of observing signs that some children may have mild or fluctuating hearing losses due to middle ear infections. Such losses are often undetected and can cause problems in learning speech and language. Many children with hearing losses benefit from amplification and auditory training in how to use their remaining hearing most efficiently.

The disabilities coordinator should also work with the education coordinator to provide timely staff training on recognizing signs that some children may be at high risk for later learning problems as well as emotional problems resulting from failure and frustration. This training should address ways to help children develop the skills necessary for later academic learning, such as following directions calling for more than one action, sequencing, sustaining attention, and making auditory and visual discriminations.

Guidance for Paragraph (l)

The RAPS can provide information on agreements which have been developed between Head Start and SEAs and between Head Start and LEAs and other agencies. Such agreements offer possibilities to share training, equipment and other resources, smoothing the transition from Head Start to public or private school for children and their parents. Some of these agreements specify cost- and resource-sharing practices. Tribal Government Head Start programs should maximize use of Bureau of Indian Affairs, LEA and Head Start funds through cooperative agreements. Indian grantees should contact ACYF for referral to technical assistance in this regard. Grantees should bear in mind that migrant children are served in the majority of States and include consideration of their special needs, including the necessity for rapid provision of special education and related services, in agreements with LEAs and other agencies.

Guidance for Paragraph (m)

In developing the plan and the budget which is a part of the grant application process, it is important to budget adequately for the number of children with disabilities to be served and the types and severity of their disabilities. The budget should reflect resources available from other agencies as well as the special costs to be paid for from Head Start funds. The Head Start legislation requires Head Start to access resources to meet the needs of all the children enrolled, including those with disabilities.

An effective plan calls for the careful use of funds. The Disabilities Services Coordinator needs to keep current with the provisions of Part B of the IDEA and the services which may be available for three through five year-old children under this Act. Coordinators also need to utilize the expanded services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program and Supplemental Security Income program.

To assist in the development of the plan, it may be helpful to establish an advisory committee for the disability effort or to expand the scope of the health advisory committee.

Guidance for Paragraph (o)

Examples of evaluation costs which can be covered include professional assessment by the multidisciplinary evaluation team, instruments, professional observation and professional consultation. If consultation fees for multidisciplinary evaluation team members to participate in IEP meetings are not available from another source, they are allowable expenditures and need to be provided to meet the performance standards.

Many children with disabilities enrolled in Head Start already receive services from other agencies, and grantees should encourage these agencies to continue to provide services. Grantees should use other community agencies and resources to supplement services for children with disabilities and their families.

By planning ahead, grantees can pool resources to schedule the periodic use of experts and consultants. Grantees can time-share, reducing travel charges and assuring the availability of scarce expertise. Some LEAs and other agencies have enabling legislation and funds to contract for education, health, and developmental services of the type Head Start can provide. Grantees can also help increase the amount of preschool funding available to their State under the Individuals With Disabilities Education Act. The amount of the allocation to each SEA and to the public schools is affected by the number of three through five year old children with IEPs in place by December 1 of each year. By establishing good working relationships with State Public Health personnel and including them on advisory committees, health resources can be more easily utilized.

It may be helpful to explore the possibility of a cooperative agreement with the public school system to provide transportation. If the lack of transportation would prevent a child with disabilities from participating in Head Start, program funds are to be used to provide this related service before a delay occurs which would have a negative effect on the child's progress. The major emphasis is on providing the needed special help so that the child can develop to the maximum during the brief time in Head Start.

The Americans with Disabilities Act of 1990 (42 U.S.C. 12101) requires that new buses (ordered after August 26, 1990) by public bus systems must be accessible to individuals with disabilities. New over-the-road buses ordered by privately operated bus and van companies (on or after July 26, 1996 or July 26, 1997 for small companies) must be accessible. Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public. The Justice Department enforces these requirements.

Efforts should be made to obtain expensive items such as wheelchairs or audiometers through resources such as Title V (formerly Crippled Children's Services). Cooperative arrangements can be made with LEAs and other agencies to share equipment such as tympanometers. Special equipment such as hearing aids may be obtained through EPSDT or from SSI funds for those children who have been found eligible. Some States have established libraries of assistive technology devices and rosters of expert consultants.

Section 1308.5 Recruitment and Enrollment of Children With Disabilities

Guidance for Paragraph (a)

Head Start can play an important role in Child Find by helping to locate children in need and hardest to reach, such as immigrants and non-English speakers. In cooperation with other community groups and agencies serving children with disabilities, Head Start programs should incorporate in their outreach and recruitment procedures efforts to identify and enroll children with disabilities who meet eligibility requirements and whose parents desire the child's participation.

Integrating children with severe disabilities for whom Head Start is an appropriate placement is a goal of ACYF. Grantees should bear in mind that 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance or the Rehabilitation Act of 1973 (20 U.S.C. 794) states that any program receiving Federal funds may not deny admission to a child solely on the basis of the nature or extent of a disabling condition and shall take into account the needs of the child in determining the aid, benefits, or services to be provided. Many children who appear to have serious impairments are nevertheless able to make greater gains in an integrated setting than in a segregated classroom for children with disabilities.

The key factor in selecting an appropriate placement is the IEP. The need of the individual child and the ability of the child to benefit are determining factors. Likewise, the amount of time per day or week to be spent in the regular setting and/or in other settings is determined by the IEP. The IEP of a child with a severe emotional/behavioral disorder, for example, might realistically call for less than full day attendance or for dual placement. Another factor to consider is that according to the PIR, the majority of children with severe impairments are provided special services by both Head State staff and staff of other agencies, sharing the responsibility. Many grantees have successfully served children with moderate and severe disabilities.

The disabilities coordinator's responsibility includes providing current names of appropriate specialized agencies serving young children with disabilities and the names of LEA Child Find contact persons to the director to facilitate joint identification of children with disabilities. It also includes learning what resources other agencies have available and the eligibility criteria for support from State agencies, Supplemental Security Income (SSI), Title V, Maternal and Child Health Block Grants, Title XIX (EPSDT/Medicaid), Migrant Health Centers, Developmental Disabilities programs, Bureau of Indian Affairs, third party payers such as insurance companies and other sources.

Grantees need to develop lists of appropriate referral sources. These include hospital child life programs, SSI, early intervention programs funded by Part H of the IDEA or other sources, EPSDT providers, infant stimulation programs, Easter Seal and United Cerebral Palsy agencies, mental health agencies, Association for Retarded Citizens chapters, Developmental Disabilities Planning Councils, Protection and Advocacy Systems, University Affiliated Programs, the LEA Child Find, and the medical community.

Head Start programs are encouraged to increase the visibility of the Head Start mainstreaming effort within the community by:

- Including community child service providers on policy council health and disability advisory boards and in other relevant Head Start activities.
- Making presentations on Head Start mainstreaming experiences at local, State and Regional meetings and conferences, such as the National Association for the Education of Young Children, Council for Exceptional Children, and the Association for the Care of Children's Health.

• Participating in interagency planning activities for preschool infant and toddler programs such as the State Interagency Coordinating Councils supported under the IDEA.

Guidance for Paragraph (b)

Grantees should maintain records of outreach, recruitment, and service activities for children with disabilities and their families.

Each grantee should develop a policy on what types of information are to be included in a comprehensive file for each disabled child. The policy should outline the locations where a copy of each record will be sent. For example, while a comprehensive file will be maintained at the Head Start program central office (where the disability services coordinator and component coordinators may be based), a teacher must have access to a child's IEP and progress notes in order to plan effectively. Confidentiality needs to be maintained in a manner which allows for access to information by appropriate staff while meeting applicable Head Start and State requirements.

Guidance for Paragraph (d)

Staff should assist families who need help in obtaining immunizations before the program year begins, bearing in mind that a goal of parent involvement and social service activities is to encourage independence and develop skills in meeting timelines when seeking services for children. Care should be taken that children are not denied enrollment, but that their families receive the necessary assistance to meet entrance requirements. "Healthy Young Children: A Manual for Programs," (a cooperative effort of the Administration for Children, Youth and Families, the American Academy of Pediatrics; the Division of Maternal and Child Health, U.S. Department of Health and Human Services; Georgetown University Child Development Center; Massachusetts Department of Public Health, and the National Association for the Education of Young Children, 1988, copyright, NAEYC) contains best practice guidance.

Section 1308.6 Assessment of Children

Guidance for Paragraph (b)

Early screening is essential because of the time required for the steps necessary before special services can begin. It has been very difficult for some grantees to complete health screenings in a timely manner for several reasons including the lack of resources, especially in rural areas; the need to rely on donated services from agencies whose schedules have been especially overloaded during September and October after the start of the Head Start program year; lack of summer staff in most programs; and the difficulty in reaching some families. Lack of coordination among agencies with legislative responsibility for identifying children with disabilities has resulted in duplication and unacceptable delays in providing required services for many grantees. Other grantees, however, have demonstrated the ability to complete screenings early in the program year without difficulty. Many programs already complete screening by 45 days after the first day of program operation. Some participate in spring or summer screening programs in their areas before the fall opening. Grantees are encouraged to schedule well in advance with clinics and with such providers as EPSDT and the Indian Health Service for timely screening and any subsequent evaluations that may be needed.

Recently, a number of legislative and legal requirements have increased the resources available for the screening and evaluation of children. Title XIX, EPDST/Medicaid, has new requirements for screening and evaluation, as well as treatment; the Social Security Administration has modified eligibility requirements for children with disabilities so that more services will be available; and all States have assured that services will be provided from at least age three under IDEA so that LEAs in more States will be engaged in identifying and evaluating children from birth to age six.

In response to these changes, the Department of Health and Human Services and the Department of Education, through the Federal Interagency Coordinating Council, have developed a cooperative agreement for coordinated screening. Head Start is one of the participating agencies which will work together to plan and implement community screenings, assisting the LEAs which have the major responsibility for identifying every child with a disability under the IDEA. In addition, programs may elect to make some summer staff available for activities to close out program work in the spring and prepare for the fall.

These developments make timely screening feasible. They also make it possible to expedite immunizations. State-of-the-art coordinated screening programs make immunizations available.

This coordination can focus staff energy on assisting families to have their children immunized during the screening phase rather than making repeated follow-up efforts after the program for children has begun. Coordinated screening also provides an excellent parent education opportunity. Information on child development, realistic expectations for preschoolers and such services as WIC can be provided during the screening. Some communities have combined screening with well-received health fairs.

The staff should be involved in the planning of screening to assure that screening requirements are selected or adapted with the specific Head Start population and goals of the screening process in mind. Instruments with age-appropriate norms should be used. Children should be screened in their native language. Universities, civic organizations or organizations to aid recent immigrants may be able to locate native speakers to assist. The RAPs can provide information on the characteristics of screening instruments.

Current best practice indicates that individual pure tone audiometry be used as the first part of a screening program with children as young as three. The purpose is to identify children with hearing impairments that interfere with, or have the potential to interfere with communication. The recommended procedure is audiometric screening at 20 dB HL (re ANSI–1969) at the frequencies of 1000, 2000, and 4000 Hz, (and at 500 Hz unless acoustic immittance audiometry is included as the second part of the screening program and if the noise level in the room permits testing at that frequency.) Acoustic immittance audiometry (or impedance audiometry) is recommended as the second part of the program to identify children who have middle-ear disorders.

The audiometric screening program should be conducted or supervised by an audiologist. Nonprofessional support staff have successfully carried out audiometric screening with appropriate training and supervision.

When a child fails the initial screening, an audiometric rescreening should be administered the same day or no later than within 2 weeks. A child who fails the rescreening should be referred for an evaluation by an audiologist.

Current best practice calls for annual hearing tests. Frequent rescreening is needed for children with recurrent ear infections. Grantees who contract or arrange for hearing testing should check to assure that the testing covers the three specified frequencies and that other quality features are present. Speech, hearing and language problems are the most widespread disabilities in preschool programs and quality testing is vital for early detection and remediation.

Playing listening games prior to testing and getting use to earphones can help children learn to respond to a tone and improve the quality of the testing.

Some grantees have found it strengthens the skills of their staff to have all members learn to do developmental screening. This can be a valuable in-service activity especially for teachers. State requirements for qualifications should be checked and non-professional screeners should be trained.

Some programs have involved trained students from schools of nursing, child development or special education graduate students, or medical students who must carry out screening work as part of their required experience.

Guidance for Paragraph (d)

Parents should be provided assistance if necessary, so that they can participate in the developmental assessment.

Grantees should offer parents assistance in understanding the implications of developmental assessments as well as medical, dental or other conditions which can affect their child's development and learning.

Development assessment is an ongoing process and information from observations in the Head Start center and at home should be recorded periodically and updated in each developmental area in order to document progress and plan activities.

Disabilities coordinators, as well as education staff, need to be thoroughly familiar with developmental assessment activities such as objective observation, time sampling and obtaining parent information and the use of formal assessment instruments. Knowledge of normal child development and understanding of the culture of the child are also important.

Guidance for Paragraph (e)

While the LEA is responsible for assuring that each child who is referred is evaluated in accordance with the provisions of IDEA and usually provides the evaluation, grantees may sometimes provide for the evaluation. In that event, grantees need to assure that evaluation specialists in appropriate areas such as psychology, special education, speech pathology and physical therapy coordinate their activities so that the child's total functioning is considered and the team's findings and recommendations are integrated.

Grantees should select members of the multidisciplinary evaluation team who are familiar with the specific Head Start population, taking into account the age of the children and their cultural and ethnic background as they relate to the overall diagnostic process and the use of specific tests.

Grantees should be certain that team members understand that Head Start programs are funded to provide preschool developmental experiences for all eligible children, some of whom also need special education and related services. The intent of the evaluation procedures is to provide information to identify children who have disabling conditions so they can receive appropriate assistance. It is also the intent to avoid mislabeling children for whom basic Head Start programming is designed and who may show developmental delays which can be overcome by a regular comprehensive program meeting the Head Start Performance Standards.

When a grantee provides for the evaluation of a child, it is important that the Head Start eligibility criteria be explained to the evaluation team members and that they be informed as to how the results will be used.

Grantees should require specific findings in writing from the evaluation team, and recommendations for intervention when the team believes the child has a disability. The findings will be used in developing the child's IEP to ensure that parents, teachers and others can best work with the child. Some grantees have obtained useful functional information by asking team members to complete a brief form describing the child's strengths and weaknesses and the effects of the disability along with suggestions for special equipment, treatment or services. The evaluators should be asked in advance to provide their findings promptly in easily understood terms. They should provide separate findings and, when they agree, consensus professional opinions. When planning in advance for evaluation services from other agencies, grantees should try to obtain agreements on prompt timing for delivery of reports which are necessary to plan services.

To assist the evaluation team, Head Start should provide the child's screening results, pertinent observations, and the results of any developmental assessment information which may be available.

It is important that programs ensure that no individual child or family is labeled, mislabeled, or stigmatized with reference to a disabling condition. Head Start must exercise care to ensure that no child is misidentified because of economic circumstances, ethnic or cultural factors or developmental lags not caused by a disability, bilingual or dialectical differences, or because of being non-English speaking.

If Head Start is arranging for the evaluation, it is important to understand that a child whose problem has been corrected (e.g., a child wearing glasses whose vision is corrected and who does not need special education and related services) does not qualify as a child with a disability. A short-term medical problem such as post-operative recovery or a problem requiring only medical care and health monitoring when the evaluation specialists have not stated that special education and related services are needed does not qualify as a disability.

The evaluation team should include consideration of the way the disability affects the child's ability to function as well as the cause of the condition.

Some children may have a recent evaluation from a clinic, hospital or other agency (other than the LEAs) prior to enrolling in Head Start. If that evaluation did not include needed functional information or a professional opinion as to whether the child meets one of the Head Start eligibility criteria, the grantee should contact the agency to try to obtain that information.

Some children, prior to enrolling in Head Start, already have been diagnosed as having severe disabilities and a serious need for services. Some of these children already may be receiving some special assistance from other agencies for their disabilities but lack developmental services in a setting with other children. Head Start programs may best meet their needs by serving them jointly, i.e., providing developmental services while disability services are provided from another source. It is important in such situations that regular communication take place between the two sites.

Beginning in 1990, State EPSDT/Medicaid programs must, by law, evaluate and provide services for young children whose families meet eligibility criteria at 133 percent of the poverty levels. This is a resource for Head Start and it is important to become aware of EPSDT provisions.

Section 1308.7 Eligibility Criteria: Health Impairment Guidance

Guidance for Paragraph (c)

Many health impairments manifest themselves in other disabling conditions. Because of this, particular care should be taken when classifying a health impaired child.

Guidance for Paragraph (b)

Because AIDS is a health impairment, grantees will continue to enroll children with AIDS on an individual basis. Staff need to be familiar with the Head Start Information Memorandum on Enrollment in Head Start Programs of Infants and Young Children with Human Immunodeficiency Virus (HIV), AIDS Related Complex (ARC), or Acquired Immunodeficiency Syndrome (AIDS) dated June 22, 1988. This guidance includes material from the Centers for Disease Control which stresses the need for a team, including a physician, to make informed decisions on enrollment on an individual basis. It provides guidance in the event that a child with disabilities presents a problem involving biting or bodily fluids. The guidance also discusses methods for control of all infectious diseases through stringent cleanliness standards and includes lists of Federal, State and national agencies and organizations that can provide additional information as more is learned. Staff should be aware that there is a high incidence of visual impairment among children with HIV and AIDS.

Guidance for Paragraph (c)

Teachers or others in the program setting are in the best position to note the following kinds of indications that a child may need to be evaluated to determine whether an attention deficit disorder exists:

(1) Inability of a child who is trying to participate in classroom activities to be able to orient attention, for example to choose an activity for free time or to attend to simple instructions;

(2) Inability to maintain attention, as in trying to complete a selected activity, to carry out simple requests or attend to telling of an interesting story; or

(3) Inability to focus attention on recent activities, for example on telling the teacher about a selected activity, inability to tell about simple requests after carrying them out, or inability to tell about a story after hearing it.

These indicators should only be used after the children have had sufficient time to become familiar with preschool procedures and after most of the children are able easily to carry out typical preschool activities.

Culturally competent staff recognize and appreciate cultural differences, and this awareness needs to include understanding that some cultural groups may promote behavior that may be misinterpreted as inattention. Care must be taken that any deviations in attention behavior which are within the cultural norms of the child's group are not used as indicators of possible attention deficit disorder.

A period of careful observation over three months can assure that adequate documentation is available for the difficult task of evaluation. It also provides opportunity to provide extra assistance to the child, perhaps through an aide or special education student under the teacher's direction, which might improve the child's functioning and eliminate the behavior taken as evidence of possible attention deficit disorder.

Attention deficit disorders are not the result of learning disabilities, emotional/behavioral disabilities, autism or mental retardation. A comprehensive psychological evaluation may be carried out in some cases to rule out learning disability or mental retardation. It is possible, however, in some instances for this disability to coexist with another disability. Children who meet the criteria for multiple disabilities (e.g., attention deficient disorder and learning disability, or emotional/behavioral disorder, or mental retardation) would be eligible for services as children with multiple disabilities or under their primary disability.

Teacher and parent reports have been found to provide the most useful information for assessment of children suspected of having attention deficit disorder. They are also useful in planning and providing special education intervention. The most successful approach may be a positive behavior modification program in the classroom, combined with a carryover program in the home. Prompt and clear response should be provided consistently. Positive reinforcement for appropriate behavior, based on rewards such as stickers or small items desired by the child has been found effective for children with this disorder, along with occasional withholding of rewards or postponing of desired activities in the face of inappropriate behavior. Effective programs suggest that positive interactions with the child after appropriate behavior are needed at least three times as often as any negative response interactions after inappropriate behavior. Consultants familiar with behavior modification should be used to assist teachers in planning and carrying out intervention which can maintain this positive to negative ratio while shaping behaviors. These behavior interventions can be provided in mainstream placements with sufficient personnel.

Suggested Primary Members of A Head Start Evaluation Team for Health Impaired Children:

Physician.
Pediatrician.
Psychologist.
Other specialists related to specific disabilities.
Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Family counseling.
Genetic counseling.
Nutrition counseling.
Recreational therapy.
Supervision of physical activities.
Transportation.
Assistive technology devices or services

Section 1308.8 Eligibility Criteria: Emotional/Behavioral Disorders

Guidance for Paragraph (a)

Staff should insure that behavior which may be typical of some cultures or ethnic groups, such as not making eye contact with teachers or other adults or not volunteering comments or initiating conversations are not misinterpreted.

The disability, social service and parent involvement coordinators should consider providing extra attention to children at-risk for emotional/behavioral disorders and their parents to help prevent a disability. Members of the Council of One Hundred, Kiwanis, Urban League, Jaycees, Rotary, Foster Grandparents, etc. may be able to provide mentoring and individual attention.

Suggested Primary Members of a Head Start Evaluation Team for Emotional/behavioral Disorders:

Psychologist, psychiatrist or other clinically trained and State qualified mental health professionals.
Pediatrician.
Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Behavior management.
Environmental adjustments.
Family counseling.
Psychotherapy.
Transportation.
Assistive technology.

Section 1308.9 Eligibility Criteria: Speech or Language Impairment

Guidance for Paragraph (a)

Staff familiar with the child should consider whether shyness, lack of familiarity with vocabulary which might be used by testers, unfamiliar settings, or linguistic or cultural factors are negatively influencing screening and assessment results. Whenever possible, consultants trained in assessing the speech and language skills of young children should be selected. The child's ability to communicate at home, on the playground and in the neighborhood should be determined for an accurate assessment. Review of the developmentally appropriate age ranges for the production of difficult speech sounds can also help reduce over-referral for evaluation.

Suggested Primary Members of a Head Start Evaluation Team for Speech or Language Impairment:

Speech Pathologist.
Language Pathologist.
Audiologist.
Otolaryngologist.
Psychologist.
Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Language therapy.
Speech therapy.
Transportation.
Assistive technology devices or services.

Section 1308.10 Eligibility Criteria: Mental Retardation

Guidance for Paragraph (a)

Evaluation instruments with age-appropriate norms should be used. These should be administered and interpreted by professionals sensitive to racial, ethnic and linguistic differences. The diagnosticians must be aware of sensory or perceptual impairments that the child may have (e.g., a child who is visually impaired should not be tested with instruments that rely heavily on visual information as this could produce a depressed score from which erroneous diagnostic conclusions might be drawn).

Suggested primary members of a Head Start evaluation team for mental retardation:

Psychologist.
Pediatrician.
Possible related services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.11 Eligibility Criteria: Hearing Impairment Including Deafness

Guidance for Paragraph (a)

An audiologist should evaluate a child who has failed rescreening or who does not respond to more than one effort to test the child's hearing. If the evaluation team determines that the child has a disability, the team should make recommendations to meet the child's needs for education and medical care or habilitation, including auditory training to learn to use hearing more effectively.

Suggested Primary Members of a Head Start Evaluation Team for Hearing Impairment:

Audiologist.
Otolaryngologist.
Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Auditory training.
Aural habilitation.
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Medical treatment.
Speech therapy.
Total communication, speechreading or manual communication.
Transportation.
Use of amplification.
Assistive technology devices or services.

Section 1308.12 Eligibility Criteria: Orthopedic Impairment

Guidance for Paragraph (a)

Suggested Primary Members of a Head Start Evaluation Team for Orthopedic Impairment:

Pediatrician.
Orthopedist.
Neurologist.
Occupational Therapist.
Physical Therapist.
Rehabilitation professional.
Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Language therapy.
Medical treatment.
Occupational therapy.
Physical therapy.
Assistive technology.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.13 Eligibility Criteria: Visual Impairment Including Blindness

Guidance for Paragraph (a)

Primary Members of an Evaluation Team for Visual Impairment including Blindness:
Ophthalmologist.
Optometrist.
Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Environmental adjustments.
Family counseling.
Occupational therapy.
Orientation and mobility training.
Pre-Braille training.
Recreational therapy.
Sensory training.
Transportation.
Functional vision assessment and therapy.

Section 1308.14 Learning Disabilities

Guidance for Paragraph (a)

When a four or five-year-old child shows signs of possible learning disabilities, thorough documentation should be gathered. For example, specific anecdotal information and samples of the child's drawings, if appropriate, should be included in the material given to the evaluation team.

A Master's degree level professional with a background in learning disabilities should be a member of the evaluation team.

Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Vision evaluation.
Neurology.
Psychology.
Motor development.
Hearing evaluation.
Child psychiatry.
Pediatric evaluation.

Section 1308.15 Autism

A child who manifests characteristics of the condition after age three can still be diagnosed as having autism. Autism does not include children with characteristics of serious emotional disturbance.

Suggested possible members of a Head Start evaluation team:
Psychologist.
Pediatrician.
Audiologist.
Psychiatrist.
Language pathologist.
Possible related services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Family support services.
Language therapy.
Transportation.

Section 1308.16 Traumatic Brain Injury

Traumatic brain injury does not include congenital brain injury.

Suggested possible members of an evaluation team included:
Psychologist.
Physical therapist.
Speech or language pathologist.
Possible related services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Rehabilitation professional.
Occupational therapy.
Speech or language therapy.
Assistive technology.

Section 1308.17 Other Impairments

This category was included to ensure that any Head Start child who meets the State eligibility criteria as developmentally delayed or State-specific criteria for services to preschool children with disabilities is eligible for needed special services either within Head Start or the State program.

Suggested primary members of an evaluation team for other impairments meeting State eligibility criteria for services to preschool children with disabilities.
Pediatrician.
Psychologist.
Other specialists with expertise in the appropriate area(s).
Possible Related Services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Occupational therapy.
Speech or language therapy.
Family Counseling.
Transportation.

Deaf-blindness

Information on assistance or joint services for deaf-blind children can be obtained through SEAs.

Multiple Disabilities

A child who is deaf and has speech and language impairments would not be considered to have multiple disabilities, as it could be expected that these impairments were caused by the hearing loss.

Suggested primary members of a Head Start evaluation team:
Audiologists.
Special educators.
Speech, language or physical therapists.
Psychologists or psychiatrists.
Rehabilitation professional.
Possible related services:
(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)
Speech, language, occupational or physical therapists as needed.
Assistive technology devices or services.
Mental health services.
Transportation.

Section 1308.18 Disabilities/Health Services Coordination

Guidance for Paragraph (a)

It is important for staff to maintain close communication concerning children with health impairments. Health and disability services coordinators need to schedule frequent re-tests of children with recurrent middle ear infections and to ensure that they receive ongoing medical treatment to prevent speech and language delay. They should ensure that audiometers are calibrated annually for accurate testing of hearing. Speech and hearing centers, the manufacturer, or public school education services districts should be able to perform this service. In addition, a daily check when an audiometer is in use and a check of the acoustics in the testing site are needed for accurate testing.

Approximately 17 percent of Down Syndrome children have a condition of the spine (atlanto-axial instability) and should not engage in somersaults, trampoline exercises, or other activities which could lead to spinal injury without first having a cervical spine x-ray.

Guidance for Paragraph (b)

The disabilities services coordinator needs to assure that best use is made of mental health consultants when a child appears to have a problem which may be symptomatic of a disability in the social/emotional area. Teachers, aides and volunteers should keep anecdotal records of the child's activities, tantrums, the events which appear to precipitate the tantrums, language use, etc. These can provide valuable information to a mental health consultant, who should be used primarily to make specific recommendations and assist the staff rather than to document the problem.

The mental health coordinator can cooperate in setting up group meetings for parents of children with disabilities which provide needed support and a forum for talking over mutual concerns. Parents needing community mental health services may need direct assistance in accessing services, especially at first.

The disability services coordinator needs to work closely with staff across components to help parents of children who do not have disabilities become more understanding and knowledgeable about disabilities and ways to lessen their effects. This can help reduce the isolation which some families with children with disabilities experience.

Guidance for Paragraphs (c) and (d)

Arrangements should be made with the family and the physician to schedule the administration of medication during times when the child is most likely to be under parental supervision.

Awareness of possible side effects is of particular importance when treatment for a disability requires administration of potentially harmful drugs (e.g., anti-convulsants, amphetamines).

Section 1308.19 Developing Individual Education Programs (IEPs)

Guidance for Paragraph (a)

The IEP determines the type of placement and the specific programming which are appropriate for a child. The least restrictive environment must be provided and staff need to understand that this means the most appropriate placement in a regular program to the maximum extent possible based on the IEP. Because it is individually determined, the least restrictive environment varies for different children. Likewise, the least restrictive environment for a given child can vary over time as the disability is remediated or worsens. A mainstreamed placement, in a

regular program with services delivered by regular or special staff, is one type of integrated placement on the continuum of possible options. It represents the least restrictive environment for many children.

Following screening, evaluation and the determination that a child meets the eligibility criteria and has a disability, a plan to meet the child's individual needs for special education and related services is developed. In order to facilitate communication with other agencies which may cooperate in providing services and especially with LEAs or private schools which the children will eventually enter, it is recommended that programs become familiar with the format of the IEP used by the LEAs and use that format to foster coordination. However, the format of the IEP to be developed for children in Head Start can vary according to local option. It should be developed to serve as a working document for teachers and others providing services for a child.

It is recommended that the staff review the IEP of each child with a disability more frequently than the minimum once a year to keep the objectives and activities current.

It is ideal if a child can be mainstreamed in the full program with modifications of some of the small group, large group or individual program activities to meet his or her special needs and this should be the first option considered. However, this is not possible or realistic in some cases on a full-time basis. The IEP team needs to consider the findings and recommendations of the multi-disciplinary evaluation team, observation and developmental assessment information from the Head Start staff and parents, parental information and desires, and the IEP to plan for the best situation for each child. Periodic reviews can change the degree to which a child can be mainstreamed during the program year. For example, a child with autism whose IEP called for part-time services in Head Start in the fall might improve so that by spring the hours could be extended.

If Head Start is not an appropriate placement to meet the child's needs according to the IEP, referral should be made to another agency.

Helpful specific information based on experience in Head Start is provided in manuals and resource materials on serving children with disabilities developed by ACYF and by technical assistance providers. They cover such aspects of developing and implementing the IEP as:

- Gathering data needed to develop the IEP;
- Preparing parents for the IEP conference;
- Writing IEPs useful to teachers; and
- Developing appropriate curriculum activities and home follow-up activities.

Guidance for Paragraph (j)

Programs are encouraged to offer parents assistance in noting how their child functions at home and in the neighborhood. Parents should be encouraged to contribute this valuable information to the staff for use in ongoing planning. Care should be taken to put parents at ease and to eliminate or explain specialized terminology. Comfortable settings, familiar meeting rooms and ample preparation can help lessen anxiety. The main purpose is to involve parents actively, not just to obtain their signature on the IEP.

It is important to involve the parents of children with disabilities in activities related to their child's unique needs, including the procurement and coordination of specialized services and follow-through on the child's treatment plan, to the extent possible. It is especially helpful for Head Start to assist parents in developing confidence, strategies and techniques to become effective advocates for their children and to negotiate complicated systems. Under IDEA, a federally-funded Parent Training and Information Program exists whereby parent training centers in each State provide information, support and assistance to parents enabling them to advocate for their child. Information regarding these centers should be given to parents of a child determined to have a disability. Because some parents will need to advocate for their children over a number of years, they need to gain the confidence and skills to access resources and negotiate systems with increasing independence.

Some parents of children with disabilities are also disabled. Staff may need to adjust procedures for assisting parents who have disabilities to participate in their children's programs. Materials to assist in this effort are available from technical assistance providers.

Section 1308.20 Nutrition Services

Guidance for Paragraph (a)

Vocabulary and concept building, counting, learning place settings, social skills such as conversation and acceptable manners can be naturally developed at meal or snack time, thus enhancing children's skills. Children with disabilities often need planned attention to these areas.

The staff person who is responsible for nutrition and the disabilities services coordinator should work with the social services coordinator to help families access nutrition resources and services for children who are not able to learn or develop normally because of malnutrition.

The staff person who is responsible for nutrition and the disabilities services coordinator should alert staff to watch for practices leading to baby bottle caries. This is severe tooth decay caused by putting a baby or toddler to bed with a nursing bottle containing milk, juice or sugar water or letting the child carry around a bottle for long periods of time. The serious dental and speech problems this can cause are completely preventable.

In cases of severe allergies, staff should work closely with the child's physician or a medical consultant.

Section 1308.21 Parent Participation and Transition of Children From Head Start to Public School

Guidance for Paragraph (a)

Grantees should help parents understand the value of special early assistance for a child with a disability and reassure those parents who may fear that if their child receives special education services the child may always need them. This is not the experience in Head Start and most other preschool programs where the majority of children no longer receive special education after the preschool years. The disabilities coordinator needs to help parents understand that their active participation is of great importance in helping their children overcome or lessen the effects of disabilities and develop to their full potential.

The disabilities coordinator should help program staff deal realistically with parents of children who have unfamiliar disabilities by providing the needed information, training and contact with consultants or specialized agencies. The coordinator should ensure that staff carrying out family needs assessment or home visits do not overlook possible disabilities among younger siblings who should be referred for early evaluation and preventive actions.

Guidance for Paragraphs (b) and (c)

As most Head Start children will move into the public school system, disabilities coordinators need to work with the Head Start staff for early and ongoing activities designed to minimize discontinuity and stress for children and families as they move into a different system. As the ongoing advocates, parents will need to be informed and confident in communicating with school personnel and staff of social service and medical agencies. Disabilities coordinators need to ensure that the Head Start program:

- Provides information on services available for LEAs and other sources of services parents will have to access on their own, such as dental treatment;
- Informs parents of the differences between the two systems in role, staffing patterns, schedules, and focus;
- Provides opportunities for mutual visits by staff to one another's facilities to help plan appropriate placement;
- Familiarizes parents and staff of the receiving program's characteristics and expections;
- Provides early and mutually planned transfer of records with parent consent at times convenient for both systems;
- Provides information on services available under the Individuals With Disabilities Education Act, the federally-funded parent training centers and provisions for parent involvement and due process; and
- Provides opportunities for parents to confer with staff to express their ideas and needs so they have experience in participating in IEP and other conferences in an active, confident manner. Role playing has been found helpful.

It is strongly recommended that programs develop activities for smooth transition into Head Start from Part H infant/toddler programs funded under IDEA and from Head Start to kindergarten or other placement. In order to be effective, such plans must be developed jointly. They are advantageous for the children, parents, Part H programs, Head Start and LEAs. ACYF has developed materials useful for transition. American Indian programs whose children move into several systems, such as Bureau of Indian Affairs schools and public schools, need to prepare children and families in advance for the new situation. Plans should be used as working documents and reviewed

for annual update, so that the foundation laid in Head Start is maintained and strengthened.

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

2. The authority citation for part 1304 is revised to read as follows:

Authority: 42 U.S.C. 9801 et seq.

3. In part 1304, wherever the term "OCD" is used change to "ACYF" and wherever the term "Office of Child Development" is used change to "Administration on Children, Youth and Families."

4. Section 1304.1–2 is amended by revising paragraphs (a), (c) and (i) to read as follows:

§ 1304.1–2 Definitions.

* * * * *

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

* * * * *

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

* * * * *

(i) The term "children with disabilities" means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities who, by reason thereof need special education and related services. The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

5. Section 1304.3–3 is amended by revising paragraph (b) introductory text to read as follows:

§ 1304.3–3 Medical and dental history, screening and examinations.

* * * * *

(b) Effective with the beginning of the 1993–94 program year, grantees must provide for health and developmental screenings by 45 days after the beginning of services for children in the fall, or for a child who enters late, by 45 days after the child enters into the program and must include:

* * * * *

PART 1305—ELIGIBILITY REQUIREMENTS AND LIMITATIONS FOR ENROLLMENT IN HEAD START

6. The authority citation for part 1305 is revised to read as follows:

Authority: 42 U.S.C. 9801 et seq.

7. Section 1305.2 is amended by revising paragraph (a) to read as follows:

§ 1305.2 Definitions.

(a) *Children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, by reason thereof need special education and related services. The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

* * * * *

[FR Doc. 93–1234 Filed 1–19–93; 8:45 am]

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January 21, 1993

Part VII

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Part 3500

Real Estate Settlement Procedures Act; Statement of Approved Accounting Methods; Interpretive Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R–93–1634; FR–3430–I–01; RESPA Interpretive Rule 1993–1]

Real Estate Settlement Procedures Act; Statement of Approved Accounting Methods under Section 10

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

ACTION: Interpretive rule.

SUMMARY: On November 2, 1992 the Department issued a final rule revising its regulations under the Real Estate Settlement Procedures Act (RESPA), also known as Regulation X. In its Final Rule, the Department reserved § 3500.17 for matters involving escrow accounts, including escrow accounting procedures and implementation of sections 10(a)(1) and (2) and sections 10(b)(c) and (d) of RESPA representing escrow account statement requirements as added by the National Affordable Housing Act of 1990, and set forth in a proposed rule published in the **Federal Register** on December 9, 1991. The Department withdrew all previous RESPA related legal opinions, including one issued on February 6, 1980 by Deputy Assistant Secretary Patricia Worthy interpreting the original provisions of section 10 of RESPA. Because of the uncertainty created by these circumstances, the Department has determined to use its authority under section 19(a) of RESPA to issue an Interpretive Rule regarding its interpretation of allowable accounting methods for escrow accounts covered by section 10 of RESPA, which include every escrow account established in connection with a federally related mortgage loan as defined by RESPA, whether created before or after the effective date of RESPA (December 22, 1974).

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: David Williamson, Director, RESPA Enforcement, room 5241 (202–708–4560) or Fred Eggers, Deputy Assistant Secretary, Office of Economic Affairs, Office of Policy Development and Research, room 8204, (202–708–3080) Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410–8000. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: The purpose of this Interpretive Rule is to state the position of the Department regarding allowable accounting methods under section 10 of RESPA. RESPA provides that: A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower—

(1) To deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premium, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of the first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve month period; or

(2) To deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the amount of the estimated taxes, insurance premiums and other charges with respect to the property which are reasonably anticipated to be paid on dates during the ensuing twelve-months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period: *Provided, however,* That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow accounts to avoid or eliminate such deficiency.

Section 10 sets limits on the amounts which lenders and servicers may require borrowers to deposit in escrow accounts for payments of taxes, insurance premiums or other charges with respect to a mortgaged property when the accounts are established and while the accounts are ongoing. The Section does not, however, specify the permissible accounting methods servicers may use in analyzing escrow accounts to ensure that they meet these limits. Under an aggregate accounting method, the account is analyzed as a whole and the limits are applied to the whole account. Under an individual- or single-item accounting method, each item is accounted separately, and the limits are applied to each item.

On February 6, 1980, former HUD Deputy Assistant Secretary Patricia Worthy issued an opinion which stated, among other things, that section 10 does not mandate any specific accounting method. It also indicated that "individual item accrual" (also frequently known as "individual- (or) single-item analysis") was permitted under section 10. The opinion stated: "As we understand this accounting method, each obligation (e.g. school tax, township tax, each separate assessment and each insurance payment) is treated separately and sufficient funds collected to pay each obligation without taking from funds collected to pay other obligations. In effect, if not in operation, separate accounts are maintained to meet each obligation."

On April 21, 1980, Departmental counsel issued a related opinion that installments paid by a servicer of a single annual tax liability could not be treated as separate obligations for purposes of permitted escrows under section 10. Both of the above-cited opinions were collected in Barron's Federal Regulation of Real Estate and were well known in the mortgage loan servicing community. Federal Housing Administration Handbook "Administration of Insured Mortgages", originally published in 1974 and published in the **Federal Register** on November 10, 1976, permitted the use of either the "aggregate" or "single-item" method of escrow account analysis.

On February 4, 1991, the Comptroller General of the United States issued an opinion to Henry Gonzalez, Chairman, Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs which stated in relevant part: "After reviewing the statute, its legislative history and all other pertinent materials, we have concluded that the practice of 'single-item analysis' is not prohibited under provisions of Section 10." The Comptroller General further suggested that HUD should clarify its position in regulations.

The Department is preparing a rule and an accompanying regulatory impact analysis growing out of its study of

escrow accounting practices in the United States, and also dealing with escrow account statements under sections (10) (b), (c), and (d) established by the 1990 Housing Act. This rulemaking was not completed at the time the Department issued a Final Rule on November 2, 1992 substantially revising other provisions of the Regulation X, the RESPA regulation. The Department therefore reserved 24 CFR 3500.17 for escrow account provisions. However, because the November 2, 1992 Final Rule withdrew all previous RESPA informal legal opinions, there has been uncertainty concerning the Department's position on acceptable methods of escrow accounting under RESPA. Therefore, pending new rulemaking establishing a new § 3500.17, the Department announces its interpretation of section 10 of RESPA, regarding acceptable accounting methods for purposes of section 10. The public is reminded, however, that inasmuch as rulemaking may lead to a change or changes in the Department's policies respecting escrow accounting including policies respecting escrow accounting procedures, that this interpretation only pertains pending adoption of a final rule by the Department in accordance with the Administrative Procedures Act or until this interpretive rule is withdrawn or superseded.

The Interpretive Rule

[RESPA Interpretive Rule 1993–1]

Escrow Accounting Methods

The Department of Housing and Urban Development interprets section 10(a) (1) and (2) of the Real Estate Settlement Procedures Act (RESPA) with respect to permissible escrow accounting methods as follows:

Both "individual- (or) single-item analysis" and "aggregate (or) composite analysis" are acceptable escrow accounting methods under sections 10(a) (1) and (2) of RESPA for determining the maximum amounts which may be accumulated in escrow accounts for purposes of this Section. (Nothing in this interpretation shall prevent mortgage loan documents from specifying an accounting method or any other limitation which leads to lesser escrow amounts than would result from these analyses.) Under individual- (or) single-item analysis, each item accounted for may represent only a single payee and the account for that payee may not be subdivided into separate sub-accounts. The following appendix contains examples of algorithms which illustrate these accounting methods. These illustrations should not be interpreted as, in any manner, establishing minimum balance requirements for escrow accounts; they are intended only to illustrate these methods.

Appendix

"Aggregate (or) composite analysis" is a method of computing required escrow balances and deposits considering all escrow items as a whole. The following explains the accompanying chart:

Step 1. Under the aggregate method, in establishing required payments from the borrower, the servicer would first project a trial monthly (month-end) balance for the account as a whole over the next twelve months (a trial running balance), assuming each estimated disbursement is made in the month it is due and assuming payments from the borrower equal to 1/12 of the estimated total annual escrow account disbursements are received each month.

Step 2. The servicer would then examine the monthly trial balance and would add to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero and adjust all subsequent monthly balances accordingly.

Step 3. The servicer then would add to the monthly balances, if it chooses a "cushion" under Section 10 of RESPA, up to one-sixth of the estimated total annual escrow account disbursements. This amount represents up to two months of escrow payments to the servicer (net of any increases or decreases because of prior year shortages or surpluses respectively).

Under this algorithm, when the account is being newly established, at settlement, the monthly balance prior to the first payment (see step 3) is the amount to start the escrow account. If there are disbursements after settlement but prior to the first monthly payment, funds may also be collected for these disbursements. For ongoing accounts, the servicer should compare the actual balance in the account to the projected monthly balance after Step 3 to determine any shortage to be made up by the borrower over the period or any surplus to be returned to the borrower.

"Individual- (or) single-item analysis" is a method of computing required escrow balances and deposits considering each escrow item independently. The following explains the accompanying chart:

Step 1. Under the single-item method, in establishing required payments from the borrower, the servicer would first project a separate trial monthly (month-end) balance for each item over the next twelve months (a trial running balance), assuming each estimated disbursement is made in the month it is due and assuming payments from the borrower equal to 1/12 of the estimated total annual escrow account disbursements for each item are received each month.

Step 2. The servicer would then examine the monthly trial balance for each item and would add to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance for that item to zero and would adjust all subsequent monthly balances accordingly.

Step 3. The servicer then would add to the monthly balances for each item, if it chooses a "cushion" under Section 10 of RESPA, up to one-sixth of the estimated total annual disbursements for that escrow item. This amount represents up to two months of escrow payments for each item to the servicer (net of any increases or decreases because of prior year shortages or surpluses respectively).

Under this algorithm, when the account is being newly established, at settlement, the monthly balance prior to the first payment (see step 3) is the amount to start the escrow account. If there are disbursements after settlement but prior to the first monthly payment, funds may also be collected for these disbursements. For ongoing accounts, the servicer should compare the actual balance for each item in the account to the projected monthly balance after Step 3 to determine any shortage to be made up by the borrower over the period or any surplus to be returned to the borrower. Under this method, a shortage or surplus is based on an analysis of the sum of all individual item accounts.

Examples Illustrating Aggregate and Single-Item Analyses

Disbursements: $360 for school taxes disbursed on September 20; $1,200 for county property taxes—$500 disbursed on July 25, $700 disbursed on December 10.
Cushion: Two months.
Settlement: May 15.
First Payment: July 1.

	Single-item						Aggregate		
	Taxes			School taxes			All		
	Pmt	Disb	Bal	Pmt	Disb	Bal	Pmt	Disb	Bal
Step 1—Initial Trial Balance									
June	0	0	0	0	0	0	0	0	0
July	100	500	-400	30	0	30	130	500	-370
August	100	0	-300	30	0	60	130	0	-240
September	100	0	-200	30	360	-270	130	360	-470
October	100	0	-100	30	0	-240	130	0	-340
November	100	0	0	30	0	-210	130	0	-210
December	100	700	-600	30	0	-180	130	700	-780
January	100	0	-500	30	0	-150	130	0	-650
February	100	0	-400	30	0	-120	130	0	-520
March	100	0	-300	30	0	-90	130	0	-390
April	100	0	-200	30	0	-60	130	0	-260
May	100	0	-100	30	0	-30	130	0	-130
June	100	0	0	30	0	0	130	0	0
Step 2—Adjusted Trial Balance—Increase Monthly Balances to Eliminate Negative Balance									
June	0	0	600	0	0	270	0	0	780
July	100	500	200	30	0	300	130	500	410
August	100	0	300	30	0	330	130	0	540
September	100	0	400	30	360	0	130	360	310
October	100	0	500	30	0	30	130	0	440
November	100	0	600	30	0	60	130	0	570
December	100	700	0	30	0	90	130	700	0
January	100	0	100	30	0	120	130	0	130
February	100	0	200	30	0	150	130	0	260
March	100	0	300	30	0	180	130	0	390
April	100	0	400	30	0	210	130	0	250
May	100	0	500	30	0	240	130	0	650
June	100	0	600	30	0	270	130	0	780
Step 3—Trial Balance With Cushion									
June	0	0	800	0	0	330	0	0	1040
July	100	500	400	30	0	360	130	500	670
August	100	0	500	30	0	390	130	0	800
September	100	0	600	30	360	60	130	360	570
October	100	0	700	30	0	90	130	0	700
November	100	0	800	30	0	120	130	0	830
December	100	700	200	30	0	150	130	700	260
January	100	0	300	30	0	180	130	0	390
Febuary	100	0	400	30	0	210	130	0	520
March	100	0	500	30	0	240	130	0	650
April	100	0	600	30	0	270	130	0	780
May	100	0	700	30	0	300	130	0	910
June	100	0	800	30	0	330	130	0	1040

Dated: January 14, 1993.

Arthur Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

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federal register

Thursday
January 21, 1993

Part VIII

Department of Education

Office of Special Education and Rehabilitative Services

Notices of Funding Priorities and Inviting Applications for New Awards Under the Rehabilitation Research and Training Centers Program

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services

Final Funding Priorities for FY 1993 and 1994 for Certain Rehabilitation Research and Training Centers

AGENCY: Department of Education

ACTION: Notice of final funding priorities for fiscal years 1993 and 1994 for certain rehabilitation research and training centers.

SUMMARY: The Secretary announces final priorities for several Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities 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 priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Yvonne Fleming, U.S. Department of Education, 400 Maryland Avenue, SW., room 3418, Switzer Building, Washington, DC 20202–2572. Telephone: (202) 205–8532. Deaf and hearing-impaired individuals may call (202) 205–5516 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains 12 final priorities under the RRTC program. Four of the priorities are in various aspects of spinal cord injury; three cover aspects of traumatic brain injury; and there is one priority each in the areas of stroke, neuromuscular diseases, multiple sclerosis, arthritis, and functional assessment. NIDRR has published additional proposed priorities for other RRTCs and other programs for fiscal years 1993–1994, and the final versions of those priorities will be published later. Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program, the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

The final priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These priorities would address Goal 5 by helping individuals with disabilities to develop the skills necessary to live and work successfully in the world as it is today.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities. On July 6, 1992, the Secretary published a notice of proposed priorities in the **Federal Register** (57 FR 29766). The Department of Education received 616 letters commenting on the proposed priorities. A number of modifications were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does not solicit applications. A notice inviting applications is published in a separate notice in this issue of the **Federal Register**.

Description of the Rehabilitation Research and Training Center Program

RRTCs are established to conduct coordinated and advanced programs of rehabilitation research on designated rehabilitation problem areas and to provide training to researchers and service providers. Each Center must disseminate and encourage the use of new rehabilitation knowledge and publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

The statute requires that each Center conduct training for providers of rehabilitation services at various levels, which may include undergraduate, in-service, and postgraduate education. Each RRTC also must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. NIDRR encourages all Centers to include individuals with disabilities and minorities as trainees in clinical and research training.

Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronting individuals with disabilities in order to achieve the goals specified in the priority. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes. However, the regulatory selection criteria for the program (34 CFR 352.31) require that applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities: (1) Full integration into the community, (2) full employment, (3) independence and empowerment, (4) maximum human functioning and health, (5) improved vocational rehabilitation services, and (6) the translation of new knowledge and

technology into practice. The priorities in this notice are derived from the long-range planning process and are intended to achieve one or more of these six outcomes.

The publication of these final funding priorities does not obligate the Department of Education to fund projects in any or all of these areas. Funding of particular projects depends on the availability of funds and the quality of the applications received. The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: The Background section for some of the priorities may contain substantive requirements that must be followed by each applicant for those priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities:

Priority 1—Rehabilitation in Neuromuscular Diseases Background

Neuromuscular diseases (NMDs) of all types affect approximately 500,000 children and adults in the United States. NMDs affect all the components of the neuromuscular organ system, and most of the NMDs are slowly progressive or even static over a relatively normal life span. However, some NMDs can produce severe physical disabilities in young children, result in wheelchair use by age 10, and even (as in the case of Duchenne muscular dystrophy) lead to early mortality (REHAB BRIEF, Vol. XI, No. 9, 1988).

NMDs can also strike productive adults without warning in mid-life, cause physical incapacities and seriously impair health, physical and cognitive functioning, ability to work, and family life. Individuals with NMD incur muscular weakness and atrophy, limb contractures, spinal deformity, restrictive lung disease, cardiovascular complications, and cognitive and psychosocial impairments in various degrees and combinations. The rates of progression may vary among diseases and among individuals.

Rehabilitation is necessary to inhibit deformity, prolong locomotive functions, preserve and enhance manipulation skills, maximize independent functional skills, and assist the individual to maintain and enhance a normal social, behavioral, and vocational profile (Goodgold, General Principles of Management and Evaluation of Neuromuscular Disease, PM&R: State of the Art Reviews, Vol. 2, No. 4, 1988). Rehabilitation should consider the individual's total needs, and include attention to pulmonary, cardiovascular, and other complications, as well as musculoskeletal and psychosocial care. The relatively high incidence of cognitive impairment in certain neuromuscular diseases has important implications for educational and vocational planning (Fowler, Johnson, Yang, 1988).

Individuals with NMDs have significant needs for vocational rehabilitation services to enable them to maintain or regain appropriate employment. Research at the University of California at Davis indicates that many service providers underestimate the vocational potential of individuals with NMDs, focusing instead on the life-threatening implications of some NMDs. As a result, the vocational rehabilitation service system needs additional strategies and training to optimize services to this population.

Priority: An RRTC in NMD rehabilitation shall focus on developing interventions to improve the lives of individuals with NMDs, and, to accomplish this, shall—

- Develop and validate quantitative measures and techniques to assess functioning, including measures of endurance, mobility, strength, and cognitive performance, and use these measures to both document the natural course of NMDs and to evaluate rehabilitation interventions;
- Develop and evaluate rehabilitation interventions, including technological aids and devices and exercise training, among others, to preserve maximum physical functioning, longevity, and independence, and assist individuals with NMDs to attain and maintain employment;
- Develop and evaluate techniques to restore and enhance psychosocial and cognitive functioning;
- Develop and evaluate strategies to improve vocational rehabilitation services and vocational outcomes for this population;
- Develop and evaluate strategies to assist individuals and their families to adjust to the impact of NMDs and to maintain quality of life; and
- Develop and evaluate new strategies to address life-long needs for health care, rehabilitation, psychosocial well-being, employment, and independent living for individuals with NMDs and their families.

Priority 2—Rehabilitation and Multiple Sclerosis Background

Multiple Sclerosis (MS) is an adult-onset neurological disease that affects the message-carrying nerve fibers of the central nervous system. Some of the common symptoms include fatigue, loss of coordination, numbness, vision problems, muscle weakness, difficulty walking, spasticity, and urinary and bowel problems. There are widely varying combinations of symptoms and rates of exacerbation among individuals. Some have few symptoms, which remain fairly consistent over time, while a small number rapidly develop severe disabilities. Most cases fall between the extremes, and are characterized by exacerbations followed by periods of remission.

Multiple sclerosis is a frequent cause of disability in the young adult population. The total population of individuals with MS in the United States is probably 250,000–500,000 (Baum and Rothschild, Annals of Neurology, 1981, v. 10), and, since a substantial number may incur severe disability over several decades, MS is a disease that has considerable social and economic impact. The age of onset is usually between 20 and 45 years—with a mean age of onset of 33—and most of those affected are women. Because MS strikes individuals in their most productive years, just when they are assuming major family and career responsibilities, its impact is often significant (Scheinberg, Multiple Sclerosis: A Guide for Patients and Their Families, 1983). And because MS has only a slight impact on longevity, an individual can expect to live approximately 30 years after the onset of MS.

The aim of MS rehabilitation is to optimize independent functioning and quality of life for people with the disease and for their families. Rehabilitation has been associated with the diagnosis and treatment of functional limitations, with emphasis on the functional assessment of motor, sensory, and cognitive problems and treatment aimed at enhancing function and altering behavior (Halstead, L.S., Grabois, M., Medical Rehabilitation, 1985). Because there is no available cure, individuals with MS must have "a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social and personal needs of individuals with multiple sclerosis and their families" (National MS Society, Long-term Care Issues in Multiple Sclerosis, 1990).

Priority: An RRTC in the rehabilitation of individuals with multiple sclerosis shall—

- Develop and evaluate new clinical interventions and rehabilitation strategies to improve human functioning, which may include early intervention, as well as techniques to improve motor, sensory, cognitive, alimentary, urinary, and sexual functioning of individuals with MS;
- Develop and evaluate new rehabilitation strategies, including technology and assistive devices, to assist individuals with MS to attain or maintain employment, independence, and maximal quality of life;
- Develop and evaluate new rehabilitation strategies to promote the maintenance of effective psychosocial and family functioning; and
- Develop and evaluate new models for consumer participation, community integration, and long-term care in the community.

Priority 3—Functional Assessment and Evaluation of Rehabilitation Outcomes

Background

Improving rehabilitation practices and outcomes requires an ability to assess functional status and changes in status in many areas, including motor function, cognitive function, emotional and interpersonal function, and sensory function, among others. Both rehabilitation practitioners and researchers need better methods and protocols to measure and assess the various elements of impairment, disability, and handicap.

Functional assessment data are useful to the clinician in selecting and monitoring treatments and in determining whether or not treatment goals have been achieved (Fuhrer and Halpern, 1984). Accurate functional assessment data are important to researchers in studies of the incidence and prevalence of specific physical impairments and their associated limitations and disabilities (Kaufert, 1983) and in studies predicting post-rehabilitation functioning. Functional assessment is also a basic component of the evaluation of rehabilitation interventions and services.

A common classification scheme of impairment, disability, and handicap, comparable to the World Health Organization's (WHO's) International Classification of Diseases, 9th edition, is fundamental to the development of an assessment system. The WHO trial International Classification of Impairments, Disabilities, and Handicaps may be a useful starting point in developing a common language for describing rehabilitation outcomes. The Functional Independence Measure (FIM) (Granger and Hamilton, 1987), a descriptive, criterion-referenced scale, has gained some acceptance as a measurement system and is another useful starting point to be considered in the development of an assessment system.

There are numerous tools to measure specific components of human performance; e.g., strength, endurance, energy expenditure, range of motion, muscle activity, and sensory function. However, these assessments often are based on subjective observation or on locally unique applications of assessment technology, so that it is difficult to make comparisons of clinical data between rehabilitation settings. Furthermore, most assessment tools are based on single body systems and have not been incorporated into an integrated, multidimensional analysis that would provide meaningful measures of outcomes after rehabilitation. A common measurement system would permit meaningful comparisons of the effects of the same intervention administered in different amounts or levels of intensity, as well as comparisons across various types of interventions and rehabilitation settings.

There has been less research in developing measures of handicap. Handicap refers to limitations in social role performance and work productivity. While measures of remunerative activity are available, tools for assessing social role performance (e.g., parenting or spousal relationships) are lacking, as are tools to measure the individual's integration into the community. There is also a dearth of measures to examine the effect of environmental factors—such as physical barriers, communication barriers, and policy or attitudinal barriers—in creating handicaps. Because ultimate outcomes of rehabilitation should be holistic, researchers and clinicians need common measures of the extent of handicap and the effect of rehabilitation in ameliorating handicap.

Rehabilitation practice uses a diverse array of therapeutic techniques, devices, and modalities. While precise measurement of a specific intervention and its outcome is often difficult, it is a prerequisite to determining efficacy and cost benefit. Standardized measures of such interventions as physical, vocational, and psychosocial rehabilitation, family involvement, and community integration are also needed, as is a system to characterize and evaluate the different rehabilitation programs and service delivery settings in which interventions are applied.

Priority: An RRTC in functional assessment and evaluation of rehabilitation outcomes shall enhance the capacity of the rehabilitation field to apply appropriate rehabilitation interventions and assess their outcomes. To achieve these objectives, the Center shall—

- Develop and evaluate quantitative measurement systems for assessing functional abilities, clinical interventions, and rehabilitation outcomes resulting from changes in functional status;
- Develop and evaluate measures of handicap and well-being—including such areas as quality of life, employment, and community integration—and evaluate the utility of these measures for assessing the effect of various rehabilitation interventions on level of handicap; and
- Identify valid and reliable measures of social and environmental factors that affect rehabilitation success and test the usefulness of these measures.

In addition, the Center shall—

- Work with a broad spectrum of rehabilitation researchers and clinicians throughout the Nation to apprise them of the ongoing work, obtain their inputs, and provide professional education on the issues and methods of functional assessment and evaluation of rehabilitation outcomes;
- Work closely with other relevant RRTCs and Rehabilitation Engineering Centers to assure the broadest utility and acceptability for the assessment systems and the appropriate use of new measurement devices and technologies;
- Coordinate with any efforts in functional assessment and evaluation of rehabilitation outcomes by the new National Center for Medical Rehabilitation Research of the National Institutes of Health and other relevant research entities; and
- Involve individuals with disabilities in the selection and definition of outcome measures.

Priority 4—Arthritis Rehabilitation

Background

The term "arthritis" encompasses a large group of rheumatic diseases that affect the joints and connective tissues that support the skeleton and the body—such as muscles, tendons, and ligaments—and that protect and cover internal organs. Although the overall prevalence of rheumatic diseases increases with age, many young adults and children also are affected. About one in seven Americans, or as many as 37 million, suffer from some form of rheumatic disease, and the annual economic impact of arthritis alone is

estimated at $9 billion (1990 Annual Report, Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee).

This priority focuses on three types of arthritis that account for the most disability:

(1) Degenerative joint disease or osteoarthritis (OA) is the most common form of arthritis and is most likely to cause disability through impairments in the knees, hips, and spine. Certain occupations that require frequent knee bending may lead to osteoarthritis.

(2) A chronic inflammatory disease of unknown cause, rheumatoid arthritis (RA) afflicts more than two million Americans, and it affects at least twice as many women as men. This disorder causes inflammation, pain, and swelling in the linings of the joints, and also can produce such general symptoms as weakness, fatigue, and loss of appetite. The disease tends to be both chronic and irregular and is frequently disabling.

(3) More than 200,000 American children are afflicted with some form of arthritis. One of these diseases, juvenile rheumatoid arthritis (JRA), accounts for about 5,000 new cases each year and resembles adult RA in that it is a chronic inflammatory disease of unknown cause that is characterized by joint pain and related symptoms and apparent defects in regulation of the immune system (1990 Annual Report, Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee).

Arthritis is a degenerative condition in that exacerbations lead to further impairments and limitations. Individuals who have arthritis often exhibit symptoms of fatigue, depression, sleeplessness, and intense chronic pain. Their lives may be marked by inactivity, unemployment, and psychosocial withdrawal.

Researchers and clinicians have begun to investigate rehabilitation solutions such as pain management techniques, exercise regimens, endurance training, job modifications, and new approaches to social and community participation. Service delivery methods, such as team care, care in the local community, family involvement, and the use of assistive technology, appear to lead to more favorable rehabilitation outcomes. However, major modifications in rehabilitation await conclusive evidence of the efficacy of these promising interventions.

Priority: An RRTC in rehabilitation of individuals with arthritis shall—

• Develop and evaluate improved rehabilitation treatment techniques that maintain and restore physical, psychological, and vocational functioning and reduce chronic pain;

• Develop and evaluate new rehabilitation strategies, including technology and assistive devices, that will aid individuals with arthritis to attain or maintain employment;

• Develop early interventions, including family strategies, that will prevent or ameliorate psychosocial and educational problems often associated with JRA; and

• Develop or adapt and evaluate acceptable measures to assess function, quantify rehabilitation interventions, and assess outcomes in human functioning, employment, and community integration.

Priority 5—Stroke Rehabilitation

Background

Stroke is a major cause of disability leading to institutionalization for elderly persons. In 1986 the American Heart Association estimated that approximately 350,000 Americans survived strokes, adding to the total of over two million stroke survivors, many of whom required chronic care (Wolf, 1989). About two thirds of stroke survivors have permanent disabilities. An estimated 40 percent of all medical rehabilitation patients are stroke survivors, presenting a major challenge to the rehabilitation field. The recommendations of a 1989 NIDRR-funded conference on Methodologic Issues in Stroke Outcome Research were published by the American Heart Association in the September, 1990 Supplement to Stroke: A Journal of Cerebral Circulation and are one foundation for this priority.

The impact of residual impairments of stroke is profound, requiring prolonged therapy and adjustment to the likelihood of long-term significant disability. Many stroke survivors are dependent on others for assistance with self-care and mobility, and survivors are often limited in their options for social interaction and community participation. The physical, social, and vocational functioning of stroke survivors in the community is significantly poorer than that of age-matched persons in control groups. While the incidence of stroke is lower in the working age population, strokes can have devastating consequences for return to work or other employment outcomes.

Approximately half of all individuals who survive a stroke are disabled by neurological impairments such as muscular weakness or paralysis, impaired cognition, communication disorders, visual field loss, perceptual deficits, incontinence, or depression. Yet, rehabilitation practitioners have demonstrated the potential to assist these individuals to function with a significant degree of independence.

Stroke rehabilitation research is specifically concerned with the large number of stroke survivors and their residual impairments and disabilities. Providers of rehabilitation services, payers, and individuals and their families need assurances that rehabilitation interventions are appropriate and cost-effective. This, in turn, requires validated knowledge of the basic determinants and parameters of disability and the efficacy of rehabilitation interventions (Gresham, 1986).

A key to both improved research and better care for individuals is a valid classification system based on clear descriptions of the variety of natural histories and prognoses (Basmajian, 1989). Stroke rehabilitation outcome research must be concerned with a range of issues, including prevention of recurrence and of secondary complications, restoration and maximization of remaining function, and psychosocial factors that facilitate living and working in the community.

Priority: An RRTC on stroke rehabilitation shall develop approaches that will improve the outcomes of rehabilitation for individuals who have had strokes, and shall—

• Assess the predictive accuracy of prognostic indicators (either existing or developed by the Center) and develop systems to apply predictive knowledge in clinical practice;

• Develop valid classification schemes to measure and describe stroke and the concomitant impairments and disabilities;

• Develop and evaluate rehabilitation interventions to improve communication, cognition, neuromotor functioning, and emotional, family, vocational, or community adjustment;

• Develop valid measures to assess rehabilitation outcomes after stroke, including long-term outcomes in the community and the workplace; and

• Develop and assess rehabilitation and health care service delivery models, including self-contained stroke rehabilitation units, coordinated team care, and vocational rehabilitation services.

Priorities 6–8—Rehabilitation in Traumatic Brain Injury

Background

Traumatic brain injury (TBI) is defined as brain damage from externally inflicted trauma to the head that results

in significant impairment to an individual's physical, psychosocial, or cognitive functional abilities. It is characterized by altered consciousness (coma or post-trauma amnesia) during the acute phase after injury, the duration of which varies greatly among individuals, usually depending on the severity of the injury.

The peak incidence of TBI is between the ages of 15 and 24, and it is two to three times more common in males than females. Most persons with TBI are single and are likely to have limited education and employment experience. A significant number have histories of alcohol or drug use, or have undergone psychiatric care prior to their head injuries (Kraus et al., 1983).

The National Head Injury Foundation reports that every year 30,000 to 50,000 of the 400,000 to 600,000 people who sustain TBIs are left with noticeable physical, social, and cognitive deficits severe enough to prevent them from returning to their former levels of function. The number of survivors requiring comprehensive and extended periods of rehabilitation has also increased dramatically since the introduction of sophisticated emergency care and trauma centers.

The residual deficits that result from TBI may be grouped as follows:

(1) *Physical impairments*—impairments of gait, limb spasticity, labored speech, vision difficulties, poor balance, hearing loss, other sensory impairments, headaches, lack of coordination, paralysis, and potential for seizure disorders;

(2) *Cognitive impairments*—loss of alertness, attention, concentration, learning and memory, abstraction, conceptualization, and problem-solving;

(3) *Executive impairments*—loss of ability to plan, organize, and carry out goal-directed activity; inability to modulate, monitor, evaluate, regulate, and self-correct on-going behavior; and

(4) *Psychosocial impairments*—tendency toward social inappropriateness, inability to control emotions, fatigue, mood swings, sexual dysfunction, restlessness, lack of motivation, and inability to form and maintain relationships.

Prevention and treatment of the many secondary medical, psychological, and cognitive complications will enable many survivors of TBI to progress purposefully through acute rehabilitation and, after discharge, to remain in the home and community without frequent return to the hospital or rehabilitation facility to remediate the problems. Because brain injury research and service programs are relatively recent developments, there have been to date few definitive solutions to the complex rehabilitation problems of TBI. Frequently, service delivery methods from developmental disabilities, correctional rehabilitation, and mental health models have been transferred or modified for rehabilitation purposes.

Individuals with TBIs frequently need interventions in the areas of education, vocational education, and vocational rehabilitation to enable them to obtain and retain appropriate employment. Because TBI may involve a lasting combination of cognitive and neurobehavioral impairments, and sometimes motor and communications impairments as well, these individuals require individualized rehabilitation strategies, often long-term.

The scope and severity of the disabilities and the opportunity to improve outcomes indicate a need for a substantial body of programmatic research to provide information and understanding of the many diagnostic, evaluative, therapeutic, and community reintegration issues related to TBI. Thus, the Secretary is proposing priorities for three Centers in various aspects of head trauma research.

Each of the Centers to be funded under these priorities must coordinate with other NIDRR-sponsored RRTCs and model systems on brain injury, and with the RSA-funded regional centers on TBI.

Priority 6—Rehabilitation Interventions in TBI

An RRTC on the prevention of secondary complications and the development of interventions to improve functioning of individuals with TBI shall—

- Develop a valid methodology to measure and describe the course of brain injury recovery and clinical sequelae;
- Develop and test prognostic indicators of rehabilitation outcome including early predictors of functional outcomes for all age groups;
- Develop and evaluate new methods of prevention and treatment of the secondary medical, psychological, and neurobehavioral complications of TBI;
- Identify individual characteristics and environmental barriers that contribute to the development and exacerbation of secondary complications, and develop interventions to address them; and
- Develop and evaluate new rehabilitation interventions for community-based rehabilitation to improve the medical, neurobehavioral, psychological, and social functioning of persons with moderate to severe TBI.

Priority 7—Community Integration and TBI

An RRTC to advance the outcomes of independent living and community integration for individuals with TBI shall—

- Develop and evaluate valid measures of community integration for the TBI population;
- Develop and evaluate effective models of community integration;
- Develop and evaluate successful models for optimizing support to and from families during rehabilitation and community integration;
- Develop and evaluate treatment strategies to enhance neurobehavioral functioning and cognition, especially as related to employment and community integration;
- Develop strategies to enhance the accessibility of independent living and employment opportunities for individuals with TBI;
- Delineate the types of services needed in the community to meet the rehabilitation needs of persons with TBI and evaluate the appropriateness and efficacy of community services;
- Develop and evaluate models for the prevention and treatment of substance abuse, including the timeliness of intervention, among individuals with TBI; and
- Develop and evaluate innovative approaches to enhance neurobehavioral function and psychological adjustment.

Priority 8—Vocational Rehabilitation and Employment in TBI

An RRTC to improve vocational rehabilitation services for individuals with TBI and enhance their long-term employment outcomes shall—

- Develop and evaluate new strategies of vocational rehabilitation, job placement, and work adjustment services, including models for competitive employment;
- Identify and demonstrate effective transition models from school to work for school-age TBI survivors;
- Develop and evaluate improved programs of vocational education and vocational training for this population;
- Identify types of job accommodations that will enable TBI survivors to work productively; and
- Develop community-based support services to provide ongoing supports needed to maintain employment for the long term.

Priorities 9–12—Rehabilitation of Spinal Cord Injury

Background

Spinal Cord Injury (SCI) results from trauma to the lower central nervous

system that has a catastrophic effect on physical functioning and major effects on psychosocial and vocational functioning as well. The primary effects are loss of motor function and loss of sensation below the level of injury. Because of the nature of the injury, the survivor is vulnerable to a myriad of debilitating and costly medical and social complications. While SCIs are relatively uncommon, they are always costly in terms of hospitalization and rehabilitation expenditures, loss of income and assets, and effects on the quality of life.

Kraus, *et al.* (1983) estimated the annual incidence of acute SCI in the United States to be approximately 50 per million population. Vehicular accidents are the primary cause of these injuries. SCI often occurs in a young population that will incur major lifetime medical costs if rehabilitation is not successful. The SCI typically occurs to males between the ages of 15 and 24. They are likely to be single, have limited educational levels, and not be established in careers or even long-term employment. The recent scientific literature indicates that many of these young men have learning disabilities or problems with alcohol and substance abuse which place them at high risk for trauma and interfere with rehabilitation success after injury.

The Secretary is proposing priorities for four RRTCs to develop solutions to problems in the rehabilitation of individuals with SCIs. Each of these RRTCs must coordinate with the Spinal Cord Injury Special Demonstration projects, also funded by NIDRR, to ensure the timely transfer of new rehabilitation knowledge to the demonstration projects.

Priority 9—Secondary Complications in SCI

Background

Preventing or treating costly secondary medical complications enhances the health status, employability, and potential for independent functioning of individuals with SCI. Many individuals with SCI remain in acute care hospitals or nursing facilities for extended lengths of stay because of decubitus ulcers, urinary tract infection, mass reflex spasticity, deep vein thromboses, and other secondary complications.

Significant progress has been made in the prevention and treatment of secondary complications of SCI such as urinary tract infections (Lloyd, 1989; Nanninga, 1980; Montgomery, 1985), deep vein thrombosis (Green, 1986, 1987, 1991; Merli, 1990), and other circulatory disorders and respiratory complications (Stover, *et al.*, 1984).

Priority: An RRTC on secondary complications shall focus on improving the functioning of individuals with SCI by developing new clinical methods and service delivery techniques that will prevent or ameliorate secondary complications. The Center shall—

- Define the clinical course of SCI and the development and exacerbation of debilitating complications;
- Develop and evaluate techniques to reduce the incidence of secondary complications and minimize the debilitating and costly consequences of both frequent hospitalization and lengthy medical treatment;
- Develop and evaluate interventions to optimize individual functioning in individuals with SCI; and
- Validate methods to involve family members in the rehabilitation process and to maximize consumer self-management of the rehabilitation process.

Priority 10—Community Integration for Individuals With Spinal Cord Injury

Background

The literature on spinal cord injury suggests that post-injury life expectancy is now as high as 30–40 years (REHAB BRIEF, Vol. IX, No. 12). These can be productive years of work, study, family life, independent living, leisure activities, and community participation. However, there are many obstacles that must be addressed if these objectives are to be realized. These include problems in maintaining health status; disincentives to work, marriage, and family life; high costs and unavailability of quality health care; and restrictions caused by mobility limitations and inaccessibility.

Priority: An RRTC in community integration for individuals with SCI shall develop and disseminate new knowledge and techniques to—

- Improve personal and psychosocial adjustment after SCI;
- Enhance family life, including involvement of family members in rehabilitation, and options for marriage, sexuality, reproduction, and parenting;
- Enhance participation in community life;
- Improve techniques for maintaining health status; and
- Improve systems for long-term care in the community.

Priority 11—Vocational Rehabilitation and Employment for Individuals With Spinal Cord Injury

Background

Data indicate that at least 70 percent of individuals with SCI are unemployed at five years post-injury, and more than 60 percent are unemployed at ten years post-injury (Menter, R.R., in Apple, D.F and L.M. Hudson, eds., Spinal Cord Injury: The Model, 1991). Individuals who have sustained SCI are capable of productive work in many fields and at many levels, but there appear to be a number of obstacles to realizing this employment potential.

While continuing health maintenance problems, limited functional capacities, and incomplete community integration may contribute to this problem, unacceptably high unemployment persists even among those in whom acute rehabilitation and physical restoration have been quite successful. Obstacles that have been identified include: financial disincentives in public policy, inadequate vocational rehabilitation services, disincentives in employee benefit plans, environmental and transportation barriers, barriers to personal assistance services at the job site, and concomitant disabilities such as learning disabilities or substance abuse.

Priority: An RRTC on vocational rehabilitation and employment for individuals with SCI shall develop techniques to—

- Increase the incidence and duration of employment and the level and quality of work life for individuals with SCIs;
- Improve the quantity and appropriateness of vocational rehabilitation services to individuals with SCI;
- Maximize the incentive to work at an optimum level with improved cost-benefit ratios to society;
- Improve educational and vocational training programs for individuals with SCI; and
- Reduce physical and attitudinal barriers to employment and provide work-related supports to enhance the likelihood of successful employment.

Priority 12—Aging With Spinal Cord Injury

Background

The increased post-injury life expectancy has resulted in a new phenomenon that is not well understood—a population aging with SCIs. Initial studies of this phenomenon indicate that significant changes in function, equipment needs, and costs of care occur as individuals get older (Menter, *op. cit.*).

Observers have noted that the patterns of problems related to aging differ along three major dimensions of injury: the type of neurological injury (e.g., high or low, complete or incomplete), age at onset of the injury, and the historical era

in which the injury occurred. Most individuals experience declines in functional capacities as they age. However, normal declines in muscle strength, range of motion of the joints, or pulmonary or cardiovascular capacity may significantly interfere with the SCI individual's ability to function or to compensate for other limitations, may lead to increased disability and hospitalization, and may even be life-threatening.

These physiological changes are often accompanied by changes in the social support systems, such as changes in family composition; diminished resources brought on by loss or aging of parents or spouse, or retirement; and changes in housing or community programs. There is also a major increase in costs of care when the individual requires more frequent hospitalization, more personal assistance, and more assistive technological devices.

Priority: An RRTC to address the problems of aging with SCI shall—

- Develop a better understanding of the natural course of SCI as persons age;
- Develop techniques for individuals aging with SCI to maintain functional capabilities and to cope with additional functional losses;
- Develop regimens for nutrition, exercise, stress management, health maintenance, and self-care to minimize the impacts of aging with SCI; and
- Develop methods to maintain community integration, employment, family life, and independent living for individuals aging with SCI.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: November 23, 1992.

Lamar Alexander,

Secretary of Education.

Appendix—Analysis of Comments and Changes

The Department received 616 comments in response to the proposed priorities. Many additional comments were received after the deadline date and could not be considered in this response. Most of the comments were generally supportive of the priorities, but many made suggestions for modifications. In addition, a number of individuals and organizations urged the addition of other specific priorities. This Appendix first presents and discusses the comments that were general and applicable to several or all of the priorities. Second, the comments received on each specific priority are discussed in the order in which the priorities were published. Finally, the comments calling for additional priorities are discussed at the conclusion of this Appendix.

General Comments

Comment: Several commenters recommended that RRTCs should involve not only individuals with disabilities but also representatives of insurance companies or others who represent the public, the ultimate payers for most rehabilitation services. The contention was that this would make RRTCs more responsible and provide an incentive to develop more cost-effective rehabilitative technology.

Discussion: Each Center must involve individuals with disabilities as part of a general policy of participatory research and because individuals with disabilities are the ultimate intended beneficiaries of the research. RRTCs are encouraged to involve others, including appropriate service providers, that they deem relevant to their missions. State VR agencies are major payers for rehabilitation services, and all RRTCs are required to involve representatives of the public vocational rehabilitation agency in the State. The VR agencies, as payers, are interested in cost containment. However, the Secretary believes it would be overly prescriptive to require that insurance companies be involved.

Changes: None.

Comment: One commenter asked that NIDRR clarify the required relationship to the public vocational rehabilitation program for each of the prospective Centers.

Discussion: The background description of RRTCs, which is part of the priorities, states that "[e]ach Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center." Each Center must involve the State agencies and other rehabilitation service providers in its activities. The Secretary further encourages all Centers to act as a resource and provide information, technical assistance, and training to the personnel of the public rehabilitation programs.

Changes: None.

Comment: Several commenters suggested that there should be some cross-cutting priorities as well as disability-specific ones. These commenters suggested that certain conditions such as spasticity, cognitive deficits, fatigue, or paralysis are common to a number of disability categories and that the conditions should be studied across disabilities. Some of these commenters used the specific example of cognitive deficits occasioned by stroke as comparable to those caused by traumatic brain injury (TBI). A few other commenters, however, argued that the disability-specific organization of the priorities should be maintained.

Discussion: The Secretary believes that this is an interesting issue that should be further explored. On the one hand, there are many functional limitations that are indeed common to several disability categories. Nevertheless, the position expressed by participants in NIDRR's long-range planning process was that research on the rehabilitation of these conditions should be organized around specific disabilities because etiology is extremely significant in determining the most effective rehabilitation approach. With regard to the cited example of cognitive deficits, NIDRR has previously combined research on various aspects of stroke and TBI in a single Center. However, because the characteristics of the two populations are quite disparate, and because rehabilitation interventions, prognoses, and objectives vary for these two populations, the research requirements are also different.

NIDRR will convene a state-of-the-art meeting in FY 94 to consider the value of organizing some future rehabilitation research activities around cross-cutting conditions rather than disability-specific categories.

Changes: None.

Comment: One commenter argued that RRTCs should contain a basic science component, since a strong basic science faculty tends to attract better clinical investigators and practitioners to an institution.

Discussion: The Secretary is concerned with building capacity in rehabilitation research and has considered this suggestion. The Rehabilitation Act does permit some basic research in RRTCs if it is necessary to achieve an applied rehabilitation outcome. However, the Secretary will not require basic research. It will be the responsibility of an applicant to demonstrate that any basic research it proposes is essential to the achievement of the objectives stated in the priority. NIDRR will explore means to collaborate with other Federal research agencies to achieve some capacity-building in rehabilitation research.

Changes: None.

Comment: Some commenters suggested that the priorities should be made more flexible by permitting Centers in one priority area to conduct research on one or more of the objectives (or "bullets") that have been published under another priority in a related area.

Discussion: The Secretary recognizes the lack of clear dividing lines among some potential areas of research in closely-related priority areas. The Department does not impose limitations on the scope of proposed research other than those prescribed by the statute, regulations, and the priorities. Applications for RRTC grants are reviewed to ensure they respond to the requirements of a priority. Applicants are free to propose research on an objective similar to an objective published under another priority in a related area. However, applicants are urged to review the selection criteria for the RRTC program at 34 CFR 352.31 and to assess the potential effect of research proposals in areas not directly related to the priority on the peer review of the application.

Changes: None.

Comment: Several commenters objected to the separation of medical rehabilitation and vocational rehabilitation research, specifically in the case of the traumatic brain injury (TBI) and spinal cord injury (SCI) centers. Their contention was that as rehabilitation is a holistic concept, rehabilitation research should be comprehensive.

Discussion: The Secretary agrees that the practice of rehabilitation should be concerned with all aspects of an individual's life. However, research must be organized around particular scientific disciplines and expertise, with well-delineated research hypotheses. Research is generally not as all-encompassing as practice. While it may be worthwhile to include comprehensive research for some rehabilitation issues, the Secretary believes that the delineation in these priorities will ensure that more attention is directed to new research areas.

Changes: None.

Comment: One commenter noted the importance of literacy to NIDRR's six goals and urged that NIDRR address literacy in some way. It was not clear whether the commenter was suggesting a separate priority for literacy or inclusion of literacy components in all priorities.

Discussion: The Secretary appreciates the importance of literacy in achieving many life goals. NIDRR has recently conducted a competition for projects to enhance braille literacy for individuals who are blind and is considering priorities related to other aspects of literacy and disability. The Secretary reminds interested parties that NIDRR accepts applications for its Field-Initiated Research (FIR) and Innovation Grants program (IGP) competitions without regard to subject area.

Changes: None.

Priority 1—Rehabilitation and Neuromuscular Diseases (NMDs)

Comment: Several commenters stated that cognitive dysfunction is extremely rare in individuals with NMDs and should be dropped from the priority as it serves only to divert resources from more important issues.

Discussion: While it is true that cognitive dysfunction is not characteristic of all NMDs, it is a significant issue in some NMDs. The commenters seemed to define cognitive function quite narrowly as intellect or "IQ", overlooking the components of attention, memory, spatial awareness, and coordination. The Secretary agrees that cognitive deficits are not key to all NMDs and does not expect the RRTC to use resources to study cognitive deficits in those NMDs for which they are not relevant.

Changes: None.

Comment: One commenter stated that RRTCs should not be responsible for techniques to assist individuals to maintain employment, but only to attain employment.

Discussion: The Secretary believes maintaining employment is an important goal of rehabilitation for individuals with disabilities. When rehabilitation programs assist previously unemployed individuals to attain employment, they must be concerned with the likelihood that the individual can maintain that employment. Maintaining employment for a specified period is a criterion for "successful rehabilitation" under the public vocational rehabilitation program. Thus, it is appropriate to expect RRTCs that are developing new rehabilitation approaches to be concerned with strategies that will promote the maintenance of employment.

Changes: None.

Comment: One commenter stated that the requirement that the RRTC include technological aids and devices among the rehabilitation interventions it develops and evaluates is too restrictive, since technological aids might not be an effective intervention.

Discussion: The Secretary believes that it is important to understand the potential of technology to assist in rehabilitation of any condition, and that the role of technology in NMDs has not been sufficiently explored. The priority does not dictate the amount of emphasis to be placed on technology. It is up to the applicant to present a response to the priority that justifies its own approach to developing and evaluating technology to assist individuals with NMDs to preserve functioning, independence, and employment.

Changes: None.

Comment: One commenter stated that the priority for NMDs should contain, as a requirement for funding, a strong emphasis on developing vocational rehabilitation that leads directly to employment.

Discussion: The Secretary believes that attaining and maintaining employment are important goals of vocational rehabilitation services and outcomes. The priority's requirement to develop and evaluate strategies to improve vocational rehabilitation services and vocational outcomes will address employment outcomes for persons with NMD.

Changes: None.

Priority 2—Rehabilitation and Multiple Sclerosis (MS)

Comment: One commenter suggested that the priority should make specific reference to new interventions for the improvement of urinary functioning in individuals with MS.

Discussion: The Secretary agrees that this is an important issue for this population.

Changes: The first activity has been reworded to read "develop and evaluate new clinical interventions and rehabilitation strategies to improve human functioning, which may include early intervention, as well as techniques to improve motor, sensory, cognitive, alimentary, urinary, and sexual functioning of individuals with MS."

Comment: One commenter stated that the development and exploration of assistive technology for vocational attainment should be broadened to address full community integration, independence, and quality of life.

Discussion: The Secretary agrees that the potential of technology to assist individuals with MS to maximize the quality of life in the community has not been sufficiently explored.

Changes: The second activity in the priority has been reworded to provide for strategies to assist individuals to "attain or maintain employment, independence, and maximal quality of life".

Comment: One commenter stated that opportunities for community integration

and consumer participation are critical components of long-term care in the community.

Discussion: The Secretary agrees that these issues are important to long-term care in the community.

Changes: The fourth activity in the priority has been modified to read "Develop and evaluate new models for consumer participation, community integration, and long-term care in the community."

Priority 3—Functional Assessment and Evaluation of Rehabilitation Outcomes

Comment: One commenter suggested that the priority may be too comprehensive in addressing both medical rehabilitation and community integration, and that the emphasis on community integration should be increased, with a concomitant decrease in attention to issues of physical rehabilitation. A second commenter urged that independent living be included as one of the rehabilitation strategies to be addressed by the potential Center.

Discussion: The Secretary agrees that the scope of the priority is broad and comprehensive. At the same time, the Secretary believes that this type of work is extremely important to the field of rehabilitation—whether it be medical, psychosocial, or vocational—and believes it is the key to much of the other work supported by NIDRR. This area emerged as perhaps the most important priority in research on human functioning in the NIDRR long-range planning process. The Secretary believes that this Center should be concerned with the full range of rehabilitation. Although the Secretary believes that independent living includes a group of rehabilitation interventions that will surely need to be studied in any attempt to assess rehabilitation outcomes, the priority does not constrain the applicants to consider any specific rehabilitation interventions.

Changes: None.

Comment: Several commenters suggested the inclusion of a reference to the development of validated treatment guidelines and treatment objectives and an activity involving measurement and evaluation standards for medical rehabilitation. They argued that these standards are needed to improve the quality of clinical practice and to demonstrate that adherence to standards leads to better outcomes for the individuals who are served.

Discussion: The development of standards for medical rehabilitation practice is an important concept that deserves further elaboration by the field of medical rehabilitation. The Secretary believes, however, that the development of standards for clinical practice would be a massive undertaking that would require resources and activities well beyond the scope of this priority.

Changes: None.

Comment: One commenter recommended that the priority include a requirement to develop systems to measure client goals, the extent and impact of client involvement in rehabilitation practice, and the extent and impact of client empowerment.

Discussion: The Secretary believes the idea of developing measures to assess the extent and impact of client involvement on rehabilitation outcomes has potential merit, and that development of these measures would be an allowable activity under the proposed priority. However, the Secretary elects not to add more requirements to what is already a very comprehensive priority. The Secretary also reminds interested individuals that applications to study these topics could be submitted under the FIR and IGP programs.

Changes: None.

Comment: Several commenters stated that applications of functional assessment to quality assurance and quality improvement would be one of the most important contributions of this priority and should be mentioned.

Discussion: The Secretary agrees that a functional assessment or outcome measurement system will be an important part of the evaluation of rehabilitation interventions and services and of determining efficacy and cost benefit as stated in the Background section of the priority. The assessment and measurement system is justified in terms of its potential role in improving the accountability of rehabilitation as well. However, the Secretary does not believe it is necessary to change the background statement of the priority.

Changes: None.

Priority 4—Arthritis Rehabilitation

Comment: One commenter stated that the concentration on degenerative joint disease, rheumatoid arthritis, and juvenile arthritis was excellent, but that both fibromyalgia and osteoporosis are also conditions that may lead to major disability and should be included.

Discussion: The Secretary agrees that fibromyalgia is a condition that raises significant rehabilitation problems. However, the Secretary declines to require all applicants to propose studies on this population. Instead, applicants may elect to add studies of this population, while not neglecting the three populations described in the Background section of the priority. The Secretary reminds the public that NIDRR conducts FIR and IGP competitions in which interested parties may submit applications for research that is outside the scope of the priorities. The Secretary believes that there is currently considerable research attention, including both basic and applied research, to the problem of osteoporosis, particularly as it affects women. Thus, the limited resources available for arthritis rehabilitation research through NIDRR need not be diverted to this problem at this time.

Changes: None.

Comment: One commenter stated that there have been a number of promising functional assessment measures and that it may be more appropriate to focus on the adaptation and application of existing measurements, rather than to require the development of assessment measures.

Discussion: The Secretary agrees that researchers should capitalize on promising existing instruments.

Changes: The fourth activity in the priority has been amended to read "develop or adapt and evaluate acceptable measures * * *."

Priority 5—Stroke Rehabilitation

Comment: Several commenters stated that the proposed requirement to document the natural course of recovery from stroke and to develop prognostic indicators would be unproductively duplicative of other studies. They stated that the requirement should be focused on improving the accuracy of predicting stroke outcomes and applying predictive measures in rehabilitation practice.

Discussion: The Secretary agrees that is important to advance the goals of research in order to improve practice. As there has been considerable prior research to document the natural course of stroke recovery, the Secretary agrees to set more advanced goals for this priority and require that the researchers use the results of these previous studies to develop accurate measures to predict rehabilitation outcomes in practice.

Changes: The priority has been modified to delete "document the natural course of stroke recovery" and require the Center to assess the predictive accuracy of existing or newly developed prognostic indicators and develop systems to apply predictive knowledge in clinical and rehabilitation practice.

Comment: Several commenters stated that a major additional need in stroke research is a study of the relative effectiveness and cost-effectiveness of

various rehabilitative treatment strategies.

Discussion: The Secretary agrees that this is an important issue. Consequently, the priority does require the evaluation of rehabilitation interventions and the assessment of rehabilitation and health care service delivery models. Both evaluation and assessment include studies of effectiveness and, to the extent feasible, cost-effectiveness.

Changes: None.

Comment: One commenter questioned the requirement to "develop and assess health care service delivery models, including self-contained stroke rehabilitation units, coordinated team care, and vocational rehabilitation services." The commenter questioned whether this implied that the funded RRTC must have all three of these components, whether all three components must be evaluated somewhere, or whether these were simply examples of models that could be studied. Other commenters suggested that the priority be expanded to include additional service models, such as day treatment, outpatient treatment, intermediate care, nursing home placement, and home care.

Discussion: The Secretary believes that it is important that the Center evaluate all three components—self-contained stroke rehabilitation units, coordinated team care, and vocational rehabilitation services—that are specified in the priority. The Center may develop and assess one or more of the models in collaboration with another institution. An applicant may also propose to evaluate additional service models or variations on these three components.

Changes: None.

Comment: One commenter stated that some functional deficits are common to all individuals with acquired brain injuries, regardless of etiology, and that populations with stroke or TBI could be grouped together for research purposes.

Discussion: In the beginning of this Appendix, the Secretary discussed the general issue of disease-specific priorities and also made it clear that applicants may propose related research as long as the applications are responsive to the entire research scope of the principal priority to which they are responding. There are indeed many commonalities in functional deficits of individuals with stroke and TBI, and NIDRR combined the two disease categories in a previous RRTC.

However, the Secretary has chosen to fund a separate Center for stroke research because of the different rehabilitation issues presented by these two populations. Average age at onset, family composition, prognoses, role expectations, sources of financial support, life expectancy, vocational potential, educational needs, prevention of secondary complications, likelihood of recidivism, and other health problems are different for these populations. Because rehabilitation research must address long-term outcomes, these factors would be likely to confound the research. As previously stated, NIDRR will convene a meeting of experts to discuss these suggestions and the possibilities of organizing some future research priorities along the lines of functional capacities and deficits.

Changes: None.

Priorities 6–8—Rehabilitation In Traumatic Brain Injury

Comment: Several commenters stated that there should be a requirement for the TBI Centers to coordinate with other NIDRR projects and RSA centers on TBI.

Discussion: The Secretary agrees that this should be a specific requirement for the TBI Centers.

Changes: The Background statement for priorities 6–8 has been amended to require coordination with other NIDRR Centers and projects and RSA centers on TBI.

Comment: One commenter suggested that the TBI RRTCs be required to coordinate materials development and dissemination with the National Head Injury Foundation and its State associations.

Discussion: Each Center must disseminate and encourage the use of new rehabilitation knowledge and must involve individuals with disabilities, rehabilitation service providers, and, if appropriate, family members, in dissemination activities. However, the Secretary does not believe it appropriate to specify that the RRTCs must involve any particular private organizations in any of their activities.

Changes: None.

Comment: Some commenters suggested that certain additional physical and psychosocial impairments should be listed in the background statement of the priorities.

Discussion: The Secretary agrees that the suggested problems are important impairments and has altered the background statement to include them.

Changes: The background statement of the priority has been changed to read "The residual deficits that result from TBI may be grouped as follows: (1) *Physical impairments*—impairments of gait, limb spasticity, labored speech, vision difficulties, poor balance, hearing loss, other sensory impairments, headaches, lack of coordination, paralysis, and potential for seizure disorders; * * * (4) *psychosocial impairments*—tendency toward social inappropriateness, inability to control emotions, fatigue, mood swings, sexual dysfunction, restlessness, lack of motivation, and inability to form and maintain relationships."

Comment: One commenter urged that the priorities require research on TBI survivors over age 45, who, while they have significant work potential, are often ignored because they do not fit the profile of the typical TBI survivor.

Discussion: The Secretary agrees that individuals over age 45 may have significant work experience and potential, as well as needs for continued independence and community integration. Applicants are free to propose research projects on TBI survivors over age 45, but the Secretary points out that selection criteria for the RRTC program at 34 CFR 352.32 emphasize that applicants must be responsive to the published priorities. The Secretary declines to require research on this population because applicants should be free to propose specific sample populations and research hypotheses and to justify their positions. Further, the relatively low incidence of older-age TBI survivors may make it difficult to study sufficiently large samples of this group. At the same time, the rehabilitation prospects of this age group may be sufficiently different that their inclusion in a sample with younger survivors could dilute the reliability of the study findings. The Secretary again reminds the public that special studies outside the scope of the priorities are welcome in NIDRR's FIR and IGP programs.

Changes: None.

Comment: One commenter argued that the inclusion of a requirement to study individuals with concomitant SCI and TBI will weaken the research effort. The commenter stated that the population of individuals with this dual disability is small, and the heterogeneity of the TBI population already makes it difficult to obtain study samples of sufficient size. The commenter argued that to require research on this low-incidence population would divert resources from more important studies, with questionable results.

Discussion: The Secretary agrees that, while this is an important problem for a relatively small population, the RRTC should not be required to investigate this issue.

Changes: The proposed requirement to "develop approaches to the special rehabilitative needs of individuals with concomitant brain and spinal cord

injuries" has been deleted from the priority.

Comment: One commenter suggested that there be specific research on the problem of agitation, which occurs in approximately half of individuals admitted to acute rehabilitation and appears to have serious implications for rehabilitation outcomes.

Discussion: The Secretary agrees that this appears to be a serious problem that is deserving of study. However, the priority does not specify any of the symptoms or complications to be studied. The Secretary prefers to invite applicants to propose the details of their studies and to justify their approaches. If agitation is a significant complication for over half of TBI survivors, it likely will be identified as a study issue.

Changes: None.

Comment: One commenter stated that the research on substance abuse among individuals with TBI should address the timeliness of substance abuse rehabilitation.

Discussion: The Secretary agrees that the timeliness of substance abuse rehabilitation is an important factor in evaluating that intervention.

Changes: The seventh activity of Priority 7 has changed to address the issue of the timeliness of substance abuse rehabilitation.

Comment: One commenter recommended that Priority 7—Community Integration and TBI—address the additional program options of assisted living and specialized day programs.

Discussion: The Secretary agrees that these programs may be among those investigators choose to study but will not specify what strategies the RRTC must evaluate in its efforts to achieve the designated outcomes.

Changes: None.

Comment: One commenter suggested that the priorities on TBI include research into aggressive community education and intervention programs to promote community acceptance of individuals with head injury.

Discussion: The Secretary agrees that community acceptance is important for all individuals with disabilities. However, the NIDRR long-range planning process participants recommended that NIDRR research should emphasize accessibility and developing individual capabilities, since research on how to change attitudes has had a limited impact.

Changes: None.

Comment: Several commenters recommended that the priority on community integration be expanded to include issues of housing, transportation, re-entry into the secondary education system, adult education, postsecondary education, non-vocational productive activities, and recreation.

Discussion: Again, the Secretary acknowledges that these may be important components of "effective models of community integration" and "types of services needed in the community" provided for in the priority. The Secretary elects not to prescribe any of the elements of the models to be developed and evaluated, but rather to permit applicants to propose models consistent with their research hypotheses.

Changes: None.

Comment: One commenter objected to the inclusion of a requirement to "[d]evelop and evaluate treatment strategies to enhance neurobehavioral functioning and cognition, especially as related to employment and community integration" in Priority 7—Community Integration and TBI. The commenter stated that, based on its observations as an RRTC on community integration and TBI, this requirement should be included in Priority 6—Rehabilitation Interventions in TBI. The commenter suggested a substitute requirement to develop "strategies to enhance the accessibility of independent living and employment opportunities for individuals with TBI."

Discussion: The Secretary believes that the suggested addition would greatly improve the usefulness of the Center funded under Priority 7. However, the Secretary does not agree to eliminate from that priority the requirement to develop and evaluate treatment strategies that are focused on employment and community integration.

Changes: A requirement has been added to Priority 7 to "[d]evelop strategies to enhance the accessibility of independent living and employment opportunities for individuals with TBI".

Comment: One commenter suggested a change in the proposed requirement to "[d]elineate types of services needed in the community * * * and evaluate treatment programs" in Priority 7 because of a lack of clarity about the expectations in that requirement.

Discussion: The Secretary agrees that community services and treatment programs are not equivalent.

Changes: The priority has been changed to read "Delineate the types of services needed * * * and evaluate the appropriateness and efficacy of community services".

Comment: One commenter recommended that Priority 8—Vocational Rehabilitation and Employment in TBI should also address financial disincentives to work; model accommodations for professionals, executives, and skilled workers; and accommodations for those who have retained pre-injury vocational skills but require accommodations.

Discussion: The Secretary agrees that these are important issues. However, the Secretary believes that studies of financial disincentives to work require different types of rehabilitation expertise and significant resources that would dilute attention to the other issues in this priority, and, therefore, should not be included within the scope of this priority. Accommodations for skilled TBI survivors could be addressed under the priority as it stands, specifically under the requirement to "[i]dentify types of job accommodations that will enable TBI survivors to work productively." The Secretary does not specify the study populations for the research but leaves it to the applicant to propose and defend a research hypothesis and methodology.

Changes: None.

Priorities 9–12—Rehabilitation of Spinal Cord Injury

Comment: Several commenters argued that there is an incongruity in combining research into neural recovery with research on secondary complications, since the two subjects require quite different capabilities and approaches. One commenter stated that the study of neural recovery is more appropriately placed in the domain of pharmacology than in rehabilitation.

Discussion: The Secretary accepts the contention of the commenters that these two research subjects cannot be combined. Secondary complications are more clearly related to NIDRR's applied rehabilitation research mission.

Changes: The title of Priority 9 has been changed to read "Secondary Complications in SCI." References to neural recovery have been deleted.

Comment: Many commenters recommended that research on neural recovery be required in the priority on vocational rehabilitation because neural recovery is important to vocational rehabilitation.

Discussion: The Secretary does not agree. The research interests and capabilities required for research on neural recovery are quite different from those required for vocational rehabilitation research. Neural recovery is only one of several necessary precursors.

Changes: None.

Comment: Several commenters thought that the background section to Priority 9 implied that research on

urinary tract infections and circulatory disorders was no longer needed and urged that emphasis on these problems be retained.

Discussion: The Secretary intended the reference in the background section to significant research progress in certain areas to indicate the value of research to rehabilitation and the fact that these areas were amenable to research and to progress in achieving solutions. The priority is open to research on all secondary complications.

Changes: None.

Comment: One commenter asked for clarification of the extent to which RRTCs will be required to invest resources in studying the use of adaptive technology by individuals with SCI, since adaptive technology research requires different capabilities than medical rehabilitation research.

Discussion: The priorities do not establish any specific requirement for research on adaptive technology to solve the problems delineated by the priorities. Each applicant must propose what it considers to be the most promising research to address these problems. An applicant may elect to devote up to 100 percent of its effort to studies of adaptive technology, or it may propose to ignore adaptive technology. The selection criteria for RRTCs allow for the consideration of the merit of various approaches.

Changes: None.

Comment: One commenter stated that research results must be translated into interdisciplinary clinical practice and into educational programs and practices for client use. The commenter argued that these programs should be client-developed and designed so that clients can evaluate their own self-care.

Discussion: The RRTC program contains several requirements for translation of research findings into practice, communication of research findings to clinicians and consumers, as well as to other researchers, and involvement of consumers in research and dissemination. These requirements could easily be met by the approach described by the commenter. However, the Secretary elects not to dictate the specific approaches that an applicant must use to disseminate, but rather to let applicants propose approaches.

Changes: None.

Suggestions for Additional Priorities

Comment: Two hundred and sixty commenters recommended that NIDRR include a priority for an RRTC on pediatric trauma, as it had done in the FY 1988 competition. Many commenters expressed concern that the NIDRR research agenda would no longer include research on the rehabilitation of children with disabilities in general, on injured children in particular, and on support to families of these injured children. These commenters emphasized that NIDRR should not abandon research on injured children.

Many of the commenters simply expressed support for the continuation of the current research in this area. However, many of the commenters also stressed the need for research in nine specific areas. The nine areas included prevention or primary prevention; epidemiological research; acute medical care practices; health policy research; transition to education; outcome research and evaluation models; transitional services to vocational and special education; case management and parent advocacy models; and information dissemination and training.

A number of commenters focused on the need for further research on children with traumatic brain injuries. One commenter noted that she had provided written testimony on the importance of research in pediatric trauma during the NIDRR long-range planning process and that her comments were not reflected in the decision not to announce a priority in this area.

Discussion: The Secretary has reviewed the extensive public comment on the pediatric trauma issue and wishes to emphasize that the Department is committed to the principles of secondary prevention, early intervention and service improvement for injured children.

The extensive public comment provided information on the incidence, prevalence and impact of pediatric trauma which, when considered together, highlights the importance of research in this area. Comments supporting this research were received also from providers of rehabilitation and other services to adults, supporting this research. In light of all these comments, the Secretary believes pediatric trauma should continue so injured children, their families, and service providers can continue to benefit from the creation of new knowledge.

Changes: The Department will publish a final priority for research in pediatric trauma.

Comment: One commenter urged that NIDRR announce a priority for an RRTC to assist independent living centers to better meet the needs of minority populations.

Discussion: On July 31, 1992, NIDRR published a notice of proposed priorities that includes a proposed priority for an RRTC on Independent Living for Underserved Populations (57 FR 34024). This priority responds to the issues raised by the commenter.

Changes: None.

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.133B]

Applications for Certain New Awards Under the Rehabilitation Research and Training Centers Program for FY 1993

AGENCY: National Institute on Disability and Rehabilitation Research, Education.

ACTION: Notice inviting applications for certain new awards under the Rehabilitation Research and Training Centers (RRTC) program for Fiscal Year (FY) 1993.

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The final priorities for the Rehabilitation Research and Training Centers (RRTC) program are published in this issue of the **Federal Register**. This consolidated application package includes the closing dates, estimated funding, and application forms necessary to apply for awards under any of this program's competitions. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels.

APPLICATION NOTICES FOR FISCAL YEAR 1993 REHABILITATION RESEARCH AND TRAINING CENTERS CFDA NO. 84.133B

Funding priority	Date for transmittal of application	Estimated No. of awards	Estimated funds available	Estimated project period (months)
Rehabilitation in Neuromuscular Disease	3/24/93	1	650,000	60
Rehabilitation and Multiple Sclerosis (MS)	3/24/93	1	600,000	60
Functional Assessment and Evaluation of Rehabilitation Outcomes	3/24/93	1	600,000	48
Arthritis Rehabilitation	3/24/93	1	650,000	60
Stroke Rehabilitation	3/24/93	1	600,000	60
Rehabilitation Interventions in Traumatic Brain Injury (TBI)	3/24/93	1	650,000	60
Community Integration and Traumatic Brain Injury (TBI)	3/24/93	1	600,000	60
Vocational Rehabilitation and Employment in Traumatic Brain Injury (TBI)	3/24/93	1	600,000	36
Secondary Complications in Spinal Cord Injury	3/24/93	1	650,000	60
Community Integration for Individuals with Spinal Cord Injury (SCI)	3/24/93	1	650,000	60
Vocational Rehabilitation and Employment for Individuals with Spinal Cord Injury (SCI)	3/24/93	1	600,000	36
Aging with Spinal Cord Injury (SCI)	3/24/93	1	600,000	48

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 352; and (c) the Notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**.

Purpose of Program: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

This notice supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This notice would address Goal 5 by helping individuals with disabilities to develop the skills necessary to live and work successfully in the world as it is today.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (20 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the Research design* (35 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management* (20 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin,

gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Note: The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals with disabilities from minority backgrounds. Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

In addition, the 1992 Amendments also require that each grantee that provides services to individuals with disabilities must advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs may be obtained by calling (202) 205–9343.

If you need further information about these requirements, please contact David Esquith at (202) 205–8801.

Eligible Applicants: Those eligible for assistance under this program are as follows: (a) State and public agencies or organizations; (b) private agencies or organizations; (c) institutions of higher education, and (d) Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: March 23, 1993.

Available Funds: $8,400,000.

Estimated Average Size of Awards: $700,000.

Estimated Number of Awards: 12.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions: The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials: Public Reporting Burden Estimate Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED Form ED (80–0014) is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A)).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certification form must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: William Whalen, The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., room 3417, Switzer Building, Washington, DC 20202–2704. Telephone: (202) 205–9141; deaf and hearing impaired individuals may call (202) 205–5474 for TDD services.

Program Authority: 29 U.S.C. 760–762.

Dated: January 13, 1993.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms and Certifications included in this

package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one program competition NIDRR or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applications that are for training activities, including all applications in the Research Training grants program, should limit indirect charges to the lesser of the actual indirect costs or eight percent of the total direct costs of the program, as noted in the Education Department General Administrative Regulations (EDGAR). If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs may be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only State, public or private agencies or organizations, institutions of higher education and Indian tribes and tribal organizations are eligible to apply for grants under this program.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff cannot advise you of whether your subject area or proposed approach is likely to receive approval. However, NIDRR staff can advise you of the requirements of the program for which you propose to submit your application.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame, as well.

For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted each year of the project. Additionally, there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-U

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit
Address *(give city, county, state, and zip code)*	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A State — H Independent School Dist
B County — I State Controlled Institution of Higher Learning
C Municipal — J Private University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Profit Organization
G Special District — N Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A Increase Award — B Decrease Award — C Increase Duration
D Decrease Duration — Other *(specify)*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

BILLING CODE 4000–01–C

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

4. The Secretary strongly requests the applicant to limit the Application Narrative to no more than 100 double-spaced, typed pages (on one side only).

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instruction, searching existing data sources, gathering maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

(Information collection approved under OMB control number 1820–0027. Expiration date: July 31, 1995.)

BILLING CODE 4000–01–U

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90, and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues 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 the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 93–1304 Filed 1–19–93; 8:45 am]
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Standard Form - LLL-A

federal register

Thursday
January 21, 1993

Part IX

Department of Housing and Urban Development

Office of Assistant Secretary

Funding Availability; Disaster Relief Housing Counseling; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Funding Availability; Disaster Relief Housing Counseling

[Docket No. N–93–3538; FR 3370–N–01]

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

ACTION: Notice of Funding Availability (NOFA) for disaster relief housing counseling for Fiscal Year 1992 under the Dire Emergency Supplemental Appropriations Act of 1992.

SUMMARY: This Notice announces the availability of $500,000 of Fiscal Year (FY) 1992 funding under the Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102–368, approved September 23, 1992) for HUD-approved housing counseling agencies to provide emergency counseling regarding housing availability, maintenance and financing to homebuyers, homeowners, and renters living in areas adversely affected by Hurricane Andrew, Typhoon Omar, Hurricane Iniki, and other natural disasters as declared by the President of the United States.

Funding for housing counseling under this NOFA will be made available to eligible housing counseling agencies serving, or proposing to serve, the areas affected by Hurricane Andrew, Typhoon Omar, and Hurricane Iniki. (In this NOFA, Hurricane Andrew, Typhoon Omar and Hurricane Iniki are referred to as "federal disasters." The geographical areas adversely affected by these three federal disasters and designated as federal disaster areas, and identified in Section I.B.2 of this NOFA, are referred to as "federal disaster areas.") The balance of any funds remaining after awards are made under this NOFA will be made available in FY 1993, through publication of an additional NOFA (or NOFAs), for other disasters, which may be declared by the President during FY 1993.

An applicant must, as of the date of issuance of the Request for Grant Application (RFGA) based on this NOFA, be a HUD-approved housing counseling agency, and must be able and willing to provide comprehensive housing counseling to individuals and families (1) living in a federal disaster area within the applicable Region, or (2) residing outside the disaster area, but whose employment was adversely affected by one of the three federal disasters. (HUD Handbook No. 7610.1 REV–2, dated September 1990 (the Handbook) sets forth the requirements and procedures governing HUD's housing counseling program. Housing counseling services not covered by the Handbook do not quality for eligibility for funding under this NOFA.)

In the body of this document is information concerning: the purpose of this NOFA; elibility for funding; available funding; selection criteria; and the application process, including how to apply for funding, and how selections will be made.

DATES: The application due date is March 18, 1993. Application kits may be obtained from, and completed applications must be submitted to HUD's Office of Procurement and Contracts at HUD Headquarters. Please see Section II.A. of this NOFA for further information on obtaining and submitting applications, and for the address of the Office of Procurement and Contracts. Application kits will be made available by a date that affords applicants at least 30 days to respond to this NOFA.

Applications may be mailed, provided that they are postmarked no later than midnight, March 18, 1993. If an application is physically delivered to the Office of Procurement and Contracts at HUD Headquarters, the application must be delivered by the close of business for that office. Applicants should contact the Office of Procurement and Contracts ((202) 708–1585) regarding the time the office closes.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before, or postmarked by, the application 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.

FOR FURTHER INFORMATION CONTACT: Thomas Miles, Program Advisor, Single Family Servicing Division, Department of Housing and Urban Development, room 9178, 451 Seventh SW., Washington, DC 20410, telephone (202) 708–1672, or (202) 708–4594 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Sec. 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); secs. 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook 7610.1, REV–2, dated September 1990; Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102–368, approved September 23, 1992).

2. Background

Section 106 of the Housing and Urban Development Act of 1968 (section 106) authorizes HUD to provide a program of housing counseling services to designated homeowners and tenants. The program authorized by section 106 (Housing Counseling Program) is divided into two distinct components: The housing counseling services and requirements provided under section 106(a), and those services and requirements provided under section 106(c).

Section 106(a) authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. With respect to homeowners, section 106(a) states that the above-described services shall be provided to homeowners with HUD-insured mortgages; first-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949 (home loans guaranteed by the Farmers Home Administration); and homeowners with loans guaranteed or insured under chapter 37 of title 38, United States Code (home loans insured or guaranteed by the Department of Veterans Affairs).

Section 106(c) authorizes homeownership counseling only (no tenant counseling) and defines a homeowner eligible for counseling under this section as a homeowner whose home loan is secured by property that is the principal residence of the homeowner, who is unable to correct a home loan delinquency within a reasonable time. Section 106(c) defines "home loan" as a loan secured by a mortgage or lien on residential property.

Under the Housing Counseling Program, HUD awards grants to public or private nonprofit organizations to provide the housing counseling services authorized by section 106(a) and section 106(c). When the Congress makes funds available to assist the Housing Counseling Program, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. An agency that is approved by HUD as a housing counseling agency does not automatically receive funding. The agency must apply for such funding under a Request for Grant Application (RFGA) issued by HUD. The purpose of the housing counseling program is to promote and protect the interests of HUD, HUD-approved and other mortgages, and housing consumers participating in HUD-insured and other housing programs.

B. Allocation Amounts

1. Total Available Funding

A total amount of $500,000 was appropriated for housing counseling, as authorized by section 106, by the Dire Emergency Supplemental Appropriations Act, 1992 (Pub. L. 102–368, approved September 23, 1992). The purpose of this supplemental appropriations for housing counseling is to provide counseling concerning housing availability, maintenance and financing to homeowners, homebuyers, and tenants living in a federal disaster area.

2. Allocation of Funds

HUD will award grants up to $500,000 for disaster counseling under this NOFA to HUD-approved housing counseling agencies, which serve the areas affected by the three federal disasters.

The balance of funds remaining, if any, will be allocated during FY 1993 for other disasters that may occur during that fiscal year and which are declared federal disasters.

As of the date of the publication of this NOFA, the Federal Government, in accordance with the procedures for designating disasters set forth in Pub. L. 93–288, as amended by Pub. L. 100–707, has identified areas within three States and one U.S. territory as federal disasters areas. These areas are:

a. In the State of Hawaii (Hurricane Iniki), the Islands of Molokai, Oahu, Maui, Hawaii, Kauai, Niihau, Lanai, and Kahoolawe;

b. In the State of Florida (Hurricane Andrew), the Counties of Collier, Broward, Dade and Monroe;

c. In the State of Louisiana (Hurricane Andrew), the Parishes of Acadia, Avoyelles, Cameron, Jefferson Davis, Orleans, Plaquemines, St. James, St. Bernard, Vermilion, Allen, Calcasieu, Evangeline, Livingston, Rapides, St. Helena, St. Landry, Tangipahoa, Washington, East Baton Rouge, East Feliciana, Jefferson, Lafayette, Pointe Coupee, St. Charles, St. Tammany, West Baton Rouge, West Feliciana and Terrebonne; and

d. The territory of Guam (Typhoon Omar).

For detailed information about each area, contact the Federal Emergency Management Agency (FEMA) Field Office that serves the disaster-affected location.

HUD's award grants under this NOFA will be based on an estimate of the amount of funds needed to meet the disaster relief counseling within the federal disaster areas. Under this plan, HUD Headquarters will, in so far as possible, award grants in relation to the number of families and individuals adversely affected by a federal disaster, and funding requested by the respondents under the RFGA.

3. Grant Awards

HUD Headquarters will make an equitable awarding of allocated housing counseling funds to eligible HUD-approved housing counseling based upon documented need in relation to:

a. The number of individuals and families estimated to be adversely affected by the federal disaster; and

b. The number of eligible applicants. (A determination of "eligible" applicant is based on the applicant's ability to meet the criteria specified in Section I.C of this NOFA.)

4. Announcement of Awards

In accordance with the requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and HUD's implementing regulations at 24 CFR part 4, no selection information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications. However, applicants that are declared ineligible or late will be notified. In accordance with section 102(a)(4)(c) of the HUD Reform Act, HUD will notify the public, by notice published in the **Federal Register**, of award decisions made by HUD under this funding. After the award process, HUD Headquarters will transfer the grants to the appropriate Regional Office for administration.

5. Grantee Reimbursement by HUD

HUD will reimburse grantees on the basis of not more than $35.00 per "counseling unit" which is defined as a documented face-to-face, written, or telephonic contact between:

a. The grantee's housing counselor and a client; or

b. The grantee's housing counselor and a mortgagee, landlord, service agency, creditor, credit reporting agency, governmental agency, realtor or employer, acting on behalf of a client, which results in an action or decision that:

(1) Identifies, clarifies, or assists in meeting or meets the client's housing need; or

(2) Assists in resolving or resolves the client's housing problem.

(See HUD Handbook 7610.1 REV–2, dated September 1990, paragraph 1–7 on page 1–6 for a definition of "client," "housing need," and "housing problem.")

C. Eligibility

1. Current HUD-approved Agency

Eligible applicants include public and private nonprofit entities with a current approval by HUD as housing counseling agencies, under the provisions of HUD Handbook No. 7610.1 REV–2 (dated September 1990, or its earlier versions), and which are located, or will be located within, or within reasonable proximity (as provided in paragraph 2 of this section C) to one of the federal disaster areas.

Current approval includes agencies that are on record at the applicable HUD Field Office as having been approved as a HUD counseling agency as of the date of issuance of the RFGA based on this NOFA. Agencies for which HUD has withdrawn this approval or have indicated in writing their withdrawal from the counseling program are NOT eligible. Agencies with "conditional" re-approvals are NOT eligible unless they satisfy HUD's requirements for removal of the "conditional" approval by the due date of applications for funding under this notice.

2. Location of Agency Counseling Facilities

For funds allocated to agencies serving Florida and Louisiana disaster areas as specified in paragraph I.B.2.b. and c. of this NOFA, eligible applicants may be located anywhere within the continental United States, but must locate an office within the disaster area or within reasonable proximity of the federal disaster area. In addition, all eligible applicants must:

a. Have counseling offices located in a federal disaster area; or

b. Have counseling offices located outside the federal disaster area, but within 60 minutes by ground transportation from the disaster area; or

c. Agree to locate to, or within reasonable proximity (as provided under paragraph (b) of this section C.2) to a federal disaster area within thirty days of the date of the grant agreement with HUD.

Note that requirements a, b, and c, may be waived for eligible applicant located in the State of Hawaii and serving the Hurricane Iniki and Typhoon Omar disaster areas (i.e., the only location requirement imposed is that the applicant be located in the State of Hawaii or the territory of Guam).

D. Selection Criteria

1. General Criteria

HUD, through its Headquarters Office of Procurement and Contracts, will award housing counseling grants made available under this NOFA to selected eligible agencies. An eligible agency is a HUD-approved housing counseling agency that:

a. Meets the location requirements set forth in Section I.C.2 of this NOFA; and

b. Provides, or proposes to provide, housing counseling to the federal disaster area.

2. Specific Criteria

Applications for funding under this NOFA will be reviewed, and grants will be awarded on the basis of an evaluation of all of the following criteria:

a. Amount requested by the grantee;

b. Applicant's estimated upcoming 12-month client workload* of families and individuals adversely affected by a federal disaster. (* "Workload" refers to the number of clients, as defined in HUD Handbook No. 7610.1 REV–2, dated September 1990, reported by the applicant on Form HUD–9902, Housing Counseling Agency Activity Report, for 1992);

c. Disaster client workload total;

d. Reimbursement of grantees by HUD on the basis of $35.00 per housing counseling unit;

e. Regional Offices' documented need for housing counseling services within the disaster areas to be served by the applicants;

f. HUD's assessment of the applicant's previous performance as a HUD-approved housing counseling agency (i.e. Biennial Performance Review), including the submission of the required reports.

h. In the case of previous grantees, the applicant's performance under such grants in accordance with the terms of the grant agreement, including the submission of the specific reports required under the grant agreement.

II. Application Process

A. Obtaining Application Kits

Applicants kits (Request for Grant Application (RFGA)) for grants to be awarded under this NOFA may be obtained from, and completed applications must be submitted to: Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5258, Washington, DC 20410.

The RFGA will be made available by a date that affords applicants at least 30 days to respond to this NOFA.

B. Application Deadline

The application due date is March 18, 1993. Applications may be mailed, provided that they are postmarked no later than midnight, March 18, 1993. If an application is physically delivered to the Office of Procurement and Contracts at HUD Headquarters, the application must be delivered by the close of business for that office. Applicants should contact the Office of Procurement and Contracts ((202) 708–1585) regarding the time the office closes.

A proper submission in response to the RFGA must conform to the specifications in the RFGA. HUD will not accept changes made by applicants to the forms, certifications and assurances, except for those specified in Section IV.A of this NOFA.

III. Checklist of Application Submission Requirements

An applicant must submit three different types of written submissions: Forms, certifications, and assurances. An applicant must submit three sets of each written submission, as specified below, with supporting documentation only as specified in the RFGA. Applicants must limit the submission of material to that required by the individual form, certification or assurance. HUD will not consider extraneous material and will discard it.

A. Forms

Each applicant will be required to submit the following completed and signed forms:

1. Standard Form 424, Application for Federal Assistance.

2. Standard Form 424B, Assurances—Non-construction Programs.

3. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

B. Certifications

Each applicant will be required to submit, at a minimum, the following certifications:

1. Certification of a Drug-Free Workplace, in accordance with the Drug-Free Workplace Act of 1988 and HUD's regulations at 24 CFR part 24, subpart F.

2. Anti-Lobbying certification in accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and the regulations at 24 CFR part 87.

C. Assurances

Each applicant will be required to submit, at a minimum, assurances regarding the applicant's housing counseling program to the effect that:

1. The applicant agency received its approval by HUD prior to the date of issuance of the applicable RFGA, and currently has approval from HUD. If a Biennial Performance Review has not been made by the HUD Field Office, then a prior approval constitutes a current approval.

2. HUD has or has not conducted a performance review of the applicant agency's housing counseling program; whether, as a result of the review, HUD re-approved the agency unconditionally or conditionally; whether, if HUD granted a conditional approval because of certain agency performance deficiencies, the applicant agency corrected the deficiencies to HUD's satisfaction.

3. If the applicant agency received a counseling grant from HUD during HUD's fiscal year 1990, 1991, or 1992, the agency complied with all grant requirements.

4. The applicant agency submitted all reports required during the most recent report year under the Handbook, and the grant document, if any.

5. The number of clients listed as the applicant's estimated housing counseling "disaster area" client workload is reasonable.

6. The agency can and will commence counseling services, including Fair Housing counseling in accordance with HUD Handbook 7610.1 REV–2, dated September 1990, within thirty days of the receipt of the notice of the award of a counseling grant to the applicant agency.

7. The agency had an independent financial audit during the past twenty-four (24) months.

8. The applicant administers its housing counseling program in

accordance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

9. The applicant provides its service without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook No. 7610.1 REV–2, dated September 1990.

IV. Corrections to Deficient Applications

After the deadline for submission of applications, applications will be screened to determine whether all items were submitted. Applicants will be given an opportunity to cure nonsubstantive deficiencies in their applications. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered.

A. Curable Deficiencies

The kinds of deficiencies which can be cured after the submission date for applications has passed are limited to the following:

1. Lack of required signature(s) on the following documents or certifications:

a. Standard Form 424B, Assurances—Non-Construction Programs.

b. Certification of Drug-free Workplace.

c. Anti-Lobbying Certification.

2. Failure to submit any of the above documents or certifications.

B. Noncurable Deficiencies

Failure to submit: 1. A completed and signed Standard Form 424, Application for Federal assistance.

2. A signed Housing Counseling Program assurance and all of its required documentation.

Note: HUD will *not* notify applicants who fail to submit any of the above two required documents. *Failure to submit the documents will render an application unacceptable.*

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which 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 between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism, Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the purpose of the funding under this NOFA is to provide grants to HUD-approved counseling agencies so that they may make counseling services available to homeowners and tenants who live in areas adversely affected by recent federal disasters.

Family, Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of grantees will provide families and individuals who were adversely affected by recent federal disasters, with counseling concerning housing availability, maintenance and financing for new housing. Since the impact on the family is considered beneficial, no further review under the order is necessary.

Accountability in the Provision of HUD Assistance

(1) Documentation and Public Access

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 a **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 requirements.)

(2) 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.)

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or 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. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure 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. HUD's regulation implementing section 13 is codified at 24 CFR part 86. 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. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4, and was recently amended by an interim rule published in the **Federal Register** on August 4, 1992 (57 FR 34246). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR 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 by 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics, (202) 708–381 (voice/TDD). (This is not a toll-free number.)

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.169.

Authority: Secs. 106, Housing and Urban Development of 1968 as amended; secs. 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook No. 7610.1, REV-2, dated September 1990; Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102–368, approved September 23, 1992).

Dated: January 12, 1993.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

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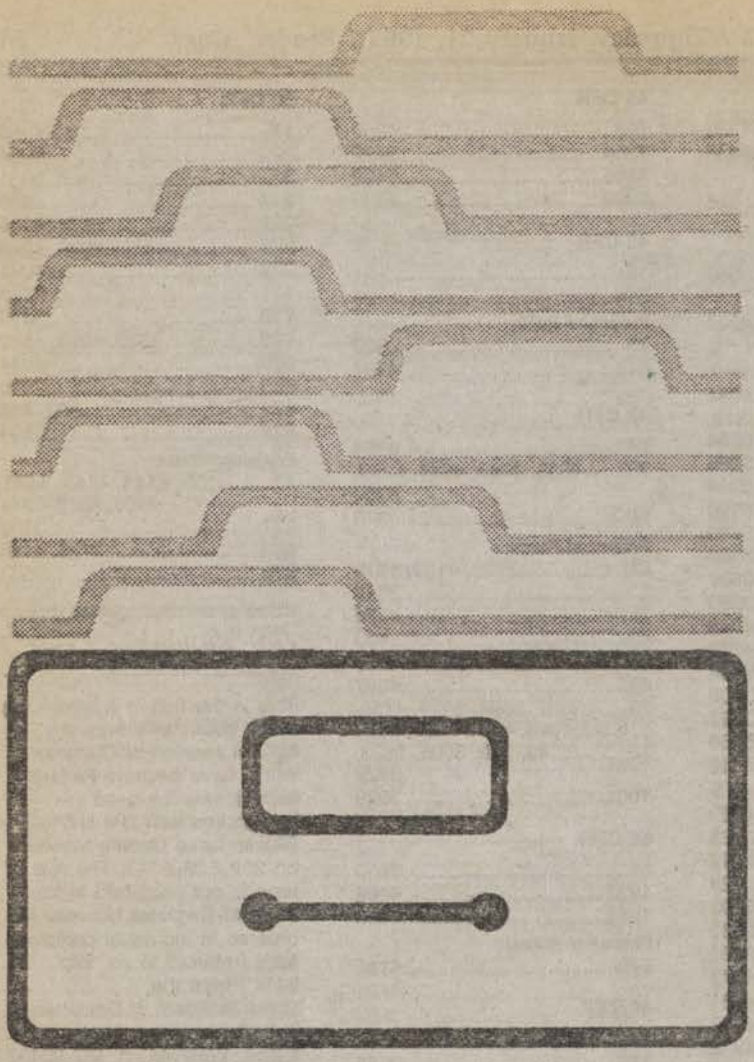
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S.J. Res. 2/P.L. 103-1

To authorize the United States Secret Service to continue to furnish protection to the former Vice President or his spouse. (Jan. 15, 1993; 107 Stat. 3; 1 page)

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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